



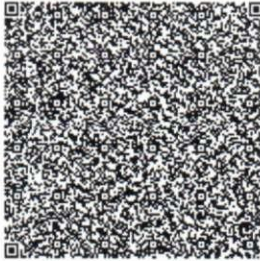
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Property Description	: NA
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First Party	: AMARJIT SINGH ADVOCATE
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ARBITRATION AWARD

IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure

IN THE MATTER OF:
Recruitment Genius Limited
46 High Street, Sevenoaks, Kent,
TN13 1JG United Kingdom

VERSUS

...Complainant

Domain Admin
Love Nahar ASAP Group of Companies
K K Market, Off No. 94, D Wing, Dhankawadi, Pune,
Maharashtra, 411043

.....Respondent

Disputed Domain Name:

<recruitmentgenius.co.in >

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.....Respondent

Disputed Domain Name: **<recruitmentgenius.co.in >**

1. THE PARTIES:

The Complainant in this Arbitration proceedings is Recruitment Genius Limited, 46 High Street, Sevenoaks, Kent, TN13 1JG United Kingdom.

The Respondent in the Arbitration proceedings is Domain Admin Love Nahar ASAP Group of Companies K K Market, Off No. 94, D Wing, Dhankawadi, Pune, Maharashtra, 411 043 .

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name **<recruitmentgenius.co.in>** has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Directi Web Services Pvt. Ltd. (R118-AFIN).



3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Domain Admin Love Nahar ASAP Group of Companies K K Market, Off No. 94, D Wing, Dhankawadi, Pune, Maharashtra, 411043. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

- 3.1 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).
- 3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **5th January, 2013**. The parties were notified about the appointment of an Arbitrator on **5th January, 2013**.



3.3 In accordance with the rules, paragraph 5(c), the Respondent was notified by me about the commencement of arbitration proceedings on 5th **January, 2013** and the due date for filing his response. The Respondent did not file any response. The Respondent was once again provided final opportunity to file his response, if any within 7 days to the Complainant by e-mail dated **January 22, 2013**.

3.4 The Respondent Domain Admin Love Nahar ASAP Group of Companies K K Market, Off No. 94, D Wing, Dhankawadi, Pune, Maharashtra, 411043 failed and/or neglected and/or omitted to file formal response to the Complaint within time as was granted to him by notice dated 5th **January, 2013** and 22nd **January, 2013**.

The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present Award is passed.

4. **FACTUAL BACKGROUND**

4.1 The Complainant is Recruitment Genius Limited, 46 High Street, Sevenoaks, Kent, TN13 1JG United Kingdom.

4.2 The complaint is based on the trade mark/service mark Recruitment Genius.

4.3 The Complainant, Recruitment Genius Limited, is a company organized under the laws of England and having

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its registered office at 46 High Street, Sevenoaks, Kent, TN13 1JG.

- 4.4 The Complainant is UK's largest online recruitment company trading under the trade mark and domain name www.recruitmentgenius.com. The main activity of the Complainant is to help people find jobs online, by combining unique technologies with a deep understanding of what it is like to be an employer looking for a new member of staff, or a job seeker looking for the next career move. The Complainant is continually expanding and developing its offering and presently fills over 195 new jobs every day for organizations across the globe including *inter alia* India.

The present dispute fall within the scope of INDRP and the Constituted Panel appointed by INDRP has the jurisdiction to decide the same. The Registrar of the disputed Domain Name has adopted the INDRP Rules, as per its Registrar Accreditation Agreement.

- 4.5 The complainant objects to the registration of disputed domain name <recruitmentgenius.co.in> in the name of the Respondent and seek the relief of transfer thereof.

5. PARTIES CONTENTIONS

5A COMPLAINANT

5A(1)The Complainant, adopted recruitment.genius / Recruitment Genius, a fanciful mark, both as a trade mark and a trade/corporate name in the year 2009. The trade mark Recruitment Genius enjoys a high degree of inherent distinctiveness and is by virtue of the same, associated exclusively and solely with the Complainant.



- 5A(2) The trade mark Recruitment Genius forms a key, essential and dominant part of the corporate name and trading style of the Complainant. It is submitted that people the world over, recognize and associate the trade mark Recruitment Genius when occurring in the corporate name/trading style/trade name of any company as belonging to the Complainant.
- 5A(3) The Complainant's trade mark Recruitment Genius belongs to the category of well-reputed trade marks in its line of trade and business i.e. advertising services; placing of advertisements for jobs and vacancies online; posting of online jobs and vacancy adverts; marketing services; business services; advice and consultancy relating to all the aforesaid services. It is instantly identifiable and recognizable by both members of the trade and public as being exclusively associated with the services and business of the Complainant. The trade mark and trade name Recruitment Genius, acts as a source identifier in as much as it stands for the high standards and superior quality of services rendered by the Complainant the world over.
- 5A(4) The Complainant's trade mark and trade name Recruitment Genius has, as a cumulative result of its innate distinctiveness, extensive network, widespread promotion and publicity given thereto, acquired the status of a well-recognized trade mark. The Complainant is the owner of the said goodwill and reputation and is entitled, to the exclusion of all others, to the benefit from the same on account of the labour,

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efforts and investment devoted by it to building up the said trade mark and trade/corporate name over time.

- 5A(5) The Complainant has registered trade mark recruitment. genius/ Recruitment Genius in UK in class 35 for the following services *"advertising services; the placing of advertisements for jobs and vacancies online; the posting of online job and vacancy adverts; marketing services; business services; advice and consultancy relating to all the aforesaid services"*.
- 5A(6) The Complainant has widespread business activities all over the world including India. With specific reference to India, the Complainant is already trading with Indian companies such as: Aditi Technologies, Clarion Technologies and Snovospace.
- 5A(7) It is submitted by the Complainant that as a result of the painstaking efforts and the superior quality of services rendered by the Complainant, which has now become synonymous with them, the trade name Recruitment Genius is associated solely and exclusively with the Complainant by members of the trade and public.
- 5A(8) The trade mark and trade name Recruitment Genius has been extensively advertised and publicized both as a trade mark and a corporate name in various magazines, journals and newspapers of international repute such as: The Financial Times, On Rec, Edge, Professional Manager, Management Today, Executive Grapevine, Better Business Magazine, HR magazine and Recruiter magazine. Recruitment Genius as a



trade mark have also been extensively advertised through electronic media especially on the Complainant's website www.recruitmentgenius.com which has viewership the world over including India.

Therefore, the trade mark and trade name Recruitment Genius has achieved a strong identity and is instantly recognizable all over the world including in India as emanating from the Complainant.

5A(9) The online popularity of the Complainant can be gauged from the huge number of search results relating to the Complainant that appear among the results when the words "Recruitment Genius" are typed into the home page of search engine <google.com>. Further the Complainant is also present on popular social networking websites such as facebook.com (with approximately 43,490 likes) and twitter.com (with approximately 9,812 followers).

5A(10) The recognition of the Complainant is also evident from the fact that its representatives attend several exhibitions such as: Chartered Institute of Personnel & Development (CIPD) Annual Conference, CIPD Recruitment & Technology, HR Performance 2011 Business Startup Show.

5A(11) The Complainant submits that the Respondent in the present dispute has registered the domain name <recruitmentgenius.co.in> thereby misappropriating illegally and without authority the trade mark/ trade name 'recruitment.genius / Recruitment Genius'

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which is the exclusive property of the Complainant. Further, the adoption of the domain name comprising the mark 'recruitment.genius / Recruitment Genius' appears to be blatantly dishonest by the Respondent who has adopted and created the domain name on May 31, 2012 which is subsequent to the adoption/creation of the trade mark and trade name Recruitment Genius by the Complainant, and also subsequent to the registration of the domain name recruitmentgenius.com by the Complainant on March 6, 2009.

5A(12) The Complainant further submits that the Respondent's mala fide and dishonest intention is evident from the fact that apart from adopting an identical / deceptively similar trade mark and domain name, the Respondent has copied/incorporated verbatim literature/contents from the Complainant's website <recruitmentgenius.com> on its website <recruitmentgenius.co.in>. For example, the Complainant's webpage entitled "How Genius Works" sets out for employers "5 genius steps to fill your job". The first of these steps reads: "You send us your job description and immediately your dedicated account manager will use their experience to refine your advertisement, so that it is fully optimized for all the job boards and social media in our network. This ensures your job opportunity is seen first by the best people". Step 1 on the Respondent's "How We Work" webpage uses exactly the same wording. Similarly, steps 2-5 are also copied verbatim from the Complainant's website.

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5A(13) The Complainant further submits that it is apparent that the Respondent has fraudulently and illegally registered the impugned domain name in order to make quick money and encash upon the goodwill associated with the Complainant's well known trade mark and domain name comprising of the trade mark / trade name Recruitment Genius.

B. RESPONDENT

5B(1) The Respondent was given an opportunity to file his/her response to the Complaint by the Panel by its notices dated **January 5, 2013 & 22nd January, 2013**. However, the respondent has failed to file any response within the prescribed time or to seek any extension of time. The case of the complainant, therefore, remained unrebutted.

6. DISCUSSIONS AND FINDINGS

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed there under in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for

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deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 In accordance with the principles laid down under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.
- 6.5 The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.

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- 6.6 The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain un rebutted and unchallenged. There is no dispute raised to the authenticity of the documents filed by the Complainant.
- 6.7 The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <recruitmentgenius.co.in> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.
- 6.8 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.9 The decision of Hon'ble Supreme Court of India in the matter of **JahuriSah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).
- 6.10 The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.



6.11 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

6.12 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

A. IDENTICAL OR CONFUSINGLY SIMILAR

6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

6.A.2 The Respondent registered the Disputed Domain Name on **May 31,2012**.

6.A.3 The contention of the Complainant that by registering the impugned domain name **<recruitmentgenius.co.in>** by the Respondent, the likelihood of confusion between the trademark of the disputed domain name cannot be avoided is upheld by this panel.

6.A.4 The Complainant relies upon the registration of trade mark Recruitment Genius in Class 35 in U. K. The Complainant claims right in the mark Recruitment Genius &/or domain **<recruitmentgenius.com>** under the Common Law in India.



6.A.5 The Complainant adopted and registered the domain **<recruitmentgenius.com>** on 6/3/2009.

The mark Recruitment Genius has been adopted as a trade mark and as a Corporate name by the Complainant in the year 2009.

6.A.6 The Complainant's use of their well-known and prior trademarks has been extensive, exclusive and continuous all across the world. Given the nature of the Complainant's use of its trade marks, anyone with access to a computer and the Internet, has access to the Complainant's web site wherein the Complainant's trademarks are featured throughout the website.

6.A.7 The Complainant maintains a website at the domain **<www.recruitmentgenius.com>** which was registered on 06.03.2009.

6.A.8. The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name **<recruitmentgenius.co.in>** is identical and/or deceptively similar to the earlier registered trade marks and Domain names of the Complainant. The whole of Complainant's trade mark /domain name has been incorporated in the disputed domain name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name **<recruitmentgenius.co.in>** is identical and/or



confusingly similar to the Trademark of the Complainant.

B Respondent has no interest or legitimate right

- 6B.1 The Respondents have no interest or legitimate right with respect to the Disputed Domain Name.
- 6.B.2. In the matter of "Croatia Airlines d.d.v. Modern Empire Internet Ltd.", a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.
- 6.B.3 The Respondent has registered the impugned domain name fraudulently and malafidely to ride upon the reputation and goodwill associated with the Complainant's trade mark and trade name Recruitment Genius as the Respondent has copied / incorporated verbatim/literature/contents from the Complainant's website.
- 6.B.4 The Respondent has no rights or legitimate interest in the domain name as the Respondent is not a licensee of the Complainant and neither has the Complainant granted any permission or consent in the Respondent to use the trade mark comprising of the words 'Recruitment Genius' in any manner or to incorporate the same in a domain name.

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6B.5 The Respondent has failed to demonstrate any bona fide use or basis of adoption of the <recruitmentgenius.co.in> domain name.

6B.6 The respondent has not rebutted claims of the complainant.

Therefore, this panel is satisfied that the respondent has no rights or legitimate interest in respect of the disputed domain name.

C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

6C.3 The Respondent registered the domain name <recruitmentgenius.co.in> on May 31, 2012. This was significantly after the adoption/creation of the trade mark and trade name recruitment.genius / Recruitment Genius by the Complainant.

6C.4 Respondent are rendering identical services, being helping people obtain jobs through an identical medium being the Internet, the Respondent must have had knowledge of Complainant's mark at the time it registered the identical domain name. Thus,

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this is prima facie evidence of the Respondent's bad faith use and registration.

6C.5 The Complainant submits that by registering and using the domain name <**recruitmentgenius.co.in**>, the Respondent has intentionally attempted to attract Internet users to its website by causing them to mistakenly believe that the Respondent's activities have been endorsed and/or sponsored by the Complainant and/or is affiliated to the Complainant who is the proprietor of an identical domain name <**recruitmentgenius.co.in**>, trade mark and trade name 'Recuitment Genius'.

6.C.6 The Respondents do not dispute any of the contentions raised by the Complainant. The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name <**recruitmentgenius.co.in**> was registered by the respondents in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.

6.C.7 The Respondents do not dispute any of the contentions raised by the Complainant. The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name <**recruitmentgenius.co.in**> was registered by the respondents in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.

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7. **DECISION**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

Transfer of the domain name <recruitmentgenius.co.in> to the Complainant.



AMARJIT SINGH
Sole Arbitrator

New Delhi
Dated: April 1 2013