



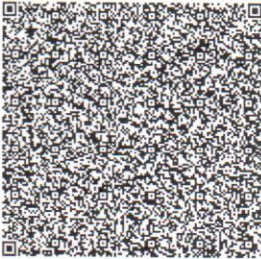
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL69746562904484M
Certificate Issued Date	: 23-Jun-2014 10:41 AM
Account Reference	: IMPACC (IV)/ dl775503/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL77550336373195327292M
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

NATIONAL INTERNET EXCHANGE OF INDIA

Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025

Mr. Marcus Angell v. Mr. Mohit Mehta

AWARD

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Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. The Parties

The Complainant is Mr. Marcus Angell, SILVER DOOR LIMITED, 3 & 4 Dukes Gate, Chiswick, London W4 5DX, U.K.

The Respondent is Mr. Mohit Mehta, Silver Door Realty P Ltd., Level 5, August Point, Golf Course Road, Gurgaon, Haryana 122005, India.

2. The Domain Name and Registrar

The disputed domain name is <www.silverdoor.in>.

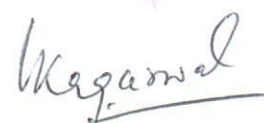
The said domain name is registered in Name.com LLC (R65 – AFIN)

3. Procedural History

(a) A Complaint dated March 12, 2012 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.

(b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

(c) In accordance with the Rules, on 19th August 2014 the National Internet Exchange of India notified the Respondent of the Complaint through the



post (courier – Blue Dart). However, the mail was received back undelivered with the endorsement “address shifted”. Thus, the matter has to proceed ex-parte. *448*

4. Factual Background

From the Complaint and the various annexures to it, the Arbitrator has found the following facts:

Complainant’s activities

The Complainant was founded in the year 2000 and presently it is engaged in providing service apartments. The Complainant books a large number of service apartments for its customers around the world every week. In other words, the Complainant is well known in the real estate, property rental and serviced rental apartments.

Respondent’s Identity and Activities

Respondent did not file any reply. Hence, the Respondent’s activities are not known.

5. Parties Contentions

A. Complainant

The Complainant has to demonstrate in the Complaint that each of the three elements specified in the Policy are applicable to this dispute. The Complainant contends that each of the aforesaid three elements is in fact applicable to this dispute.

In relation to element (i), it appears from the Complaint that “SILVER DOOR” is a part of the name of the Complainant. The disputed domain name is “www.silverdoor.in”. Thus, the disputed domain name contains a

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part of name of the Complainant. The addition of the words “in” is insignificant.

The Complainant is also the owner of multiple trademarks applications and registrations for the mark SILVERDOOR in many countries of the world. The list of the countries where the Claimant’s trademark SILVERDOOR is registered include Australia, China, European Union, India, Russia, Singapore, Switzerland, United Kingdom, United States of America, World Intellectual Property Organization (International), etc. In these countries said trademark is registered in Class 43 which includes “Letting of serviced apartments; letting agency services; finding tenants for service apartments; arranging temporary accommodation; rental and reservation of temporary accommodation”.

In support of its contentions, the Complainant has relied on the decisions in the following cases, namely, *Britannia Building Society v. Britannia Fraud Prevention* (WIPO Case No. D 2001-0506) and *F Hoffmann-La Roche AG v. Macalve e-dominios S.A.* (WIPO Case No. D2006-0451) wherein it has been held that when a domain name wholly incorporates a complainant’s registered trademark that is sufficient to establish identity or confusing similarity for purposes of the Policy. Also *Red Bull GmbH v. PREGIO Co. Ltd.*, (WIPO Case No. D2006-0909) and *Edmunds com, Inc v. Triple E. Holdings Ltd.*, (WIPO Case No. D2006-1095).

In relation to element (ii), the Respondent (as an individual, business, or other organization) has not been commonly known by the mark “SILVERDOOR”. Therefore, the Respondent has no right or legitimate interests in respect of the disputed domain name. Searches by the Complainant with the Indian Trade Mark Registry have revealed that the Respondent has not acquired trademark rights in the term “Silverdoor”.

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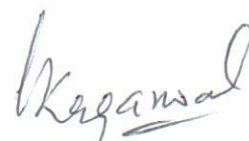
Furthermore, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. It appears that the Respondent registered the domain name for the purpose of creating confusion and misleading the general public and particularly the customers of the Complainant.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.silverdoor.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

In support of its contentions, the Complainant has relied on the decisions in the cases of *Sanofi-Aventis v. Abigail Wallace*, (WIPO Case No. D2009-0735) wherein it has been held that it is suggestive of bad faith where a trade mark is registered long before the disputed domain name is registered. Also *Herbalife International, Inc. v. Surinder S. Farmaha*, (WIPO Case No. D2005-0765); *Schur International A/S v. Jorge Massa*, (WIPO Case No. D2009-0450); *Swarovski Aktiengesellschaft v. Zhang Yulin*, (WIPO Case No. D2009-947) wherein it has been held that “The Respondent’s selection of the disputed domain name, which wholly incorporates the Trade Mark cannot be a coincidence.”.

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.silverdoor.in> or any trademark right, domain name right or contractual right.



6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

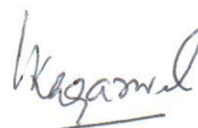
A. Identical or Confusingly Similar

According to the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

The present dispute pertains to the domain name <www.silverdoor.in>. The word “SILVERDOOR” is registered as a trademark of the Complainant in many countries as mentioned above. Most of these trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The word “silverdoor” is also registered in India as a trademark in Class 43. Therefore, the Complainant is well known to its customers as well as in business circles as “SILVERDOOR” all around the world.

It has been held in the case of *Disney Enterprises Inc. v. John Zuccarini Cupcake City and Cupcake Petrol*, (WIPO Case No. D2001-0489) that “Domain names that incorporate well-known trademarks can be readily confused with those marks.” Similarly, in the case of *Osram GmbH v. Yuri*



A Ivanov (WIPO Case No D2009-0692) it has been held that, “incorporating a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark”.

Therefore, I hold that the domain name <silverdoor.in> is ^{u/d} ~~is~~ very much similar or identical to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name <silverdoor.in>. SILVER DOOR is the name

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and mark of the Complainant. The trade mark "SILVER-DOOR" has acquired unique importance and is associated with the Complainant. A mention of the said trademark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Mohit Mehta. It is evident that the Respondent can have no legitimate interest in the domain name.

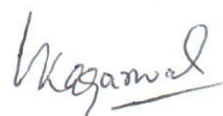
The Complainant contends that the expression SILVERDOOR does not have any relationship or association with the Respondent. Further that, the Complainant has not licensed, authorized or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. It has been held in the case of *Chanel Inc. v. Torres*, (WIPO Case No. D2000-1833) that the "Respondent had no rights in "Chanel" trademark when complainant had never "given the respondent permission to use its domain name" and had never "had any relation at all with the respondent".

I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs



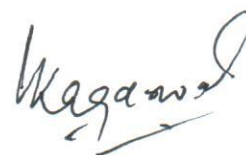
directly related to the domain name; or

- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

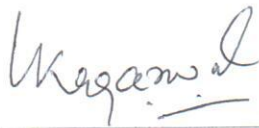
The contention of the Complainant is that the present case is covered by the above circumstances. The Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. The Complainant has contended that the Registrant/ Respondent also belongs to India. However, the complete address of the Registrant/Respondent could not be found and the e mail address mentioned in the WHOIS record is also not correct. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision



In the light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.silverdoor.in> be transferred to the Complainant



Vinod K. Agarwal
Sole Arbitrator
Solicitor of the Supreme Court of England and Wales

Date: September 22, 2014