



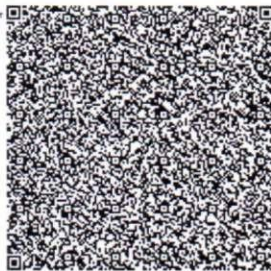
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INDIA NON JUDICIAL

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e-Stamp

Certificate No.	: IN-DL18155815690074N
Certificate Issued Date	: 20-Jun-2015 12:09 PM
Account Reference	: IMPACC (IV)/ dl856903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL85690333376171042026N
Purchased by	: SONAL KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SONAL KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: SONAL KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Sony Corporation
1-7-1 Konan, Minato-ku,
Tokyo, 108-0075,
Japan

...(Complainant)

v.

Deborah R. Heacock
1256 Horizon Circle
Seattle, WA - 98119
US

...(Respondent)

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.
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The Parties

The complainant in this proceeding is : Sony Corporation, 71-7-1 Konan, Minato-ku, Tokyo, 108-0075, Japan.

The respondent in the proceeding is : Deborah R. Heacock, 1256 Horizon Circle , Seattle WA - 98119US, Telephone: +1.2536666283, E-mail : domainsimple@gmail.com

The Domain Name & Registrant

The disputed domain name is SONYMOBILE.CO.IN is registered with Dynadot LLC.

Procedural History

I have been appointed as the Arbitrator by .IN Registry vide its email dated 17.04.2015 , to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name SONYMOBILE.CO.IN.

.IN registry has supplied the copy of the Complaint and Annexures to me.

On 22.04.2015, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexure to the Respondent and to provide me with the details of the service record.

In accordance with IN Domain Name Dispute Resolution Policy (**INDRP**) read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 22.04.2015 with the instructions to file his say within 15 days from the receipt of notice of Arbitration or the receipt of the copy of Complaint, whichever is later.

NIXI through an email dated 22.04.2015 provided the proof of sending the copy of the complaint to the Respondent by blue dart courier and also stated in the



same email that the Tribunal will be informed about the status of the courier once they receive it from the courier agency.

On 23.04.2015, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal.

Further more on 07.05.2015, NIXI informed the tribunal that the courier was lying undelivered at the destination due to the incorrect/incomplete address of the respondent.

On 09.05.2015, as the courier could not be delivered to the respondent because of the consignee address being incomplete/incorrect, the complainant was directed by the Arbitrator to send a soft copy of the complaint to the respondent. Even though the Respondent was copied on all correspondences and was deemed to be aware of the proceedings, in the interest of justice, 10 days time was further given to the Respondent to file its Reply, failing which, the parties were informed that the Arbitrator will proceed with the matter on the basis of the pleadings and documents available on record.

On 11.05.2015 the Complainant sent a soft copy to the respondent on the email address listed for the Respondent in the WhoIs database of the .IN Registry.

On 29.05.2015, the Arbitrator informed the parties that due to the Respondent's failure to file a reply, the Tribunal shall proceed and pass the award on the basis of the Complaint and documents on record.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time i.e. 21.05.2015. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted.

I feel that enough opportunities have been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present ex-parte award is passed.

I have perused the entire record and all the annexures / documents.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.



COMPLAINANT:

1. The Complainant is a corporation organized and existing under the laws of Japan of the address 1-7-1 Konan, Minato-ku, Tokyo, 108-0075, Japan.
2. The Complainant is an established international business enterprise present in diverse fields related to electronics, media and entertainment. It is a leading manufacturer of audio, video, communications and information technology products for the consumer and professional market with sales and operating revenue of 6,800.8 Billion Yen for the fiscal year ended on March 31, 2013.
3. The Complainant is a leading manufacturer of audio, video products, electronic components, professional solutions and medical related equipments. Its motion picture, television, computer entertainment, music and online businesses make the Complainant one of the most comprehensive entertainment and technology companies in the world. The Complainant's principal business operations include Sony Corporation (Sony Electronics in the U.S), Sony Pictures Entertainment, Sony Computer Entertainment, Sony Music Entertainment, **Sony Mobile Communications** and Sony Financial Holdings.
5. The word **SONY** and **SONY MOBILE** forms a substantive part of the marks of the Complainant and is used by the Complainant either as it is or in conjunction with other words. The marks have also been a part of the corporate identity of the Complainant worldwide since the 1950s when it was first adopted in Japan and also introduced to the markets in America.
6. The word SONY and SONY MOBILE also forms the forepart and is the most distinguishing feature of the Complainant's corporate name and trading style. 'SONY' is also a part of the corporate name and trading style of a number of the Complainant's affiliated companies including "SONY INDIA" in India. The Complainant has also set up a wholly owned subsidiary in India, viz, SONY INDIA LTD. which is using the trade mark SONY on all its products and is doing substantial business. With relentless commitment to quality, consistent dedication to customer satisfaction and unparalleled standards of service, Sony India is recognized as a benchmark for new age technology, superior quality, digital concepts and personalized service

- that has ensured loyal customers and nationwide acclaim in the industry.
7. The Complainant is the parent company of the Sony Group, which is engaged in business through its four operating segments – Electronics (including video games, network services and medical business), Motion pictures, Music and Financial Services. These make the Complainant one of the most comprehensive entertainment companies in the world. The Complainant's principal business operations include Sony Corporation (Sony Electronics in the U.S.), Sony Pictures Entertainment, Sony Computer Entertainment, Sony Music Entertainment, Sony Mobile Communications (formerly Sony Ericsson) and Sony Financial.
 8. The Complainant owns, uses and is the registered proprietor of the trademark **SONY** and **SONY MOBILE** in several jurisdictions of the world including in India and in various classes. Therefore, the Complainant has a well-established proprietary claim in the trademark **SONY** and **SONY MOBILE**.
 9. The mark **SONY** has been rated to be amongst the *TOP 10 best known trademarks in the world* by various independent organizations. According to a survey conducted by Harris Interactive, **SONY** tops the list in the annual Harris Poll of "best brands" in the United States of America for the seventh consecutive year. The trade mark **SONY** has been ranked no. 4 in the list of the world's best known brand in a survey conducted by Landor Associates. According to INTERBRAND, a leading international branding consultancy company, giving the order of popularity of the top 50 international brands, has in its book "Brands - An International Review", numbered the Complainant's trade mark **SONY** as the *eighth most well-known brand name* in the world.
 10. The Complainant conceived the mark **SONY** in the year 1958. Thus the trademarks **SONY** and **SONY MOBILE** are well-known on a global footing and enjoy goodwill and reputation of international character through publicity, dissemination of knowledge/information about the mark and products and services traded thereunder through articles, print advertisements and news items and word of mouth reputation. The Complainant has, since its incorporation, spent millions of dollars on the publicity of their goods and sales promotion activities. As a result of such expenditure in terms of time, money and effort, the marks **SONY** and

SONY MOBILE today has become synonymous with the products and services of the Complainant and is also a market leader in the field of electronics and media.

11. The Complainant's trademark **SONY and SONY MOBILE** are also well-known as a result of the extensive consumer exposure via the internet, with information about the products sold under the mark readily available in various languages and formats all over the world. The internet is well connected and easily accessible to all even in India and thus is a ready source of exposure to information about the Complainant and its products and services. The websites www.sony.co.in, www.sony.com, www.sony.net, www.sonymusic.com, www.sonyentertainmentnetwork.com, www.sonymobile.com etc. give easy access to consumers regarding the Complainant's mark.

12. The Complainant's domain name www.sony.com was created on 07.07.1989 and is equally popular among the viewers all over the world including India. The trademark SONY has also been used extensively over the internet to identify the Complainant and to associate the said mark exclusively with the Complainant. Relevant information pertaining to the Complainant and its well-known brand is readily available on the website www.sony.com. Further the Complainant's domain name www.sonymobile.com was created 09.05.2002 and has been in continuous use since then.

Respondent

The respondent in the proceeding is : Deborah R. Heacock 1256 Horizon Circle
Seattle WA - 98119US, Telephone: +1.2536666283, E-mail
: domainsimple@gmail.com

Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical and confusingly similar to the Complainant's Trade Mark(s).



2. The Respondent has no rights or legitimate interest in respect of the domain name.
3. The Domain Name was registered and used in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex-parte and hence conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions, and evidence and inference drawn from the Respondent's failure to reply.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "SONY".



Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

i) The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

The Complainant has stated in its complaint that domain name of Respondent sonymobile.co.in is confusingly similar and identical to his name/mark (s)SONY and SONY MOBILE.

It is submitted by the Complainant that the Respondent's domain name www.sonymobile.co.in is identical to the Complainant's SONY and SONY MOBILE marks, as it incorporates Complainant's well-known marks in their entirety. In addition to the identical nature of the marks, webpage under the impugned domain name appears to be a parking page following a "pay-per-click" format and listing various website and/or business related to mobile phones. It is clear that the website on the impugned domain name is attempting to create confusion in the minds of customers by associating itself with the Complainant and thereby generating revenue by directing the said users to other websites and other business providing similar goods.

It is further submitted that given the enormous global reputation and goodwill enjoyed by the Complainant, it is apparent that the Respondent has fraudulently acquired the domain name "www.sonymobile.co.in", which includes the identical mark of the Complainant and is also identical to the trading name / corporate name of the Complainant, solely with an intention of diverting the consumers to its www.sonymobile.co.in domain name and creating a likelihood of confusion with Complainant's SONY and SONY MOBILE marks.



It is also submitted that the Respondent's domain name www.sonymobile.co.in is identical, phonetically and substantially similar to the well-known mark / domain name / corporate name of the Complainant. The Respondent has made use of the entire trademark and trade name of the Complainant, giving the impression that the said domain name is that of the Complainant and referring to the Indian affiliate or Indian business of the Complainant.

Reliance has been placed on several cases like ***Rediff.com India Limited v. Mr. Abhishek Varma & Anr. Case No. INDRP/1*** (Decided on 03.04.2006), ***Kingston Technology Co. v. Web Master, Skype Network Limited, Case No. INDRP/033***, ***Hindustan Petroleum Corporation Limited v. M. Ram Swamy, Case No. INDRP/059*** to show that Registrant has intentionally attempted to attract Internet users to the Registrant's proposed website by creating a likelihood of confusion with the Complainant's name or mark.

Also, the complainant submits that it is well recognized that incorporating a trade mark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the Domain Name is identical or confusingly similar to the Complainant's registered mark (***Ingersol-Rand Co. Frankly Gully d/b/a Advcomren, WIPO Case No. D2000-0021***). Reliance is also placed on ***Boehringer Ingelheim Pharma GmbH & Co. KG v. Philana Dhimkana WIPO Case No. D2006-1594***, where it was held that, if a well-known trade mark was incorporated in its entirety into a domain name - that is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered trade mark.

The above submission of the Complainant has not been rebutted by the Respondent, as such they are deemed to be admitted by him.

Even otherwise, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.



ii) The Registrant has no rights or legitimate interests in respect of the domain name

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant'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;*
- ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) *the Registrant 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 Complainant alleges that neither has any legitimate interest in the mark **SONY** or **SONY MOBILE** nor is the lawful owner of any right relating to the Complainant's aforesaid marks. The Respondent bears no relationship to the business of Complainant and is neither a licensee nor has obtained authorization of any kind whatsoever to use the Complainant's marks.

It is further submitted that The Respondent has neither been using the said domain name or any name corresponding to the same in relation to any goods or services, to the best of the Complainant's knowledge, nor has he been commonly known by the domain name, which in fact corresponds and is associated exclusively with the Complainant.

The Complainant also submits that the Complainant's domain name www.sony.com was created on 07.07.1989, and the use of the mark SONY had commenced as early as 1958. Further the Complainant's domain name www.sonymobile.com was created on 09.05.2002 and the company named Sony Mobile Communications (India) Private Limited was incorporated on April 23, 2007. However the Respondent's domain name www.sonymobile.co.in was



created on 26.01.2013 which is almost six decades after the Complainant had commenced the use of the mark, corporate name SONY and more than two decades after the Complainant registered its domain name www.sony.com. Further the Respondent's use of the impugned domain is also almost 6 years after the incorporation of the Complainant's company named Sony Mobile Communications (India) Private Limited and more than one decade after the Complainant registered the domain name www.sonymobile.co.in. The Complainant being the prior user of the registered and well-known trademark SONY as well as SONY MOBILE is the lawful owner of the trade mark / corporate name SONY and the Respondent does not have any legitimate interest in the impugned domain name which copies in entirety the trade mark / domain name of the Complainant.

It is also further submitted by the Complainant that the Respondent is making an illegitimate and commercial use of the domain name www.sonymobile.co.in and deliberately misleading the internet users and diverting Complainant's consumers to other websites in order to tarnish the well-known trademark and corporate name of the Complainant. It is apparent that the use of a domain name identical to that of the Complainant's domain names and trademarks along with re-directing the users to different websites is clearly an attempt to create confusion and illegally profit from the resulting association between the Complainant and the Respondent's impugned domain name. The said manner of use of the website is clearly commercial.

Reliance has been placed on several cases like ***Societe Des Prodi Its Nestle SA, Switzerland v. Nescafe Limited, Case No. INDRP/100, Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO Case No. D2003-0455, Kangaroo Kids Education Ltd. v. Anupam Devi, Case No. INDRP/146, Factory Mutual Insurance Company v. Rhianna Leatherwood WIPO Case No. D 2009-0144*** to show that the Respondent has no rights in the domain name and is not using it for any legitimate purpose.

Moreover, reliance has also been placed by the Complainant on the case of ***Luxottica Holdings Corp. v. Lokesh Morade, case no. INDRP/139***, where it was held that, "Once the Complainant makes a prima facie case showing that



the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name."

It is submitted by the Complainant that it has established, through evidence of long and uninterrupted worldwide use of the trademarks **SONY** and **SONY MOBILE** and the long duration and widespread use of numerous domain names containing the marks **SONY** and **SONY MOBILE** that in fact it is the Complainant who is legitimately entitled to the domain name and that the Respondent does not have any right in relation thereto.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

iii) The Registrant domain name has been registered or is being used in bad faith

The Complainant alleges that the circumstances indicate that the Respondent has registered or acquired the domain name with dishonest intention to mislead and divert the consumers and to tarnish the well-known trade mark / corporate name SONY and SONY MOBILE of the Complainant.

It is further submitted that the Respondent has registered and is using the domain name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's SONY and SONY MOBILE marks and from the likelihood that internet users will mistakenly believe that the impugned domain name and its associated websites are connected to the Complainant and its goods / services.

Also, Respondent has registered and is using the domain name primarily for the purpose of disrupting the business of the Complainant and diverting the public,



who is searching for the Complaint, to a different website and has no prior rights in and no authorization to use given by the Complainant for the SONY and SONY MOBILE trademarks.

It is further submitted by the Complainant that the Respondent is diverting the users from the impugned domain name to different websites providing similar goods as that of the Complainant manifests Respondent's clear intention to attract, for commercial gain, internet users to Respondent's website by creating a likelihood of confusion with that of the Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's products. The use and registration of a similar domain name by the Respondent in an effort to gain commercial benefits is evidence of bad faith.

Moreover, the complainant submits that the Respondent's bad faith registration of the domain name is established by the fact that the domain name completely incorporates Complainant's SONY and SONY MOBILE marks and was acquired long after the trade marks SONY and SONY MOBILE became well-known.

The complainant has made references to several cases like is made once again to the case of **Television Food Network, G.P. v. Arif Siddiqui, Case No. INDRP/138, Microsoft Corporation v. Chun Man Kam, Case No. INDRP/119,** to essentially suggest bad faith registration and use of the domain.

The Complainant also relies on the Judgment of *Compagnie Gervais Danone v. yunengdonglishangmao(beijing)youxiangongsi* Case No. D2007-1918 in which the panel had accepted that "Given this finding, the Panel also infers and accepts the Complainant's undisputed contention that the Respondent registered the domain name with a view to diverting Internet users with an interest in Danone food products to its website for its own commercial gain.....6.23 Given that the Respondent has failed to show (for the reasons set out under the heading of legitimate interests above) that it was using the domain name exclusively to deal in genuine Danone products and has also failed to disclose on the site the true relationship between it and the Complainant, the Panel concludes that the Respondent in this case did intentionally attract for commercial gain users to its



website by creating a likelihood of confusion with the Complainant's mark. The activities of the Respondent, therefore, fall within the scope of paragraph 4(b)(iv) of the Policy."

Therefore, the Complainant submits that the Respondent is not using the domain name for legitimate personal or business purposes. Instead, it is apparent that the intention of the Respondent is to create initial-user confusion and divert users to its domain name and thereafter re-direct users to different websites whose links have been provided on the impugned domain name and thereby generating revenue for itself.

Upon information and belief, particularly considering the international fame of Complainant's trademarks SONY and SONY MOBILE, including the reputation in India, Complainant asserts that the Respondent intentionally registered domain name that is identical to the Complainant's trademarks SONY and SONY MOBILE in order to trade off of the goodwill associated with Complainant's mark.

A Consumer searching for information concerning Complainant is likely to be confused as to whether the Respondent is connected, affiliated or associated with or sponsored or endorsed by Complainant.

As such, the manner of use of the domain name www.sonymobile.co.in by the Respondent is a clear example of cyber-squatting. Reference has been made to the case of *Homer TLC v. Kang*, FA 573872, (Nat. Arb. Forum Nov. 22, 2005) where it was held that Respondent's use of hamptonbay.com "could in no way be characterized as fair, because consumers would think that they were visiting a site of Complainant's until they found they were in a directory which would do the Complainant potential harm"; 15 U.S.C. § 1125(d)(1)(B)(i) (using domain to divert consumers could harm the goodwill represented by the mark or tarnish or disparage the mark)

Also, the Respondent has made fraudulent and incorrect claims while registering the impugned domain name since all registrants are required to warrant at the time of registering the domain name, under Paragraph 3 (b) of the INDRP that,



"to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;" and under Paragraph 3 (d) that, "the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations".

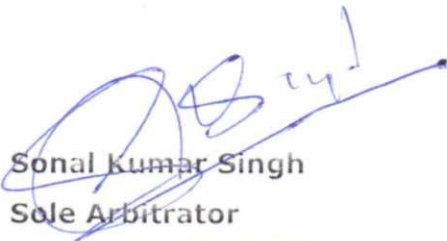
The Tribunal is of the view that the Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise, the above facts, annexures and cases referred establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

The Respondent has registered and used the disputed domain name in bad faith. NIXI is hereby directed to transfer the domain name of the Respondent i.e. <sonymobile.co.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 22nd day of June, 2015.



Sonal Kumar Singh
Sole Arbitrator

Date: 22.06.2015