



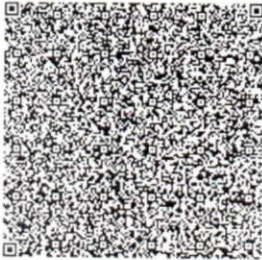
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL86043130879876N
Certificate Issued Date : 26-Nov-2015 11:31 AM
Account Reference : IMPACC (IV)/ dl856503/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL85650370071793015471N
Purchased by : LUCY RANA
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : LUCY RANA
Second Party : Not Applicable
Stamp Duty Paid By : LUCY RANA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry - National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <SOTHEBYSREALTY.IN>

IN THE MATTER OF:

1. **Sotheby's**
34-35 New Bond Street
London W1A2AA
United Kingdom.
2. **SPTC, Inc.**
1400 Virginia Street
Reno, Nevada 89502
United States of America

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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.
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United States of America

3. SPTC Delaware, LLC
C/o Sotheby's Holdings, Inc.
1334 York Avenue
New York, NY 10021
United States of America

Complainants

Versus

1. **GaoGou**
C/O YERECT
Suite 1100, South Tower
175 Bloor Street, East
Toronto
Ontario M4W3R8
Canada

Respondent

1. The Parties:

The Complainants in this arbitration proceeding are **Sotheby's** of the address 34-35 New Bond Street, London W1A2AA, United Kingdom; **SPTC, Inc.** of the address 1400, South Virginia Street, Reno, Nevada 89502, United States of America and **SPTC Delaware, LLC** of the address C/o Sotheby's Holdings, Inc., 1334 York Avenue, New York, NY 10021, United States of America.

The Respondent in this arbitration proceeding is GaoGou, C/o YERECT, Suite 1100, South Tower, 175 Bloor Street, East Toronto, Ontario M4W3R8, Canada.

2. The Domain Name, Registrar and Registrant:

The present arbitration proceeding pertains to a dispute concerning the registration of the domain name <**sothebysrealty.in**> with the .IN Registry. The Registrant in the present matter is GaoGou and the Registrar is IN Registrar, d.b.a inregistrar.com.

3. Procedural History:

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated October 28, 2015 appointed Mrs. Lucy Rana as the Sole Arbitrator in the matter. The Arbitrator submitted the statement of acceptance and declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure on the same date.

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In accordance with Rules 2(a) and 4(a), NIXI vide email dated November 03, 2015, notified the parties that Mrs. Lucy Rana has been appointed as the Arbitrator in the matter and also mentioned that the date of handover is November 02, 2015.

The Arbitrator received the Complaint dated October 26, 2015, from NIXI on November, 03, 2015.

Thereafter, the Arbitrator sent a notice to the Respondent vide email on November 03, 2015, informing that copy of this complaint along with annexures has already been forwarded to the Respondent by the .IN Registry and thereby granting the Respondent a period of **14 days (Fourteen Days)** from the receipt of the notice to file its response to the Complaint in both hard as well as soft copy.

The Arbitrator vide its email dated November 18, 2015, requested NIXI to inform when the domain complaint was served upon the Respondent. NIXI vide its email on the same date informed that the courier agency would need full contact details of the Respondent in order to deliver the hard copy of the complaint.

Thereafter, the Arbitrator vide its email dated November 18, 2015, directed the Complainant to provide complete address and phone number of the Respondent to ensure delivery of the hard copy of the complaint as well as serve a soft copy of the complaint to the Respondent vide email in order to avoid any further delay. The Respondent was directed to reply within 7 days from the receipt of the said email or the soft copy of the complaint whichever is later.

The Complaint served a soft copy of the complaint on the Respondent vide email dated November 19, 2015, along with a copy marked to the Arbitrator. The Complainant also provided full address of the Respondent as known to them.

NIXI vide email dated November 20, 2015, stated that the address provided by the Complainant is the same as the address mentioned in the WHOIS details.

Thereafter, an email was sent on the same date, directing the Complainant to provide any alternate address if known. The Complainant was further directed to inform if the soft copy of the complaint sent along with annexures has been served on the Respondent.

The Arbitrator further informed all that the seven days' time period to file a reply expire on November 26, 2015.



The Complainant vide its email dated November 20, 2015, stated that the soft copy of the complaint has been duly received by the Respondent as the email has not bounced back.

NIXI vide its email dated November 24, 2015, informed that the courier containing the complaint with the annexures had also been duly delivered to the Respondent.

Arbitrator vide its email sent on the same date reiterated that as the soft and hard copy of the complaint has been served on the Respondent the time granted to file a reply will expire on November 26, 2015.

However, as on date the Respondent has not filed any reply/response to the complaint.

4. **Factual Background**

- i. The Complainants i.e., Sotheby's, SPTC, Inc. and SPTC Delaware, LLC submit that they are a part of the Sotheby's group of companies inter alia engaged in the business of auctions since the year 1744 as well as real estate. The Complainants further submit that they have developed a reputation as a premier auction house for sale of fine art and other collectibles. The Complainants have also annexed a printout from their website www.sothebys.com that provides details about their history.
- ii. The Complainants have further stated that they provide auction services under the mark **SOTHEBYS** in 90 locations in 40 countries around the world, including in India and have recently entered into a partnership with EBay for providing live streaming auctions on the said website. The Complainants have also annexed copies of press release about the partnership with eBay as well as printouts from the said website.
- iii. The Complainants have also submitted that Sothebys and its affiliated company SPTC, Inc. owned registrations for the trade mark **SOTHEBYS** in over 50 countries around the world including in India, United States of America, Hong Kong, Australia and the European Union and have also annexed copies of the Registration certificates.
- iv. SPTC Delaware, LLC which is a subsidiary of SPTC, Inc. is engaged in the business of selling fine real estate properties in a range of locations, prices and distinctive styles since the year 1981 covering 52 countries and having 700 offices all over the world. The trade mark as being used in respect of real estate services

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is **SOTHEBYS INTERNATIONAL REALTY** which is owned by Sothebys and SPTC Delaware, LLC and is registered in over 50 countries across the world, including in India. Copies of the registration certificates have also been provided.

- v. The Complainants have further submitted that the trade mark **SOTHEBY/SOTHEBYS** has been used by them and their predecessors-in-interest and affiliated companies since several years. Copy of the incorporation certificate is also annexed.
- vi. The Complainants' revenues in respect of the real estate business run into millions of US dollars.
- vii. The Complainants have further submitted that by virtue of long and continuous use and substantial investment of time, money and effort in advertising and promoting the Complainants' services, its trade marks have gained recognition and goodwill and are also well-known.
- viii. The Complainants have submitted that they were the first international auction house to hold auction in Indian in October 1992. Since then for almost 30 years they have worked with leading collectors in the country and staged events in New Delhi and Mumbai. Thereafter, the Complainant have also entered in the real estate market in India.
- ix. Further the Complainants have registered various generic top level as well as country specific domain names details of which are given below:

S. No.	Domain name	Registrant	Created on	Website
1	Sothebys.com	Sothebys	December 20, 1994	Yes
2	Sothebys.in	SPTC, Inc.	May 07, 2008	Not operational
3	Sothebys.co.in	SPTC, Inc.	May 09, 2008	Not operational
4	Sothebysrealty.com	Sotheby's International Realty Affiliates LLC	August 04, 1997	Yes
5	Sothebysrealty.co.in	Sotheby's International Realty	August 05, 2012	Yes



		Affiliates LLC		
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The Complainants have not only registered the domain names, but have also taken action against domain names incorporating the registered trade mark **Sothebys** and decisions rendered by the National Arbitration Forum are also annexed along with the complaint.

- x. The Complainants have stated that the Registrant Gaogou who appears to be associated with an entity YERECT of the address Suite 1100 South Tower, 175 Bloor Street, East, Toronto, Ontario, M4W 3R8, Canada, had registered the domain name <sothebysrealty.in> some time in 2013. The corresponding website currently has links to various third party websites, including the website of entities offering real estate services.
- xi. The Complainants have submitted that the Respondent is a habitual cyber squatter and several domain dispute cases have been filed against him such as *Mastercard International Inc. v. Yerect International Limited D2013-2159*, *HID Global Corporation v. GaoGou, Yerect International Limited D2014-0346*, wherein the domain names were ordered to be transferred to the Complainant.
- xii. The Complainants through their Attorney also sent a registered letter dated October 01, 2015 to the Respondent calling upon him to immediately transfer the domain name <sothebysrealty.in> to the Complainant. However, the Respondent vide email dated October 02, 2015 demanded USD 2500 for transferring the same.

5. Parties Contentions:

I. Submissions on behalf of the Complainant:

(a) The disputed Domain Name is identical or confusingly similar to the marks of the Complainant (Paragraph 4(i) of the .IN Policy)

The Complainants have submitted that they have prior statutory and common law rights in the name and trade mark **SOTHEBY'S** as evident from the trade mark registrations in various countries and jurisdictions, including in India.

Further the disputed domain name <sothebysrealty.in> is either identical with or confusingly similar to the name and trade mark **SOTHEBY'S** and completely

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incorporates the said trade mark. Moreover, the disputed domain name is also identical with or confusingly similar to the name/mark **SOTHEBY'S INTERNATIONAL REALTY** as it contains both the marks **SOTHEBY'S** and **REALTY**.

The Complainant has also submitted that the deletion of apostrophe in a domain name is immaterial as the domain name cannot contain an apostrophe in any event and has also referred to a judgement i.e., *Sotheby's v. IMMAT Ltd., FA*. Further .IN is an essential part of the domain name and does not distinguish the disputed domain name from the name and trade mark **SOTHEBY'S**.

(b) **The Respondent has no rights or legitimate interests in respect of the Domain Name (Paragraph 4 (ii) and Paragraph 7 of the .IN Policy)**

The Complainants have stated that the Registrant is neither commonly known to the public by the domain name <sothebysrealty.in> nor is engaged in any business and commerce under the name **SOTHEBY'S** or **SOTHEBY'S INTERNATIONAL REALTY**, which evidences that Registrant's lack of rights and interests in the disputed domain name. The Registrant also does not own any trade mark registrations for the mark **SOTHEBY'S**.

It has also been stated that the Registrant is neither a licensee of the Complainants nor authorized by them to use the name/trade mark **SOTHEBY'S**. Further the Registrant is not using the domain name and the website provides links that resolve to third party websites which shows that the Registrant is attempting to generate revenue from consumers who mistakenly visit the website believing that it is the Complainant's website. Further the Registrant is also preventing the Complainant from using the domain name <sothebysrealty.in>. Therefore, the Registrant does not have any rights or legitimate interests in the disputed domain name.

(c) **The Domain Name was registered or is being used in bad faith. (Paragraph 4 (iii) and Paragraph 6 of the .IN Policy)**

The Complainants have stated that since the Registrant offered to sell the disputed domain name <sothebysrealty.in> to them for USD 2500 the same is registered by him in bad faith. It has further been stated that there is no doubt that the Registrant was aware of the name and trade mark **SOTHEBY'S** when it registered the domain name <sothebysrealty.in> which constitutes bad faith and a

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judgement referred in this regard is *Kenneth Cole Productions, Inc. v. ViswasInfomedia (INDRP/93)*.

The Complainant has also mentioned that if the domain name incorporates a well-known trade mark by an entity that does not have any relationship with the owner, then that itself is an evidence of bad faith. [*Disney Enterprises Inc. v. Registrant ID DI_7305075 (INDRP/596)*]

The domain was registered in the year 2013 and since then no proper use of the website has been made by the Registrant.

II. Submissions on behalf of the Respondent:

Despite receipt of the hard as well as soft copy of the complaint and adequate notification from the Arbitrator, the Respondent has not filed any response and submissions to the complaint. Therefore, the Arbitrator has proceeded with the arbitration proceedings on the basis of the material submitted and put on record by the Complainant.

6. Discussion and Findings:

In the present circumstances, the decision of the Arbitrator is based upon the Complainant's contentions and evidence adduced.

After perusing the Complaint and annexures filed along with, the Arbitrator is of the view that the Complainant has satisfied all three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

- i. The Registrant's domain name is identical and confusingly similar to a name, trademark or service mark in which the Complainant has rights;
 - ii. The Registrant has no rights and legitimate interests in respect of the domain name;
 - 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, trademark or service mark in which the Complainant has rights (paragraph 4 (i) of .IN Domain Name Dispute Resolution Policy)**

The Complainant is the registered proprietor of the name and trade mark **SOTHEBY'S** in various countries and jurisdiction including in India and has annexed copies of trade mark registrations for the said name/mark along with the

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Complaint. All the trade mark registrations predate the registration date of the domain name <sothebysrealty.in>.

The disputed domain name <sothebysrealty.in> completely incorporates the name and trade mark **SOTHEBY'S** and is identical with and confusingly similar to the said trade mark. It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Maruti Suzuki India Limited v. Nitin Bhamri* <marutisuzukieeco.co.in> NDRP/136, *Wal-mart Stores v. Ambra Berthiaume*, <walmart.in> INDRP/491. Therefore, it is observed that the domain name <sothebysrealty.in> is similar to the Complainant's mark **SOTHEBY'S INTERNATIONAL REALTY**.

Since '.IN' is an essential part of any top level Indian domain name, it does not distinguish the Respondent's domain name <sothebysrealty.in> from the Complainant's trade mark SOTHEBY'S. This has also been held in prior panels such as *Lego Juris A/S v. Robert Martin* INDRP/125 and *AB Electrolux v. GaoGou of Yerec*, INDRP/630.

Therefore, the disputed domain name <sothebysrealty.in> is identical/confusingly similar to the trade mark of the Complainant. The Complainant has satisfied the requirement paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

ii. **The Registrant has no rights and legitimate interests in respect of the domain name (Paragraph 4 (ii); paragraph 7 of .IN Domain Name Dispute Resolution Policy)**

The Complainant asserts that the Respondent has no rights or legitimate interests in the impugned domain name. The Complainant has not authorized, licensed or otherwise permitted/allowed the Respondent to make any use of its name and trade mark **SOTHEBY'S**. The website at www.sothebysrealty.in only has links that resolve to various third party websites dealing with real estate. The Respondent appears to be attempting to generate revenue through clicks from the links as provided on the website. As held by a prior panel in *Intercontinental Hotel Corporation v. Abdul Hamid*, INDRP/278, the use of the Complainant's mark in the disputed domain name is likely to mislead the public and internet users that the disputed domain name refers to the Complainant. Therefore, it cannot be asserted that the Respondent has any rights or interests in the domain name or has made any non-commercial or fair use of the domain name <sothebysrealty.in>. Further in *Consortio del Prosciutto di Parma of Via Marco dell' Arpa v. Jim Muller*, INDRP/218, it was

held that “misleading users by incorporating other’s trade marks in a domain name gives a false impression to users and does not constitute a *bonafide* offering of goods and services.”

The Respondent also cannot possibly assert that it is commonly known by the name **SOTHEBY’S/SOTHEBY’S INTERNATIONAL REALTY** and has not secured or even sought to secure any trade mark rights in the said name/mark as also held in *Six Continents Hotels, Inc. v. The Hotel Crown*, INDRP/151.

In view of the aforesaid, the Arbitrator accepts the Complainant’s claim that the Respondent is not authorized, licensed or permitted to use the trade mark **SOTHEBY’S** and therefore, the Respondent has no rights or legitimate interests in the domain name <sothebysrealty.in> and the conditions under paragraph 4 (ii) and paragraph 7 of the .IN Domain Name Dispute Resolution Policy, have been satisfied.

iii. **The Domain Name was registered or is being used in bad faith (Paragraph 4 (iii) and paragraph 6 of the .IN Policy)**

The Respondent upon being contacted by the Complainants’ Attorney demanded USD 2500 for transfer of the domain name <sothebysrealty.in>. Therefore, it can be said that the Respondent has registered the impugned domain name in bad faith, as also held in *Vodafone Group PIC v. Rohit Bansal*, INDRP/052. The Respondent’s registration of the domain name <sothebysrealty.in> is likely to confuse consumers and mislead internet users, which is prima facie preferred format of cyber squatters, in order to sell or otherwise transfer the domain name registration to the Complainant, (for valuable consideration) who is the owner and proprietor of the trade mark.

The Respondent has provided links on the website at www.sothebysrealty.in that redirect to several third party websites and therefore, cannot claim that he is making fair and non-commercial use of the domain.

The Complainant in his complaint further states that the Respondent appears to be a habitual cyber squatter and domain dispute cases have been filed against him under UDRP. The Complainant has also placed on record the judgements in the prior proceedings such as *Mastercard International Inc. v. Yerec International Limited* D2013-2159, *HID Global Corporation v. GaoGou, Yerec International Limited* D2014-0346, wherein the Registrant/Respondent in the present dispute has been a Respondent and the domain names were ordered to be transferred in favor of the Complainant.

Therefore, there is an evidentiary proof that the Respondent is indeed a cyber squatter.

In view thereof, the Arbitrator concludes the Complainant has proved the requirements under Paragraph 4 (iii) and paragraph 6 of the .IN Dispute Resolution Policy).

Despite being given adequate notification the abovementioned contentions of the Complainant have not been replied to by the Respondent, hence, they are deemed to be admitted by him. Therefore, in absence of any response received from the Respondent, the Arbitrator has proceeded with the award ex parte (As held in *Intercontinental Corporation v. Jaswinder Singh*, INDRP/265 and *Park Hospitality Worldwide LLC v Kristin Frakfurter*, INDRP/659).

7. **Decision**

Based upon the facts and circumstances and further relying on the documents as annexed with the complaint, the Arbitrator is of the view that Complainant has statutory and common law rights over the trade mark **SOTHEBY'S/SOTHEBY'S INTERNETIONAL REALTY**. The disputed domain name <sothebysrealty.in> is identical and confusingly similar to the trade mark of the Complainant. The Complainant has proved to the satisfaction of the Arbitrator that the Respondent has no right or legitimate interest to use the aforesaid domain name and the said domain name has been registered and is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <sothebysrealty.in> to the Complainant. The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana
Sole Arbitrator

Date: November 27, 2015

Place: New Delhi, India