



सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL78352977775261R
Certificate Issued Date	: 04-Nov-2019 04:18 PM
Account Reference	: IMPACC (IV)/ dl766703/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL76670364258735478291R
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: <[syscosystems.in](http://syscosystems.in)>

IN THE MATTER OF

Cisco Technology, Inc.  
170 West Tasman Drive,  
San Jose, California 95134, U.S.A.

...Complainant

-----versus-----

P.Palanichamy trading as M/s. Sysco Systems  
293 5th Street Extension, Behind Kalyan Silks,  
Gandhipuram, Coimbatore - 641012, India  
Ph. No.: +91 422 2521571, +91-422-4371979  
E-mail: [info@syscosystems.in](mailto:info@syscosystems.in)

*Aranga*

#### 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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No.293, 5th Street Extension,  
Behind Kalyan Jewellers, Gandhipuram,  
Coimbatore - 641012, Coimbatore District,  
Tamilnadu

**Sathish Raja**  
1:Ellaihotam Road Peelamedu,  
Coimbatore, Tamil Nadu, IN  
Ph: 91.9994599917  
Email: [sathishraja2005@gmail.com](mailto:sathishraja2005@gmail.com)

...Respondents

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## 1. The Parties

The **Complainant** in this arbitration proceeding is **Cisco Technology, Inc.**, of the address 170 West Tasman Drive, San Jose, California, 95134, U.S.A., a company incorporated and existing under the laws of California, United States of America.

The **Respondent** in this arbitration proceeding is **P.Palanichamy trading as M/s. Sysco Systems** of the addresses 293 5th Street Extension, Behind Kalyan Silks, Gandhipuram, Coimbatore - 641012, India; and No.293, 5th Street Extension, Behind Kalyan Jewellers, Gandhipuram, Coimbatore - 641012, Coimbatore District, Tamilnadu.

The Complainant has also impleaded one “**Sathish Raja**” of the address 1:Ellaihotam Road Peelamedu, Coimbatore, Tamil Nadu, IN (Ph: 91.9994599917 Email: [sathishraja2005@gmail.com](mailto:sathishraja2005@gmail.com) ) as the Respondent, who is the registrant of the disputed domain name.

## 2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <[syscosystems.in](http://syscosystems.in)> with the .IN Registry. The Registrant in the present matter is “**Sathish Raja**”, and the Registrar is **Crazy Domains FZ-LLC**.

## 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 September 6, 2019, had sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on September 07, 2019.

Thereafter, NIXI forwarded the soft copy of the Complaint, along with Annexures, as filed by the Complainant in the matter, to all Parties, including the Arbitrator vide emails dated

September 12, 2019, and made the pronouncement that Mrs. Lucy Rana, in her capacity as Arbitrator, would be handling the matter.

On September 18, 2019, NIXI vide its email of the same date, confirmed that the soft copy of the Complaint along with annexures, as sent to the Respondents vide email, had not bounced back. NIXI vide the same email informed that the hard copy of the complaint as sent to the concerned parties via courier was still in transit. However, vide a subsequent email on the same date, NIXI asked the Arbitrator to ignore the earlier email and informed that the email as sent to the Respondent at the ID [info@syscosystems.in](mailto:info@syscosystems.in) had bounced back and that NIXI confirm the status of service by post as an when they receive proof of delivery report.

Thereafter the Arbitrator vide email dated September 19, 2019, enquired with NIXI about the status of delivery of the Complaint and Annexures as sent to the other email ID of the Respondent (i.e. [sathishraja2005@gmail.com](mailto:sathishraja2005@gmail.com)). Vide the said email, the Arbitrator also asked NIXI to provide a hard copy of Complaint.

In response to the above email, NIXI replied vide email on the same date, inter alia stating that the Complaint and the Annexures had been successfully delivered to the Respondent's email ID to [sathishraja2005@gmail.com](mailto:sathishraja2005@gmail.com), and that they will provide the Arbitrator with the delivery report regarding the hard copy of the complaint as sent to the Respondent, as and when NIXI receives the same. In the said email, NIXI further stated that they shall also send a hard copy of the Complaint to the Arbitrator via courier. The Arbitrator then acknowledged the said email vide email dated September 19, 2019. Thereafter vide email dated September 20, 2019, the Arbitrator acknowledged receipt of the hard copy of the domain complaint.

On October 10, 2019, as the Arbitrator had not received confirmation from NIXI regarding service of the Complaint (along with annexures thereto) in hard copy upon the Respondent, but the same had been duly received by the Respondent via email, the Arbitrator vide its email of the said date, announced that the Complaint along with Annexures had been duly served upon the Respondent, vide email, as is evidenced by the fact that the email as sent did not bounce back, and as per Rule 2(a)(ii) of the INDRP Rules of Procedure, this constitutes effective service. Further, Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 provides that "*If none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.*" Hence the service of notice was deemed to have been completed upon the Respondents. Therefore, the Respondent was deemed to have been duly served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of receipt of the email dated October 10, 2019, within which to file a response to the Complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law.



As no response to the Complaint was preferred by the Respondent in the matter, the Arbitrator, vide email dated October 24, 2019, reserved the award to be passed on the basis of facts and documents available on the record.

#### **4. Factual Background**

The Complainant has submitted that it is a worldwide technology leader offering a broad range of information and communications products and services to businesses of all sizes, governmental entities, service providers, and educational institutions and that its offerings span a wide range of networking, video, collaboration and communications products and services, and includes, inter alia, networking and computer hardware and software; IP telephony and web and video conferencing products; energy management products; and mobility and security products and services. Complainant has further submitted that it also offers industry- leading customer and support services, as well as consulting and design services, and education, training and technology certification services.

Complainant has submitted that it was established in 1984 as "CISCO SYSTEMS" and that it became a public company on February 16, 1990. Complainant has further submitted that it is headquartered in San Jose, California, USA, and has a global presence with at least 400 offices worldwide, including in India, and has over 73,000 employees. Complainant has also submitted that that it had an annual revenue in FY 2018 of over USD 49.3 billion, and USD 12.4 billion for the second quarter of FY 2019. Complainant has also submitted that it has become synonymous with the Internet as well as with the productivity improvements that Internet business solutions provide. In this regard, the Complainant has annexed copies of relevant excerpts from the Complainant's website as **Annexure E** and **Annexure F**.

Complainant has submitted that besides its traditional networking portfolio, it has rapidly grown its server business and over the years, it has diversified its business from the switching and router space in new areas such as cloud, collaboration, mobility, IoT, and security. Complainant has further submitted that over the years, it has also diversified beyond its hardware businesses, by adding new cloud-based services that increase the value it delivers to business customers. Complainant has also submitted that it offers the go-to solution for businesses looking to go fully digital, with the creation of hyper-distributed technology architectures that encompass automation, data analytics, security, and collaboration, as well as communications tools and applications, and that it has been evolving so as to better serve its customers.







Complainant has submitted that it holds market share leadership in various segments, including Routing: edge/core/access, Telepresence, Wireless LAN, Switching: Modular/Fixed, Voice, Web Conferencing and Security. In this regard, Complainant has annexed extracts of various articles and reports illustrating the same, as **Annexure G**.

Complainant has submitted that it is the owner of the trade marks CISCO and CISCO SYSTEMS and that the same also form a part of the Complainant's corporate name. Complainant has further submitted that the name CISCO was derived from the name of the city San Francisco, and that CISCO was formed by Len Bosack and Sandy Lenier, who were



subsequently joined by Richard Troiano in 1984. Complainant has further submitted that the above three founded the Complainant's predecessor company, that would sell computer networking products, and that their first product was an interworking router that was able to support multiple protocols.

Complainant has submitted that in 1987, it had sales of nearly USD 2 million per month and their targeted clients were research centres, government facilities and universities. By the end of the 1980s, the Complainant began targeting the commercial market. Complainant has further submitted that it went public in 1990 and ended up with a revenue of almost USD 70 million, and the same increased from USD 180 million in 1991 to USD 330 million in 1992. Complainant has submitted that it then went on to establish subsidiaries in countries such as Hong Kong, Japan and Australia, and by 1994, 40% of their total sales came from its international subsidiaries. Complainant has further submitted that it had reached market capitalization of USD 100 billion by 1998, thereby becoming the fastest company to reach the mark. Complainant has also submitted that it had become the third most valuable company in the world by the year 2000, with a market capitalization of USD 450 billion. In this regard, the Complainant has annexed an excerpt titled "Cisco Systems, Inc Success Story" from the website "successstory.com", as **Annexure H**.

Complainant has submitted that it is the owner and registered proprietor of the trade marks "CISCO" and "CISCO SYSTEMS" in India and has submitted details of its Indian trade mark registration numbers 690651 (CISCO in class 09), 1227391 (CISCO in class 09), 1237911 (CISCO in classes 38, 41 and 42), 1472580 (CISCO in class 36), 2003238 (CISCO in class 45), 1227393 (CISCO in class 16), 1491654 (  CISCO in class 09), 1491655 (  CISCO in class 41), 1491656 (  CISCO in class 42), 1491653 (  CISCO in class 38), 1491652 (  CISCO in class 36) and 1491657 (  CISCO in class 16). In respect of the above trade mark registrations, the Complainant has annexed copies of Trade Mark Certificates/relevant pages of Trade Marks Journals/ Status pages from the Trade Mark Registry's website, as **Annexure I**.

Complainant has submitted that it has also registered the trade marks "CISCO" and "CISCO SYSTEMS" in various countries around the world and in support thereto, has annexed a list of such international trade mark registrations as **Annexure J** and copies of some registration certificates pertaining to such international registrations as **Annexure K**.

Complainant has submitted that it has a global presence, including in North America, Africa, Asia, Australia, Europe, and South America. In this regard, the Complainant has annexed a list of the countries wherein it has a presence at, as **Annexure L**.

Complainant has submitted that it has considerable revenue which evidences the extent and success of its products and has provided a chart of its global revenue for the years 2003 - 2018. In this regard, the Complainant has annexed some relevant extracts of its Annual Reports as **Annexure M** in electronic format in a **CD**.

Complainant has submitted that it spends approximately 166 million USD annually towards advertising carried out worldwide including in India, and over 9.2 billion towards sales and marketing activities as a whole and that it has publicized its trade marks across various media. In this regard, the Complainant has stated that it has annexed copies of such advertisements across various media as **Annexure N**. However, it is pertinent to mention that upon a perusal of the said annexure, the same appears to be only screenshots from the Complainant's website (cisco.com) from various points of time as taken from the 'Web Archive' (at web.archive.org).

Complainant has submitted that as a CSR initiative, it founded the 'Cisco Foundation' in 1997, which partners with nonprofits, non-governmental organizations (NGOs), and community-based organizations to carry out CSR programs.

“Complainant has submitted that as a CSR initiative, it founded the 'Cisco Foundation' in 1997, which partners with nonprofits, non-governmental organizations (NGOs), and community-based organizations to carry out CSR programs. Complainant has further submitted that it has annexed documentary evidence with respect to the above as **Annexure O**. However, it is pertinent to mention that upon a perusal of the said annexure, the same does not appear to pertain to Complainant's CSR initiatives.

Complainant has submitted that it has consistently maintained a position in the top-20 in the 'Interbrand Global Brands' lists since 2001, and that its ranking for the year 2018 is 15. Complainant has further submitted that it has also been ranked as number 16 by Interbrand in their ranking for the 'Global Green Brands'. In this regard, Complainant has submitted that it has annexed the 'Interbrand Global Brands' ranking list from Interbrand's website as **Annexure P ( actual Annexure Q)**.

Complainant has submitted that it was the recipient of the 'Ron Brown Award' in 2002-2003 and that it is commonly always on the top of Fortune's "100 Best Companies to Work For" list, with a position of No. 6 in 2019. In this regard, the Complainant has annexed a newspaper article referring to the above award as **Annexure R**. Complaint has further submitted that it has received other awards also, such as the Hewitt Associates' "The Best Employers in Australia and New Zealand 2016”.

The Complainant has submitted that it underwent a re-branding in 2006, by shortening its name from CISCO SYSTEMS to only 'CISCO' and created a marketing campaign under the banner of "The Human Network". In this regard, the Complainant has annexed relevant documentary evidence as **Annexure S**.

Complainant has submitted that it increased its brand value by USD 1.56 billion in 2007 and doubled its stock price from August 2006. In this regard, the Complainant has annexed relevant excerpts from its promotional brochure as **Annexure T**.

Complainant has submitted that it has become one of the most successful companies in the world, which is reflected in the fact that its products and services are frequently seen in movies and TV series. Complainant has further submitted that the company as well its history was subject matter of a 2011 documentary film "Something Ventured" and has annexed a news report referring to the same as **Annexure U**.





Complainant has submitted that it has approximately 600 active 'Cisco Networking Academies' across India, which have impacted 7.8 million students worldwide. Complainant has further submitted that Cisco Networking Academies deliver information and communications technology ("ICT") training to individuals who wish to improve their career and educational opportunities, and that there are over 10,000 academies worldwide. In this regard, the Complainant has annexed a list of CISCO Certified Network Academy partners in India as **Annexure V**.

Complainant has further submitted that it is the recipient of many awards and has annexed a list of the same, as is available on Complainant's official website, as **Annexure W**.

Complainant has further submitted that it has also received various awards with respect to Corporate and Social responsibilities and has annexed a list of the same from their website as Annexure X, along with a list of other such awards as **Annexure Y**.

Complaint has further submitted that its trade marks have been extensively advertised and discussed in many magazines and trade journals and has annexed copies of some such advertisements as **Annexure Z** along with a Compact Disc (CD) comprising of the same as **Annexure AA**.

Complainant has submitted that it has been very active in social media and uses its social media engagements to build customer goodwill and recognition of the brand CISCO. In this regard, Complainant has submitted some references to its social media statistics and annexed some relevant excerpts from its social media accounts as **Annexure BB**, along with excerpts from Interbrand's website about the Complainant's social media statistics, as **Annexure CC**.

Complainant has submitted that it undertakes various events and training programs to guide its buyers and customers and in this regard has annexed an article evidencing the same as **Annexure DD**. Complainant has further submitted that it has long and strong history with respect to educational endeavors and it invests in a variety of such initiatives, such as STEM initiatives in middle and high schools, cutting-edge research in institutions of higher education, engagement with the developer community, etc. Complainant has further submitted that its CISCO Networking Academy has offered opportunities to millions of students in more than 170 countries. In this regard, the Complainant has annexed relevant documents evidence in the form of relevant excerpts from its website as **Annexure EE**. Complainant has further submitted that its employees donated a total of USD 1.55 million to academic institutions in 2016 as well as thousands of hours of volunteer work. In this regard, Complainant has annexed relevant documentary evidence as **Annexure FF**. The Complainant has also provided documentary evidence pertaining to collaboration with such institutions as **Annexure GG**, along with further evidence pertaining to its educational initiatives as **Annexure HH**.

Complainant has submitted that its goods and services under the CISCO brand are advertised and promoted through its website and the same is accessible in India, and the Complainant has annexed some excerpts from its website, inter alia evidencing the same, as **Annexure II**.

Complainant has submitted that it takes legal action in various courts in other jurisdictions to protect its intellectual property rights, and that the Complainant's rights have been recognized in an Order passed in Korea. In this regard, the Complainant has annexed a copy of an Order

passed by the Intellectual Property Tribunal of Korea in re Cisco Technology, Inc. v. Beauty Solution Co., Ltd. (Case No. 2010 Dang 1320), as **Annexure JJ**.

Complainant has submitted that it entered the Indian market in 1995 and now has branch offices in major Indian cities, and relevant documentary evidence pertaining to the launch of CISCO in India, has been annexed as **Annexure KK**.

Complainant has submitted that it has invested about USD 1.7 billion in India annually and has annexed a news article referring to the same as **Annexure LL**. Complainant has further submitted that India is one of its fastest growing markets and has annexed documents referring to its financial statistics in India as **Annexure MM**.

Complainant has also submitted that India accounts for about 15% of its total global employee strength of 73,000. In this regard, Complainant has annexed relevant documentary evidence as **Annexure NN**. Complainant has further submitted that it has more than 2,000 registered partners in India and that it has established a facility named "Cisco Globalization Centre East" in Bangalore, and in this regard, has annexed relevant documentary evidence as **Annexure OO**. Complainant has also submitted that it has many key customers in India, including but not limited to government agencies, banking and financial institutions, as well as many private companies, a list of which has been mentioned in paragraph 47 of the Complaint. In this regard, the Complainant has annexed relevant documentary evidence as **Annexure PP**.

Complainant has submitted that it offers a certification program and has set up cyber security centers in India and that it is also running more than 50 projects with respect to cyber security in India, and has annexed documentary evidence with respect thereto as **Annexure QQ**. Complainant has further submitted that it has collaborated with the Indian government's Ministry of Electronics with respect to a cyber security initiative and has annexed document evidence with respect thereto as **Annexure RR**.

Complainant has also submitted that it has launched a Centre of Excellence (CoE) in Internet of Things (IoT) for digital skills and training in Bengaluru, in collaboration with the RV College of Engineering, and has annexed documentary evidence with respect thereto as **Annexure SS**. Complainant has further submitted that it has other academic tie-ups and projects also, and has annexed documentary evidence pertaining to the same as **Annexure TT**. Complainant has also submitted that it also actively participates in various Indian government initiatives such as Digital India, Make in India and Skill India, and has annexed documentary evidence pertaining to the same as **Annexure UU**, **Annexure VV** as well as **Annexure WW**, which is a copy of a news article titled 'Cisco to kick off manufacturing in India'.

Complainant has further submitted that it has taken various initiatives with respect to development of infrastructure in India, such as digitization of 'Fetri Village' in the Nagpur district, providing infrastructure solutions for smart street lighting, traffic management systems, smart city projects, etc. In this regard, the Complainant has annexed relevant documentary evidence as **Annexure YY** and **Annexure ZZ**.

Complainant has submitted that it has significant investments in India, which includes startups such as Kolkata-based Videonetics Technology Pvt Ltd, and has annexed an article titled "Cisco steps up India investments" in support of the same as **Annexure AAA**. The




Complainant has further submitted that it has also partnered with NDTV for organizing the 'Digitizing India Awards' and has annexed relevant documentary evidence in support thereto as **Annexure BBB**. Complainant has also submitted that it has own book publishing business under the mark CISCO PRESS, which is an alliance between the Complainant and the Pearson Education division of Pearson PLC, and that the same was established in 1996. In this regard, the Complainant has annexed excerpts from the website Ciscopress.com as **Annexure CCC**.

The Complainant has submitted that its earlier trade marks are its most valuable assets and that it vigorously defends them globally, including in India. Complainant has further submitted that by virtue of, inter alia, extensive use, its trade marks have acquired an enviable goodwill and reputation and has come to be associated and identified solely with the Complainant and that it enjoys exclusive proprietary rights in and to the use of the trade marks CISCO and CISCO SYSTEMS. Complainant has also submitted that its trade marks CISCO and CISCO SYSTEMS have acquired a very high recall value and are well known brands and the said marks have acquired extensive goodwill and reputation in India and worldwide in relation to the Complainant's products and services.

In view of the above described submissions, the Complainant has submitted that its trade marks CISCO and CISCO SYSTEMS have attained the status of a "well-known" trade marks within the provisions of Article 6 bis of the Paris Convention which finds statutory mention under Sections 2 (1) (zg) and 11 (2 and 6-10) of the Trade Marks Act, 1999.

The Complainant has submitted that the Disputed Domain Name was registered on December 02, 2009, and has submitted documentary evidence regarding the same. Complainant has further submitted that it first came to know of the Respondent through its trade mark application

no. 2872792 for the mark  when it was advertised in the Trade Marks Journal No. 1859, and in this regard has annexed a copy of the relevant page from the Trade Marks Journal as well as a copy of the status page as available for the said application on the Trade Marks Registry's website as **Annexure DDD**.

The Complainant has also submitted that the Respondent filed the said application claiming use of the mark SYSCO SYSTEMS (label) since August 30, 2009, but the Complainant's internet investigation in this regard did not reveal any evidence establishing use of the mark since the date so claimed i.e. August 2009. Complainant has further submitted that the above internet investigation revealed the Respondent's website located at the Disputed Domain Name <SYSCOSYSTEMS.IN> and has reproduced a screenshot of the said website in the Complaint.

Complainant has also submitted that it initiated opposition proceedings against the Respondent's aforementioned trade mark application no. 2872792, and in this regard has annexed a copy of the Notice of Opposition as filed as **Annexure EEE**. Complainant has further submitted that in addition to filing opposition, vide their attorneys, they sent a cease and desist letter dated September 14, 2018, to the Respondent, and a copy of the same has been annexed as **Annexure FFF**. Complainant has also submitted that as the Respondent did not respond to the aforementioned cease and desist letter, the Complainant sent a reminder letter to the Respondent, and in this regard has annexed a copy of the reminder letter dated October

22, 2018, as **Annexure GGG**. Complainant has also submitted as there was no response to the above letters, the Complainant through its counsel made several telephonic follow-ups with the Respondent between November 2018 and February 2019, but that the Respondent was unresponsive to the same.

The Complainant has submitted that in March 2019, it came to the Complainant's notice that the Trade Marks Registry had issued an abandonment order under Section 21(2) of the Trade Marks Act, 1999 due to the non-filing of Counter Statement by the Respondent, with respect to the Respondent's trade mark application no. 2872792. In this regard, the Complainant has annexed a copy of the said abandonment order (dated February 14, 2019) as **Annexure HHH**.

The Complainant has submitted that post receipt of the above order, it came to its notice that the Respondent was still using the disputed domain name <SYSCOSYSTEMS.IN> and hence the Complainant through its counsel served a letter dated March 07, 2019, to the Respondent, which was followed by a letter dated March 29, 2019 as there was no response to the earlier letter. In this regard, the Complainant has annexed copies of the aforementioned letters as **Annexure III**. Complainant has further submitted that in light of the above, it initiated the present proceedings.

#### **5. Complainant's Contentions**

Complainant has claimed that the domain <SYSCOSYSTEMS.IN> is visually, phonetically and structurally virtually identical to its trade marks CISCO and CISCO SYSTEMS, as well as the Complainant's domain name <Cisco.com>. Complainant has also claimed that the Respondent is using the domain name with respect to goods/services similar to those of the Complainant, such as laptops, desktops, printers hard disks etc., and that the same is likely to dilute the brand equity of the Complainant's trade marks.

The Complainant has claimed that the Respondent is carrying out activities with a view to ride upon the hard-earned goodwill and reputation of the Complainant and that the Respondent's such use weakens the brand equity of the trade marks CISCO and CISCO SYSTEMS.

Complainant has claimed that the use of the Disputed Domain Name amounts to acts of infringement of the registered trade marks, passing off, dilution and misappropriation of the brand of the Complainant. Complainant has further claimed that the Respondent's actions are causing serious tarnishment and dilution of the Complainant's brand, and that such dilution and the Respondent's actions are egregious. Complainant has also claimed that the Respondent acts with the sole intention of misappropriating the Complainant's brand to deceive and cause confusion, to mislead internet users, members of the trading and consuming public, and to make unjust and illegitimate profits. Complainant has further claimed that the Respondent is attempting to associate the Respondent and its goods and services with the Complainant's brand, and takes unfair advantage of the goodwill and reputation of the said brand by using the Disputed Domain Name, which is comprised of a confusingly similar mark, in respect of identical/similar goods and services.

## **6. Legal Grounds Submitted by the Complainant**

The Complainant has submitted the following legal grounds in support of its complaint:

### **A. The Disputed Domain Name's Similarity to the Complainant's Rights**

[.IN Domain Dispute Resolution Policy, Paragraph 4(i); INDRP Rules, Paragraph 3(b)(vi)(1)]

The Complainant has contended that it holds statutory and common law rights in respect of the trade marks CISCO and CISCO SYSTEMS in many parts of the world including India, and that the disputed domain name <SYSCOSYSTEMS.IN> is virtually identical to the Complainant's prior registered trade marks CISCO and CISCO SYSTEMS and that Respondent is using the domain name in respect of goods/services identical/similar to those of the Complainant.

The Complainant has further contended that at the time the Respondent registered the disputed domain name, the Complainant had already been using trade marks CISCO and CISCO SYSTEMS and the domain name CISCO.COM and had established rights in the same and that the said marks by that time had acquired status as "well-known" marks. The Complainant has also contended that in view of the Complainant's rights, the Respondent cannot claim or show any rights to the Disputed Domain Name that are superior to Complainant's rights in its trade marks and that the only reason for the Respondent's adoption is to trade upon the fame of the Complainant's marks for illegal commercial gain, in violation of Section 4(i) of the Policy.

### **B. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name**

[.IN Domain Dispute Resolution Policy, Paragraph 4(ii); INDRP Rules, Paragraph 3(b)(vi)(2)]

The Complainant has contended that there can be no plausible justification for the adoption of the Disputed Domain Name. Complainant has further contended that its trade marks CISCO and CISCO SYSTEMS are highly distinctive, and Respondent's adoption and use of the Disputed Domain Name creates a likelihood of confusion and deception amongst the members of trade and public with respect to the origin of the Respondent's goods/services.

Complainant has further contended that the Respondent's actions evidence an intent to make unlawful commercial gain. The Complainant states that it has never licensed or otherwise permitted the Respondent to use its trade marks and that the Respondent is not an authorized vendor, supplier, distributor, or customer relations agent for Complainant's goods.





In view of the above, the Complainant has contended that the Respondent has no rights or legitimate interests in the disputed domain name, and that the same satisfies Paragraph 4 (ii) of the Policy.

C. The Registrant's Domain Name has been registered or is being used in bad faith  
[.IN Domain Dispute Resolution Policy, Paragraph 4(iii); INDRP Rules,  
Paragraph 3(b)(vi)(3)]

The Complainant has contended that the bad faith of the Respondent in registering the disputed domain name is reflective in the fact that Respondent has copied the Complainant's earlier well-known trade marks CISCO and CISCO SYSTEMS. Complainant has contended that internet users are likely to believe that the disputed domain name is related to, associated with, or authorized by the Complainant, and that a perceived authorisation on part of the Complainant can be thought of as the Complainant already uses the website Cisco.com or that the Respondent's website is the Complainant's Indian website considering that the country code top-level domain name in the Disputed Domain Name is ".IN" or that the website linked to the Disputed Domain Name is affiliated with the Complainant, when such is not the case.

Complainant has further contended that the Respondent's usage of the domain name with respect to goods/services identical/similar to those of the Complainant's, demonstrates bad faith registration, in violation of the Policy. The Complainant has also contended that the Respondent is making unlawful commercial gains by using the Complainant's Marks to direct the traffic to its website thereby causing loss to the Complainant's interests and business, and that the Respondent is creating a likelihood of confusion with the Complainant's marks, as to the source, sponsorship, affiliation or endorsement of its websites and the services on them.

Complainant has reiterated that there exists no relationship between the Complainant and the Respondent which would give rise to any license, permission, or authorization by which Respondent could own or use the Disputed Domain Name.

In view of the above, the Complainant has asserted that each of the elements enumerated in the Policy have been met, and that it is accordingly entitled to the remedy sought under Paragraph VI of the Policy.

Additionally, the Complainant has placed reliance on the below prior cases, in support of its Complaint –

- **Yahoo! Inc. v. Akash Arora & Anr.** (1999 PTC (19)210 Delhi)
- Playboy Enterprises International, Inc. v. Hector Rodriguez, WIPO Case No. 102000-1016
- Guerlain S.A. v. Pei Kang, WIPO Case No. D2000-0055
- Veuve Clicquot Ponsardin v. The Polygenix Group Co., WIPO Case No. 02000-0163
- Charles Jourdan Holding AG v. AAIM, WIPO Case No. 02000-0403
- Caravan Club v.: Mrgsale, NAF Claim Number: FA0007000095314

- CBS Broadcasting Inc. v. Worldwide Webs, Inc., WIPO Case No. D2000-0834
- Bennett Coleman & Co Ltd v. Steven S. Lalwani (Case No. D 2000-0014)
- Bennett Coleman & Co Ltd v. Long Distance Telephone Company (Case No. D 2000- 0015)
- Entrust, Inc. vs. Mr. Sergey Krishtal

In support of the above cases, the Complainant has annexed copies of the orders/judgments as **Annexure JJJ**.

#### Other Legal Proceedings

The Complainant has submitted that no other legal proceedings that have been commenced against the Respondent in relation to the domain name <SYSCOSYSTEMS.IN>.

Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed for the disputed domain name, i.e. <SYSCOSYSTEMS.IN> to be transferred to the Complainant.

#### **7. Respondent's Contentions**

As mentioned in the Factual Background of the matter, despite being duly served with a copy of the Domain Complaint as filed and granted adequate time to respond to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.

#### **8. Discussion and Findings**

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

- The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- The Registrant has no rights and legitimate interest in respect of the domain name;
- The Registrant's domain name has been registered or is being used in bad faith.

- The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**  
(Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established its rights in the trade marks CISCO and CISCO SYSTEMS in India, pertinently, with respect to goods and services falling under classes 09, 38 and 42 of the NICE Classification and has provided relevant documentary evidence with respect thereto as **Annexure I**, in the form of registration certificates, all of which predate the registration of the domain name <SYSCOSYSTEMS.IN> by the Respondent. Based on the evidence placed on record, Complainant's first registration in India for a CISCO formative mark, incidentally for '**CISCO SYSTEMS**', dates back to December 12, 1995, by way of trade mark registration no. 690651.

It is well established that trade mark registration is recognized as prima facie evidence of rights in a mark. The Complainant, by submitting registration certificates of its registered trademarks has established that it has prior statutory rights in the trade marks **CISCO** and **CISCO SYSTEMS** in India.

The Complainant has also submitted that it has its own website at **Cisco.com** wherein it advertises its various goods and services under the **CISCO** marks, and has also placed substantial evidence on record to show that it possesses common law trade mark rights over the marks **CISCO** and **CISCO SYSTEMS** also.

The Complainant has also submitted that it has not licensed the Respondent to use its trade marks. In this regard, Complainant has further asserted that the nature of the domain is such that the same can be perceived to be the Complainant's India specific website, due to the addition of the ".IN" country code along with the name **SYSCO SYSTEMS**.

It may be stated that the disputed domain name <SYSCOSYSTEMS.IN> is almost identical and confusingly similar to Complainant's registered trade mark **CISCO SYSTEMS**, differing only in the substitution of the first and second alphabets "C" and "I" with the alphabets "S" and "Y", which does not alter the phonetics of the marks in question. In this regard, adjudicating administrative panels under the Universal Domain Dispute Resolution Policy ("UDRP"), including but not limited to in *The Swatch Group AG / Swatch AG v. packy phim* (Case No. D2018-0851), *Credit Karma, Inc. v. Majiaai* ("the First Respondent") / *zhangcunshuo, zhangcun shuo, 张存硕* ("the Second Respondent") (Case No. D2017-0909) and *La Quinta Worldwide, L.L.C. v. PrivacyProtect.org, Domain Admin/ Web Master Internet Services Private Limited, Web Master Internet Services Private Limited* (Case No. D2011-2323), have made findings of confusing similarity with respect to domain names wherein the alphabets comprising a Complainant's mark were, inter alia, rearranged, added to and/or subtracted from, in order to form the domain in question.

In view of the above, it is held that the disputed domain name <**SYSCOSYSTEMS.IN**> is confusingly identical/similar to the Complainant's trade marks **CISCO** and **CISCO SYSTEMS**. In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.



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

The Complainant has contended that its mark is well-known in India and that there can be no plausible justification for the adoption of the disputed domain name, and that the Respondent's use and registration of the same is likely to create a likelihood of confusion amongst the members of the public regarding the origin of Respondent's goods/services.

In the present dispute, Complainant has established that it has rights over the mark **CISCO** and **CISCO SYSTEMS** and that the domain <**SYSCOSYSTEMS.IN**> is confusingly identical/similar to the Complainant's trade mark.

Complainant has further contended that the Respondent's intent to make unlawful commercial gain is evidenced by Respondent's usage the trade mark **SYSCO SYSTEMS** along with the disputed domain name with respect to identical/similar goods/services. Complainant has also contended that the Respondent has no right to use the disputed domain and the said use is not licensed and is thus in violation of Complainant's rights in the earlier trade marks **CISCO** and **CISCO SYSTEMS**.

The element under Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy necessitates the Complainant to establish a prima facie case that Respondent has no rights or legitimate interests in the disputed domain in question. The burden thereafter lies on the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name. It has been held in numerous cases, including in *Huolala Global Investment Limited v Li Chenggong (INDRP Case No. 1027)* that the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a prima facie case, then the Complainant prevails.

Under paragraph 7 of the INDRP policy, it is stated that Respondent can demonstrate rights or legitimate interests in a disputed domain by showing –

- (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.

In this case, the Respondent has not replied to the Complainant's contentions and neither has it attempted to demonstrate any rights or legitimate interests in the disputed domain name. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 7 of the INDRP.

The Complainant has established a prima facie case of its rights in the marks **CISCO** and **CISCO SYSTEMS** and that the domain <**SYSCOSYSTEMS.IN**> is confusingly identical/similar to the Complainant's trade marks.

In view of facts and circumstances as presented, it appears that the Respondent has deliberately registered the disputed domain name which is almost identical to the Complainant's registered trade marks, so as to suggest a connection or affiliation with the Complainant and its goods/services under their famous mark. Considering that the Complainant adopted the **CISCO/CISCO SYSTEMS** name/mark almost 19 years before the registration of the disputed domain name, the fact that the Complainant has had a significant presence in India prior to the date of registration of the disputed domain name, coupled with the fact that the Respondent is using the disputed domain name with respect to identical/similar goods/services, it is likely that the Respondent must have been aware of the Complainant and its rights in the marks **CISCO** and **CISCO SYSTEMS**.

Therefore, in view of the facts and circumstances and evidence on record, the Arbitrator finds that Respondent has not established any rights or legitimate interests in the disputed domain name.

Further, based on the evidence placed on record, it is held that use of such a confusingly and deceptively similar domain name by the Respondent is likely to mislead and misrepresent to the general public and members of the trade as to the source, sponsorship, affiliation or association of the activity being carried on through the website.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(ii) of the .IN Domain Name Dispute Resolution Policy.

**iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)**

Paragraph 6 of the INDRP stipulates the below circumstances which show registration and use of a domain name in bad faith –

- (i) circumstances indicating that the Registrant 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 bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
- (ii) the Registrant 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 the Registrant has engaged in a pattern of such conduct; or
- (iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The Complainant has contended that the Respondent using the Complainant's marks to direct traffic to its website thereby causing loss to the Complainant's interests and business. Based on the evidence on record coupled with the Respondent's contentions that the Respondent is using the disputed domain name with respect to similar/identical goods and services, it appears that by registering and using the domain <**SYSCOSYSTEMS.IN**>, the Respondent has engaged in conduct as enumerated in paragraph 6 (iii) of the INDRP, as mentioned above.

The fact that the Respondent appears to be using the domain with respect to similar/identical goods and services suggests that the Respondent was attempting to ride upon the goodwill and reputation of the Complainant. Further, the Complainant's marks **CISCO** and **CISCO SYSTEMS** are distinctive and are obviously connected with the Complainant, and as contended by the Respondent via submission of the cases *Guerlain S.A. v. Pei Kang*, WIPO Case No. D2000-0055; *Veuve Clicquot Ponsardin v. The Polygenix Group Co.*, WIPO Case No. 02000-0163 and *Caravan Club v.: Mrgsale*, NAF Claim Number: FA0007000095314, findings of bad faith can be made in cases where the disputed domain name is so obviously connected with well-known products that its very use by someone unconnected with it suggests opportunistic bad faith. In this regard, the Complainant has also referred to the Delhi High Court's judgment in the case of *Yahoo! Inc. v. Akash Arora & Anr.* (1999 PTC (19) 210 Delhi), wherein it was held that the defendant's domain name could be perceived as being another domain of the plaintiff (in this case, the defendants were attempting to use the domain name with respect to similar services).

In this case, the only difference between the marks "**CISCO SYSTEMS**" and "**SYSCO SYSTEMS**" is the substitution of the first and second alphabets "C" and "I" with the alphabets "S" and "Y", which does not alter the phonetics of the marks in question in any way. Such findings of bad faith has been observed by prior panels in other cases under the INDRP, including but not limited to *Dart Industries Inc v. Lokesh Morada INDRP Case No. 180*.



In any case, the Respondent's use of the disputed domain name has not been defended as having been bona fide and the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use of the disputed domain name.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

### **8. Decision**

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has statutory and proprietary rights over the trade mark **CISCO** and **CISCO SYSTEMS** and variations thereof. The Complainant has herein been able to prove conclusively that:

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

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**SYSCOSYSTEMS.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 08, 2019.**

**Place: New Delhi, India.**