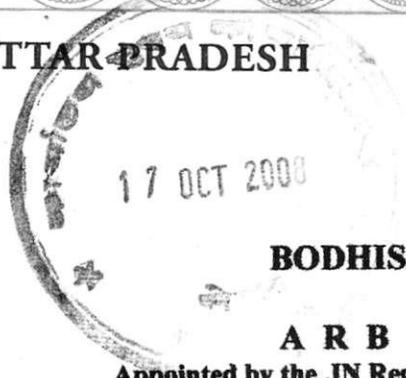




उत्तर प्रदेश UTTAR PRADESH

U 151331



BODHISATVA ACHARAYA
LL.M
ARBITRATOR

Appointed by the .IN Registry-National Internet Exchange of India

In the matter of:

Consim Info Private Limited,
301, Prince Center,
3rd Floor, New No.248,
Anna Salai (Pathari Road),
CHENNAI-600006
Authorized Representative
Rodney D. Ryder,
Preconcept, 1441, Sector 7E,
Faridabad, NCR-121004,
E-mail: rodney@preconcept.com Complainant

Versus

Anand Sanwal,
Mobius Development Group,
2 Weavers Lane,
Whitehouse Station,
New Jersey, USA.
E-mail: asanwal@yahoo.com
Represented by
Sachin R. Mehta,
Law Offices of Sachin R. Mehta Respondent

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BS

Signature

AWARD

1. The Parties

The Complainant is **Consim Info Private Limited, 301, Prince Center, 3rd Floor, New No.248, Anna Salai (Pathari Road), CHENNAI-600006** and represented by Rodney D. Ryder, Preconcept, 1441, Sector 7E, Faridabad, NCR-121004,

The Respondent is **Anand Sanwal, Mobius Development Group, 2 Weavers Lane, Whitehouse Station, New Jersey, USA.** and represented by Sachin R. Mehta, Law Offices of Sachin R. Mehta.

2. The Domain Name, Registrar & Registrant:-

The disputed domain name is www.tamilmatrimony.co.in.

The registrar is **OnlineNIC.com**, 351 Embarcadero E., Oakland, CA 94606; United States of America

3. Procedural History

The Complaint was filed to the **.IN Registry, following the Clause 4 of the policy and rules of .IN Registry** and **.IN Registry appointed "BODHISATVA ACHARAYA" ("The Arbitrator")** as **sole Arbitrator under Clause 5 of its Policy.**

The Arbitrator submitted his statement of acceptance and declaration of Impartiality and Independence on 14th August 2008 then the complaint was produced before "The Arbitrator" on 21st August 2008. The notice of arbitration proceedings was sent to the parties on August 28, 2008. The Response was dated September 4, 2008. Counsels represent both parties. There have been no further submissions on the merits. It appears that the parties have satisfied all requirements of the Policy and the Act.

4. Factual Background

The Complainant is a leading international Matrimony service provider and has 9 million registered members. The Complainant has entered into the prestigious Limca Book of Records, the Indian equivalent of Guinness Book of World records. The online marriage portal has been recognized for facilitating highest number of marriages than any other Indian website over a period of seven years [From 1999 to 2006]. The Complainant has established and well known services both offline and online.

That the profile and popularity of the Complainant under the trade/service name/mark 'Tamil Matrimony' has been continuously increasing since the date of adoption and use of the mark. At present, the Complainant's trade name/mark is a name to reckon with and has acquired an enormous goodwill not only in India but in many countries across the globe.

The '**Tamil Matrimony**' mark/brand mark, due to its extensive use, advertisements, publicity and awareness throughout the world, has acquired the status of a well known trademark under Section 2(1)(zg) of the Trade Marks Act, 1999 and Article 6bis of the Paris Convention.. The said mark/name qualifies all tests for the well-known status of a mark under section 11 (6) of the Act which includes considerations like knowledge or recognition among relevant section of public, duration, extent and geographical area of use, promotion and publicity of mark.

The Respondent registered the domain name, 'www.tamilmatrimony.co.in' which is re-directed to an adult site, 'www.iwantahotindiangirl.com', owned and operated by the Respondent.

5. Parties' Contentions

A. Complainant

Complainant contends that-

- The Respondent's domain name is identical and confusingly similar to a name, trademark or service mark in which the complainant has rights;
- The Respondent has no rights or legitimate interests in respect of domain name;
- The Respondent's domain name has been registered or is being used in bad faith; and the domain name be transferred to the complainant.

B. Respondent

The Respondent contended that it has not registered and used the domain name in bad faith because

- (a) There is no evidence that its primary motivation was to sell the disputed domain name;
- (b) The domain name was not registered with intent to prevent Complainant from using her mark as a domain name;
- (c) Respondent is not engaged in a pattern of registering domain names to prevent others from doing so;
- (d) The use of a disclaimer on the web site precludes a finding that Respondent intentional seeks to attract users for commercial gain based on confusion with Complainant's mark; and
- (e) The use of a generic term to attract business is not bad faith as a matter of law.

6. Discussion and Findings

Under the Paragraph 4 of the Policy (**INDRP**) it is stated, any person who considers that a registered domain name conflicts with his legitimate rights or interests then he may file a complaint to the **.IN Registry** and the complainant must prove the following premises:

- (i) The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which complainant has rights;
- (ii)The Respondent has no rights or legitimate interests in respect of the domain name; and

(iii)The Respondent's domain name has been registered or is being used with bad faith.

(A) Domain name is identical or confusingly similar to a name, trademark or service mark in which complainant has rights:

The name/mark '**Tamil Matrimony**' is distinctive, unique and has an established reputation in India and internationally. The mere mention of the said name/mark establishes an identity and connection with the Complainant and none else. The Complainant owns all the rights including statutory and common law rights in the said name/mark and is entitled to protection under the Indian Trade Marks Act, 1999. The use of the said name either as a mark, name, domain name, or in any other form whatsoever constitutes violation of the Complainant's rights. The Complainant has registered the mark 'Tamil Matrimony' under the Indian Trademarks Act, 1999

and it is produced before the arbitrator while the respondent has given no authenticated evidence to prove his words hence the clause (i) of Para 4 of is satisfied by the complainant before the arbitrator. Thus the opinion of arbitrator that domain name is identical or confusingly similar to a name, trademark or service mark in which complainant has rights;

(B) Lack of Rights or Legitimate Interests in respect of Domain Name

Complainant has presented evidence tending to show that Respondent lacks any rights or legitimate interest in the domain name. Respondent's claim of rights or legitimate interests is not persuasive therefore clause (ii) of Para 4 is satisfied by the complainant.

(C) Domain name has been registered or is being used with bad faith:

Many evidences given by the complainant of using the disputed domain name in bad faith by the respondent and it also clear that respondent has intentionally attempted to attract Internet users for commercial gain by the same web site or other on-line location, by creating a likelihood of confusion with the complainant's trademark.

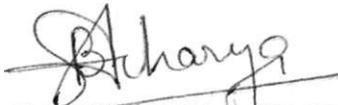
The pleadings in this case are consistent with Respondent's having adopted the disputed domain name **tamilmatrimony.co.in** for the specific purpose of trading off the name and reputation of the Complainant, and Respondent has offered no alternative explanation for his adoption of the name despite his otherwise detailed and complete submissions. Respondent's reliance on previous ICANN/UDRP decisions is misplaced. Thus the clause (iii) of Para 4 is being satisfied by the complainant and the arbitrator's opinion is similar to the complainant.

One more important thing that in the opinion of arbitrator " respondent's other website www.iwantahotindiangirl.com should also be stopped because its an abuse for Indian women and I suggest that any NGO should think to file a case of defamation against the respondent for making such vulgar, voluptuous and dirty website on behalf of Indian women.

7. Decision

In the light of the circumstances and facts discussed above, Arbitrator decides," The Disputed Domain Name is identical and confusingly similar to the registered trademark of Complainant in which the Complainants has rights and the Respondent has no right or legitimate interests in respect of the Domain Name and the Respondent's Domain Name has been registered or is being used in bad faith."

Consequently the Arbitrator decides that the Domain Name "tamilmatrimony.co.in" shall be transferred to the Complainant.


BODHISATVA ACHARYA
Arbitrator
NIXI
INDIA

DATED: 18TH OCTOBER 2008
PLACE: NEW DELHI