

महाराष्ट्र MAHARASHTRA

2016

AB 968854

अनु.क्र. 2013 दि. 24/12/16 नु.शु.रकम. 2000000

दस्तावा प्रकाश: ठावा

दस्त भादमी कलजा आदेश का 1 कोष/हरी.

मिलकतीचे दर्शन

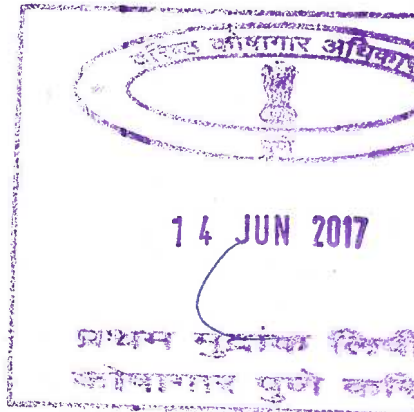
मुद्रांक विकत देणाऱ्याचे नाव: विवीन चिंतावनी ठावा

पत्ता: 24/2 शनिवार पेठ, पुणे

दुसऱ्या पक्षाचा नाव: निवमी

हस्तें व्यक्तीचे नांव व पत्ता: सविता जलिनंद कोणे - निवमी, पुणे

मुद्रांक विकत देणाऱ्याची सही: श्री. जयदीप निवंद बेवसरे
सहकारी क्र. 2009099
824 ब, शनिवार पेठ पुणे-36



**AWARD
IN ARBITRATION**

TATANEXON.CO.IN

INDRP CASE NO.898

Tata Motors Ltd.
24, Homi Mody Street
Fort, Mumbai. 400001.
Maharashtra. India.

THE COMPLAINANT

AND

Mr. Baliram Devtwal
88 Gurunanakpura, Rajpark
Jaipur. Rajasthan. 302004.
India

**THE RESPONDENT /
THE REGISTRANT**

IN THE MATTER OF DISPUTED DOMAIN NAME: - 'TATANEXON.CO.IN

BEFORE: - MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

**DELIVERED ON THIS 15th DAY OF JUNE TWO THOUSAND SEVENTEEN
AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

**01. Names and addresses
Of the Complainant: -**

**Tata Motors Ltd.
24 Homi Mody Street
Fort, Mumbai. 400001.
Maharashtra. India.**

Through its authorized
representatives

M/s DePenning & DePenning
120, Velachery Main Road
Guindy, Chennai. 600032. India

**02. Name and address of
The Respondent: -**

**Mr.Baliram Devtwal
88 Gurunanakpura, Rajpark
Jaipur. Rajasthan. 302004.
India**

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me	05.06.2017
02	Acceptance given by me	06.06.2017
03	Electronic copy of complaint received	07.06.2017
04	Mail received from the Registrant / Respondent in response to electronic copy of the complaint	07.06.2017
05	Notice of Arbitration issued	09.06.2017
06	Reply filed by Registrant / Respondent in response to the Notice of Arbitration	09.06.2017
07	Say filed by the Complainant in response to the Registrant's reply	11.06.2017
08	Notice of closure of arbitration proceedings issued	13.06.2017
09	Award passed	15.06.2017

II PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:

1. Disputed domain name is 'TATANEXON.CO.IN'.
2. Date of registration is 22.04.2016
3. Registrar is Endurance Godaddy.com LLC. (R101-AFIN)
Corporate Headquarters 14455, N Hayden Road
Scottsdale AZ 85260. U.S.A.

III PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. Arbitration proceedings were carried out as per .In Domain Name Dispute Resolution Policy (INDRP) read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 and Code of Civil Procedure, wherever necessary.
02. The parties were requested to expedite their submissions so as to enable this panel to pass award within the 60 days time frame prescribed.
03. Copies of all communications were marked to both the parties and NIXI.
04. No personal hearing was requested / granted / held.

III] BRIEF INFORMATION ON THE COMPLAINANT: -

The Complainant in the present arbitration proceedings is Tata Motors Ltd. India. It is India's largest automobile company, with consolidated revenue of Rs.275561 crores in 2015-16. It is also among the top five commercial vehicle manufacturers in the world. The Complainant is the market leader in commercial vehicles and among the top three in passenger vehicles. The Complainant is also the world's fourth largest truck and bus manufacturer. The Complainant belongs to the well known TATA group of companies.

Tata Sons Ltd. is the promoter of the major operating Tata companies and holds significant shares in these companies. These companies are commonly known and referred as Tata Group of Companies. Tata Sons Ltd. is the registered proprietor of the TATA trademark and its variants which are registered in India and around the world. The said trademarks are used by various Tata Companies under a license from Tata Sons Ltd. as a part of their corporate name. By virtue of the aforesaid facts the Complainant claims to be the licensed user of the trade marks TATANEXON AND TATA.

The NEXON SUV was unveiled by the Complainant in the Auto Expo 2014 at New Dehli in February 2014. The trademark is now popularly known as TATANEXON.

IV] SUMMARY OF THE COMPLAINT: -

The Complainant's Complaint is based on the following points, issues, representations or claims in brief:-

(A) CONTRAVENTION OF THE REGISTERED TRADEMARKS AND DOMAIN NAMES OF THE COMPLAINANT (CONTRAVENTION OF POLICY PARA 4(a) (i), RULES 3(b)(vii), (b)(ix)(1) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP) :-

1. The Complainant states that the domain name registered by the Respondent viz. TATANEXON.CO.IN, is virtually identical to the trademark registered in India, vide Trademark Application No.2773376 and the applied trademark is TATANEXON. The Complainant also states that it has trademark TATA, registered at No.299110. The Complainant states that this complies with the condition of Para 4(i) of INDRP. The Complainant has placed reliance on the decided case Tata Sons Ltd. V/s Manu Kishori, 2001, PTC 432, 90(2001). dlt 659 and several cases decided in this regard.

(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME (PARA 3(b)(vi)(2) OF INDRP RULES READ WITH PARA 7 : -

The Respondent has no right to and legitimate interest in the domain name www.tatanexon.co.in. The Respondent illegally and wrongfully adopted the well known trade mark TAT of the Complainant with the intentions to create an impression of an association with the Complainant, its reputation and name attached thereto. The Registrant has no rights to adopt the disputed domain name. He has registered the disputed domain name to en-cash on goodwill and reputation of the Complainant. Neither the Complainant, nor any of its group companies has licensed or otherwise permitted the Respondent to apply for or use of the domain name incorporating the mark TATANEXON.

According to the Complainant this complies with the condition of Para 4(ii) of INDRP.

(C) REGISTRATION AND USE IN BAD FAITH: -

The disputed domain name when searched on Google, is directly promoting the TATANEXON vehicle. Such use of the disputed domain name is considered evidence of bad faith registration. The Complainant has placed reliance on the decided case Playboy Enterprises International Inc. V/s Zeynel Demirtas, WIPO Case No.D2007-0768, The Nasdaq Stock Market Inc. V/s Vidudala Prasad, Case No.D2001-1493 in this regard.

The Complainant claims enormous presence on the internet and ownership of various domain names consisting of the words TATAMOTORS / TATA. The Complainant has furnished a big list of such registered domain names.

An innocent consumer is bound to be misled by this impugned domain name registered by the Respondent. Without seeking prior concurrence / approval / permission of the complainant amounts to 'passing off' action on the part of the Respondent. The clear intention of the Respondent appears to be to commit fraud and mislead innocent and gullible consumer by unfair and dishonest means.

(D) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the above background of the Complaint and reasons described therein the Complainant has requested for transfer of the disputed domain name to it.

VI] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

The Registrant replied on 07.06.2017, stating that the domain name has expired and that he shall not renew it. On 8th June 2017, he asked the Complainant to 'take it' from GoDaddy - the Registrar.

From all his communications it is clear that he is not interested in contesting the dispute and ready and willing to transfer the domain name to the Complainant. There is no other reply sent by him.

In response to the emails of the Registrant as above, the Complainant sent email to him asking for EPP code, get unlocked the code from the Registrar, to get the domain name transferred.

VII] REJOINDERS OF THE PARTIES: -

In view of above email correspondence between the Registrant and Complainant, no rejoinder was called for.

VIII] MERITS OF THE COMPLAINT: -

The Registrant / Respondent has come out to transfer the disputed domain name without further contesting the dispute.

However based on discussion above, documents furnished to me and also emails exchanged on the subject, this Arbitration panel records the following observations: -

(a) The Complainant has registered trademarks and websites which include the word 'TATA' as also 'TATANEXON' in its entirety. The Complainant has produced evidence in support of its claim of having the registered trademark with the word 'TATA' which is valid.

Against this the Registrant does not have any registered trademark, other similar prior website or any business mark / identity containing the word 'TATA' or part thereof. He is also not commonly known by these words or any part thereof.

(b) The Respondent's domain name contains the word TATA. The Complainant, has Indian trademarks as also various domain names of which the word 'TATA' is the prominent part.

It is a well settled legal position in many decided cases so far that, the mere addition and difference in top level domain name of the words like '.in' does not differentiate the domain name from the registered trademarks or websites of the Complainant. The Respondent has not been using the registered domain name for any legitimate or charitable purpose. He is trying to earn unlawfully out of the registration of disputed domain name, by taking disadvantage of similarity of disputed domain name with the Complainant's name, fame, goodwill and global recognition.

(c) It is the duty cast by INDRP read with INDRP Rules, on every person aspiring to register any domain name: -

(i) to verify whether any similar domain name exists, before registration of proposed domain name,

(ii) whether any registered trademark exists similar to the proposed domain name,

(iii) whether said domain name or registered trademark, has been in prior use by others

If he fails or neglects to check on above points, he is registering domain name with the risks of infringing other's rights, interests and claims. In the case of such infringement having proved, his domain name is required to be transferred to genuine owner / stakeholder. Further he may be liable for other civil and / or criminal consequences including monetary losses.

(d) The disputed domain name is identical or confusingly similar to registered trademarks, registered in India as well as various parts of the globe and with also the websites in which the Complainant has rights according to the requirement of Para 4(a)(i) of the INDRP Rules

(g) The Registrant / Respondent has no rights or legitimate interests in respect of the domain name as required by Para 4(a)(ii) of the Rules.

(h) If use of disputed domain name by the Registrant / Respondent is allowed to continue, the same would be offered for sale at unreasonable consideration to any other party including the competitors of the Complainant. Otherwise the Respondent would continue to gain illegally and immorally, by misusing the reputation of the Complainant. This would also lead to loss of business as well reputation of the Complainant.

Importantly, the Respondent has failed / neglected to establish his bona fides, legitimacy, legal rights, prior use of the domain name for lawful purpose or any type of nexus between him and the registered domain name. He is neither licensed or permitted to use the disputed domain name by the Complainant or any of its group companies.

Above facts and discussion lead to the conclusion that the Registrant has registered domain name without having any right, legitimacy or interest, which is detrimental to the interests of the Complainant.

From all above findings, it can be concluded that the Complainant has proved its case for the entitlement to the disputed domain name.

VIII] AWARD: -

On the basis of my findings on issues and foregoing discussion, I pass the following award: -

- [1] **The Complainant is entitled to the disputed domain name 'TATANEXON.CO.IN and hence the same be transferred to the Complainant.**

Dated: - 15.06.2017
Place: - Pune


(S.C.INAMDAR)
SOLE ARBITRATOR