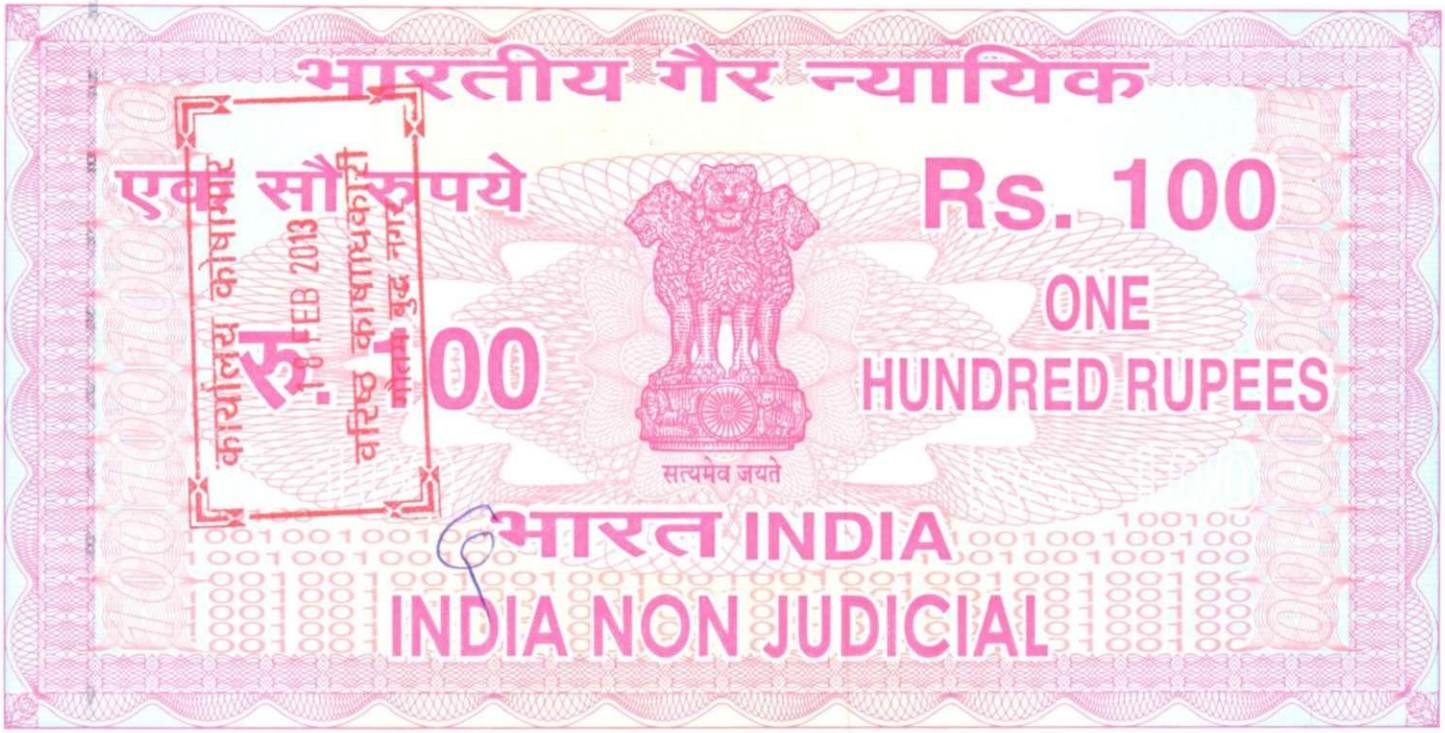


उत्तर प्रदेश UTTAR PRADESH

BK 267925

INDRA ARBITRATION

TRAVELLERS EXCHANGE CORPORATION LIMITED

V.

AK TRAVELEX FOREX SERVICES PRIVATE LIMITED

INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: RODNEY D. RYDER

TRAVELLERS EXCHANGE CORPORATION LIMITED

V.

Pk TRAVELEX FOREX SERVICES PVT. LTD

Disputed Domain Name: www.travelexforex.in

The Parties

The **Complainant** in this arbitration proceeding is Travellers Exchange Corporation Limited, a private limited company incorporated in England and Wales with its registered office situated at 65 Kingsway, London WC2B 6TD, United Kingdom

The **Respondent** in this arbitration proceeding is pk Travelex Forex Services Pvt. Ltd., located at F-5, First floor, Manish Location Plaza, Sector 12, Dwarka, New Delhi, India as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

The Domain Name and Registrar

The disputed domain name is www.travelexforex.in. The sponsoring registrar with which the disputed domain name is registered is GoDaddy.com, LLC (R101-AFIN).

Procedural History [Arbitration Proceedings]

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Rodney D. Ryder as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Name Dispute Resolution Policy and the Rules framed there under. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

The request for submission with a complete set of documents was dispatched to the Respondent by the National Internet Exchange of India [NIXI]. A reminder was sent on May 3, 2013 by the Arbitrator. The Respondent did not reply.

Grounds for the administrative proceedings

1. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The disputed domain name has been registered or is/are being used in bad faith.

Background of the Complainant and its statutory and common law rights Adoption:

The Complainant Travellers Exchange Corporation Limited has been using the mark Travellers Exchange Corporation Limited for a considerable number of years. It is a leading company in the currency exchange business. The Complainant is part of the Travelex Group

that has been operating in the currency exchange business since the 1970s and has been operating in India since 1st of November 2002. The Travelex Group is the world's largest retail foreign exchange specialist operating over 780 branded retail branches, principally in airports and tourist locations worldwide. In India, Travelex currently operates 15 retail outlets under the trademark in Amritsar, Aurangabad, Hyderabad, Ludhiana, Mumbai, Navi Mumbai, Mumbai, New Delhi and Pune. The Travelex Group has continued to enjoy an immense geographic growth, both organically and through targeted acquisitions in growth markets.

Statutory rights:
The Complainant contends that the trademark "Travelex" has acquired global reputation and goodwill and is a well known mark. The Complainant has built up a substantial reputation and goodwill in the mark Travelex and the Complainant owns and has owned for a considerable number of years, a large portfolio of trademark registrations for the mark Travelex and other related marks. The Complainant holds domain name registrations incorporating the "Travelex" trademark, including travelex.com.

Respondent
The Respondent failed to reply to the notice regarding the complaint.

Discussion and Findings
The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand "Travelex". Moreover, the Complainant has neither given any license nor authorized the Respondent to use the Complainant's mark. It is a well established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

The Respondent's Default
The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows

> *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."*

Rule 11(a) empowers the arbitrator to proceed with an ex parte decision in case any party does not comply with the time limits or fails to reply against the complaint. Rule 11(a) reads as follows:

> *" In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*

The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ

reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated; the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case.

The 'Rules' paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads:

"Types of Disputes -

> *Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:*

(i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the 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 in bad faith.

The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute, which are being discussed hereunder in the light of the facts and circumstances of this case.

Parties Contentions

Complainant

The Complainant in his complaint, interalia, contended as follows:

I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.

The Complainant, based on various Indian and international trademark registrations across various classes owns the trademark "Travelex". Based on the use of the said trademark in

India and other countries, the Complainant has submitted that it is the sole proprietor of and has sole and exclusive rights to use the said trademark "Travelex".

The Complainant submits that as the disputed domain name is 'www.travelexforex.in', it is clearly identical/confusingly similar to the Complainant's trademark – "Travelex" in which the Complainant has exclusive rights and legitimate interest.

It has been proved by the Complainant that it has intellectual property, particularly trademark rights, and other rights in the mark "Travelex" by submitting substantial documents and that the disputed domain name is similar to that of the Complainant's mark, services and domain names.

A mere glance at the disputed domain name gives rise to enormous confusion as to its origin. The disputed domain name registered by the Respondent is identical to the Corporate as well as the trademark of the Complainant. The complainant enjoys statutory and common law proprietary rights over the trademark "Travelex" and the public identify the said trademark exclusively with the complainant and no one else. The disputed domain name is confusingly similar to the "Travelex" mark because it consists of "Travelex" together with the extension ".in" making it virtually identical to "Travelex" [**Relevant Decisions**:; *Lego Juris A/S v. Robert Martin,* INDRP/125, (February 14, 2010)*; G.A. Modefine S.A. v. Naveen Tiwari,* INDRP/286, (February 20, 2009), *Laerdal Medical Corporation v. Lock's Computer Supply* WIPO Case No D2002-063; F. Hoffman La Roche AG v. Macalve e-dominions S.A. WIPO Case No. D2006-0451]

According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations -
By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that:

- *the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate;*
- *to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- *the Respondent is not registering the domain name for an unlawful purpose; and*
- *the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."

Respondent

The Respondent as stated above has failed to respond to the Complainant's complaint and assertions. The Respondent has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant; The Panel comes to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' marks and its business. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.

Complainant

The Complainant contends that the Respondent does not have any right or legitimate interest in the disputed domain name because the disputed domain name incorporates the "Travelex" mark, a mark in which the Complainant has the sole and exclusive right and that has become well known owing to the Complainant's efforts.

Furthermore, the Respondent is not commonly known by the disputed domain name nor does the Respondent actually engage in any business or commerce under the name "Travelex". He has no active business in the name of "Travelex".

The Respondent is not commonly known by the Infringing domain name and has not acquired any trademark or service mark rights to use those names. [**Relevant Decisions**: *Cisco Technology, Inc. v. Nicholas Strecha, E-Careers Ltd.*, WIPO Case No. D2010-0391 (May 7, 2010); *Red Bull GmbH v. Steve Redmon*, WIPO Case No. DCC2010-0001 (March 1, 2010)]

Respondent

The Respondent has failed to respond to the Complainant as noted above. For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

III. The disputed domain name has been registered or is being used in bad faith.

Complainant

It has been contended by the Complainant that the Respondent has registered the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

the Respondent 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 Respondent has engaged in a pattern of such conduct; or

by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

The panel is prepared to accept that disputed domain name is being used in bad faith because the Respondent registered the disputed domain name to intentionally attract Internet users to the Respondent's webpage by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the Respondent's website. [**Relevant Decisions:** *IndyMac Bank FSB v. Ebeyer*, FA 175292 (Nat. Arb. Forum September 19th, 2003; *America Online v. QTR Corporation,* FA 92016 (Nat. Arb. Forum February 4th 2000; *Microsoft Corporation v. Chun Man Kam*, INDRP/119; *Lego Juris A/S v. Robert Martin,* Case No. INDRP/125, February 14, 2010]

It must also be noted that the Respondent is a habitual offender. In the past, a UDRP panel had ordered the Respondent to transfer the domain name www.travelexforex.com to the Complainant. Despite this decision, the Respondent has now registered the disputed domain name, with the obvious intention to imitate and come as close to the Complainant's trademark. Therefore, it has been further established that the Respondent is a habitual cyber-squatter who registers domain names that incorporate famous marks owned by other parties and that Cybersquatting is evidence of bad faith under the INDRP. [**Relevant Decision:** *Dell Inc. v. Jack Sun*, INDRP/308 (March 16, 2012)]

Respondent

The Respondent has failed to respond to the Complainant as noted above.

Consequently it is established that the disputed domain name was registered in bad faith as well as used in bad faith

Decision

The following circumstances are material to the issue in the present case:

(i) the Complainants' trademark has a strong reputation and is widely known on a global basis;
(ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name;
(iii) taking into account the nature of the disputed domain name and in particular the .in extension alongside the Complainant's mark, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of the disputed Domain Name by the Respondent is and would be illegitimate. Use by the Respondent as such would amount to passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

The Respondent failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third party rights. [**Relevant Decisions**: *Salmi Oy v. PACWEBS* WIPO Case No. D2009-0040; *Graco Children's Products Inc. v. Oakwood Services Inc.* WIPO Case No. D2009-0813; *Artemides Holdings Pty Ltd v. Gregory Ricks,* WIPO Case No. D2008-1254; *Ville de Paris v. Jeff Walter,* WIPO Case No. D2009-1278].

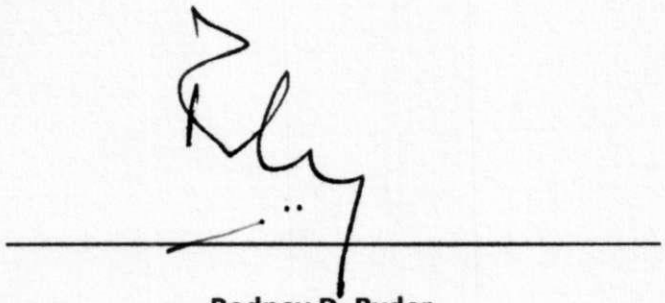
The Complainant has given sufficient evidence to prove global trademark rights on the disputed domain name. Further, the Respondent's adoption and registration of the disputed domain name is dishonest and malafide.

From the circumstances of the case and from the evidences put before the Panel by the Complainant, the Panel is of the opinion that the Respondent had no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent. While the overall burden of proof rests with the Complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is clear that the Respondent is using the disputed domain name in bad faith and 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. The Respondent's registration and use of the domain name [www.travelexforex.in] is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Since the trademarks of the Complainant are so distinctive and famous that the Respondent must have had actual knowledge of the trademarks prior to registering the disputed domain name. It is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the Infringing Domain Name. Therefore the panel comes to the conclusion that the registration is in bad faith. By registering the disputed domain name

with actual knowledge of the Complainant's trademark, the Respondent acted in bad faith by breaching its service agreement with the registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant.

[**Relevant Decisions:** *Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd.*, INDRP/215 (July 9th 2011); *Kenneth Cole Production Inc. v. Viswas Infomedia,* INDRP/93 (April 10, 2009); *Volkswagen AG v. Satya Bagla* INDRP/112; *Cisco Technology, Inc. v. Nicholas Strecha, E-Careers Ltd.*, WIPO Case No. D2010-0391 (May 7, 2010); *Red Bull GmbH v. Steve Redmon*, WIPO Case No. DCC2010-0001 (March 1, 2010); *Lego Juris AS v. Robert Martin* INDRP/125; *Societe Air France v. DNS Admin* INDRP/075; *Kelemata SPA v. Mr Bassarab Dungaciu WIPO D2003-0849; Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO D2003-0455; *Uniroyal Engineered Products , Inc. v. Nauga Network Services* WIPO D2000-0503; *Microsoft Corporation v. Chun Man Kam* INDRP/119; D2012-0466 WIPO *Luigi Lavazza S.p.A. v. Noori net;* D2008-1474 WIPO *Serta Inc. v. Charles Dawson*; *Netflix, Inc. v. Sharma,* INDRP/216 (INDRP July 1, 2011); *Guerlain S.A. v. Peikang*, D2000-0055 (WIPO March 21, 2000]; *Univ of Houston Sys, v. Salvia Corp.*, FA 637920(Nat. Arb. Forum March 21st 2006); *Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24th 2006; *Lockheed Martin Corporation v. Steely Black,* INDRP/183 (January 5, 2011); *Equifax Inc. v. The Admin,* INDRP/163 (November 23, 2010); *Revlon Consumer Products Corporation of New York v. Ye Genrong, et al,* D2010-1586 WIPO November 22, 2010]

In accordance with the Policy and Rules, the Panel directs that the disputed domain name [www.travelexforex.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.



Rodney D. Ryder
Sole Arbitrator

Date: May 27, 2013