

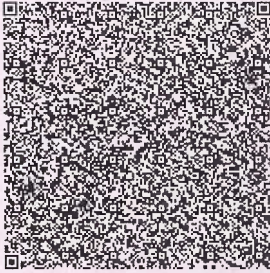


सत्यमेव जयते

# INDIA NON JUDICIAL Chandigarh Administration

## e-Stamp

Certificate No. : IN-CH12535186043882Q  
Certificate Issued Date : 22-May-2018 01:17 PM  
Certificate Issued By : chvandani  
Account Reference : IMPACC (GV)/ chimpsp07/ E-SMP MANIMAJRA/ CH-CH  
Unique Doc. Reference : SUBIN-CHCHIMPSP0725022035480148Q  
Purchased by : ASHWINIE KUMAR BANSAL  
Description of Document : Article 12 Award  
Property Description : 6 NAC SHIVALIK VIHAR MM CHD  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : ASHWINIE KUMAR BANSAL  
Second Party : TV SINDRAM AND SONS PVT LTD  
Stamp Duty Paid By : ASHWINIE KUMAR BANSAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



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### ARBITRATION AWARD

(On Stamp Paper)

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**TQ** 0002285501

#### 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.
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**INDRP ARBITRATION**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**

**ARBITRAL TRIBUNAL CONSISTING OF**

**SOLE ARBITRATOR:**

**DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.**

**Advocate, Punjab & Haryana High Court, Chandigarh**

**In the matter of:**

TV Sundram Iyengar and Sons Private Limited, TVS Building, No 7 B West Veli Street, Madurai 625001, Tamil Nadu, India.

**...Complainant**

**VERSUS**

Raja Manickam, the leaders school, Kadambavanam village, Sivaganga District, Karaikudi - 630002, Tamil Nadu, India

**...Respondent/Registrant**

**REGARDING: DISPUTED DOMAIN NAME: TVS.NET.IN**

**1. The Parties:**

**Complainant:**

TV Sundram Iyengar and Sons Private Limited, TVS Buildings, No 7 B West Veli Street, Madurai 625001, Tamil Nadu, India.

**Respondent:**

Raja Manickam, the leaders school, Kadambavanam village, Sivaganga District, Karaikudi - 630002, Tamil Nadu, India

- 2. The Domain Name and the Registrar:** The disputed domain name <tvsn.net.in> is registered with ZNET Technologies Pvt. Ltd. (R165-AFIN), D-10/52 Chitrakoot Vaishali Nagar, Jaipur, Rajasthan - 302021, India (the "Registrar").

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### **3. Procedural History [Arbitration Proceedings]**

A Complaint has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the Registrar verification in connection with the disputed domain name <tvsn.net.in>. It is confirmed that at present the Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole Arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI has intimated that it had sent the complaint along with annexures by e-mail as well as by courier to the Respondent.

In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed the Respondent on 26.04.2018, with copy to Complainant and NIXI, through the email, to give his Reply within 10 days. Arbitrator had also sent the notice dated 26.04.2018 by speed post to the Respondent at his address. On failure to file the response, another opportunity was given to the Respondent to give response vide e-mail dated 12.05.2018 but to no use. In view of provisions of section 3 of the Arbitration and Conciliation Act, 1996 (the Act) regarding receipt of communications, Respondent is deemed to have been duly served.

Respondent has failed to give any response to the Complaint inspite of expiry of stipulated period given to him. As per section 25 of the Act the Arbitrator is competent to make the award if Respondent fails to file the reply before him. Section 25 is reproduced below for ready reference:

25. Default of a party.- Unless otherwise agreed by the parties, where, without showing sufficient cause,----

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- (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant.
- (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

In view of above, Arbitrator proceeds to make the award in accordance with the Rules read with section 25 of the Act.

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

T V Sundram Iyengar & Sons, the Complainant was established in the year 1911 which is the holding company of the TVS Group. The Complainant is the trading and distribution arm of the TVS Group and its business activities include dealerships for automobile vehicles, sales & service of products for special applications like Construction & Material handling. The Complainant owns the Trademark TVS.

The Respondent has registered the disputed domain name <tvsn.net.in> on 18.01.2017 wholly incorporating Trademark of the Complainant. Hence, present Complaint has been filed by the Complainant against the Respondent.

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## **5. Parties Contentions**

### **A. Complainant**

The Complainant has more than 150 Outlets, sells around 12000 vehicles and services more than 600000 vehicles per annum. The Complainant is also the largest distributor in automobile spare parts in India, handling more than 80 suppliers, 8090 customers and 35000 part numbers and markets TVS quality branded products. The Complainant is the distributor to several commercial & multi-utility vehicles, passenger cars and three wheelers to several leading automobile vehicle manufacturers such as Honda, Renault, Ashok Leyland, Mahindra & Mahindra, Daimler Chrysler and Volkswagen. The aforementioned facts and figures establish the extensive visibility and reputation associated with the Complainant.

The TVS Group operates in diverse fields such as automotive component manufacturing, two - wheeler manufacturing, automotive dealership, finance and electronics, as well as into information technology solutions and services. Currently, there are over thirty companies in the TVS group, employing more than 40,000 people worldwide and with a turnover in excess of USD 5 billion. TVS Motor the flagship Company of the TVS Group, is the third largest two- wheeler manufacturer in India and one among the top ten in the world. The said Company was awarded the 'Star performer - Silver Shield' in two/three wheelers category, by EEPC India, for excellent export performance for the year 2007-2008. Over the years the TVS Group companies have been recipients of several such Industry awards.

Apart from the widespread awareness and use of the mark in India, the Complainant has sufficient international presence as well. The mark TVS is widely identified by the public at large. With the spread of internet, the products and services of the Complainant under the TVS mark is accessible by the public all over the world. Also, the Complainant has

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entered into successful joint ventures with companies in Sri Lanka and Bangladesh. The Complainant's group company has also taken private equity participation from Kitara Capital in Mauritius.

The Complainant's global business operations include establishing and managing joint ventures/ alliances for automobile distribution / dealership business, sourcing and supply chain related activities. Also, the Complainant partners with many international brands across the globe including some well-known companies like DATSUN, MICHELIN, BOSCH, NISSAN, 3M etc. The said companies are clientele's of the Complainant and have been associated with the Complainant for several years now.

On account of extensive usage of the Trademark TVS and the rising awareness on TVS, the adoption and/or usage of TVS by others would amount to not only dilution of the Complainant's rights over the distinct mark but also would result in confusion and deception amongst the end customers. Such unauthorized usage of the Complainant's marks TVS, and domain names comprising of TVS by others would also amount to infringement of Complainant's Trademark rights and is liable to be prevented in the Court of Law.

It is stated that the use of the keyword TVS in any leading search engine throws up the web pages of the Complainant among the leading hits. Printout of the search result procured from the famous search engine google.co.in is annexed hereto and collectively marked as 'Annexure - D'.

The Respondent wrongfully and fraudulently adopted and registered the impugned domain name www.tvs.net.in in order to utilize the name and reputation without having any rights thereto and in spite of having full knowledge of the Complainant's iconic stature in India and Internationally. The TVS company has extensive visibility the Complainant and its group companies have had in the print media is illustrated by a few News Paper cuttings collectively marked as 'Annexure F'.

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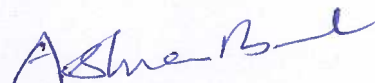
The Complainant submits that the Respondent is trying to encash on the goodwill and reputation associated with the Trademark TVS, although the Respondent has no connection with the Complainant and the other TVS Group of Companies.

It is further stated that the Complainant and/or any entity belonging to the TVS Group of Companies has not licensed or otherwise permitted the Respondent to use its TVS, nor has it permitted the Respondent to apply for or use any 'Domain Name' incorporating the mark TVS .

The disputed domain name will give unwary visitors to the domain an impression that the disputed domain name has been authorized by the Complainant. It is pertinent to mention that the Complainant has no connection with the disputed domain name holder and the Complainant has never permitted the Respondent to create the disputed domain name. The Complainant has also been in existence since 1915 and has the first Trade Union registration since 1915 and the documents in relation to the same are attached as Annexure H

The Complainant claims enormous presence on the Internet and ownership of various domain names such as tvs.in, tvsmotor.co.in, etc.

An innocent consumer is bound to be misled by this impugned disputed domain name registered by the Respondent. In the entirety of facts and circumstances obtainable in the present case as also in the wake of objections available in the present case, registration of the impugned domain name by using the word TVS without seeking prior concurrence/approval/permission of Complainant amounts to "passing off" action on the part of the Respondent/user of the domain name. The clear intention of the Respondent appears to be to commit fraud and mislead innocent and gullible consumer by unfair and dishonest means.



The use and existence of the impugned domain name will cause damage and injury both to the Complainant's business and that of its group companies. The Respondent has attempted to make a deliberate misrepresentation to the public at large that the job offers on the impugned website is from TVS Motor Company Limited. Such an act is certainly not a mere coincidence and is contrary to public interest. The misrepresentation is bound to cause confusion and deception in the minds of the purchasing public.

It is pertinent to mention that the members of the public have come to associate the Trademark TVS solely with the Complainant. Therefore, any on-line promotion or reviews which may be carried out by Respondent under the name TVS is bound to cause confusion and/or likely to cause confusion in the minds of the public as being associated with the Complainant and its Group of Companies.

It is stated that the registration of the impugned Domain Name by the Respondent was made in bad faith and ulterior motive.

It is furthermore stated that it is undoubtedly the dishonest motive of the Respondent to register such domain name comprising of popular and reputed Trademarks to clandestinely negotiate for transfer of the same for consideration.

The conduct of the Respondent leaves no doubt as to its unscrupulous motive and illegal intentions and the Complainant is apprehensive that the Respondent is in active search of an assignee of the impugned domain name and would sell the same and make illegal profit.

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That 'inaction' is within the concept of 'bad faith' is supported by the actual provisions of the Uniform Policy. Paragraph 4(b) of the Uniform Policy identifies, without limitation, circumstances that shall be evidence of registration and use of a domain name in bad faith, for the purpose of paragraph 4(a) (iii). Only one of these circumstances [4(b) (iv)], by necessity, involves a positive action post-registration undertaken in relation to the domain name (using the name to attract customers to a web site or some other on-line location). The other three circumstances contemplate either a positive action or inaction in relation to the domain name. The circumstances identified in paragraphs 4(b) (i)(ii) and (iii) can be found in a situation involving a passive holding of the domain name registration. Furthermore, it must be recalled that the circumstances identified in paragraphs 4(b) are "without limitation"-that is, paragraph 4(b) expressly recognizes that other circumstances can be evidence that a domain name was registered and is being used in bad faith.

The particular circumstances of this case, which lead to this conclusion, inter alia are:

- a) The Complainant's Trademark 'TVS' is widely known, as evidenced by the evidentiary material attached with the complaint.
- b) The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the domain name.
- c) Taking into account all of the above and the other facts and circumstances submitted in the complaint, it is not possible to conceive any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as the tort of passing off, an infringement of consumer protection legislation or an infringement of the Complainants rights under the trade

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mark law.

That furthermore it is stated that the disputed domain name is so obviously bound to be associated with the Trademark TVS belonging to the Complainant, that the very use by someone with no connection with the Complainant suggests opportunistic bad faith.

### **Respondent**

The Respondent has not filed the Response to the Complaint inspite of opportunity given to him.

### **6. Discussion and Findings**

The Respondent registered the disputed domain name in its favour with the "ZNET Technologies Pvt Ltd (R165-AFIN)" as the Registrar, the administrative contact being Raja Manickam, the Leaders Schoo, Kadambavanam village, Sivaganga district, Karaikudi 630002, Tamilnadu. The said disputed domain name was created on 18<sup>th</sup> January 2017 which incorporates Trademark TVS of the Complainant hence the present dispute has arisen between the parties.

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the Arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response.

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

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#### *"4. 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 Registrant's domain name is identical or confusingly similar to a name, Trademark or service mark in which the Complainant has rights;*

*(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and*

*(iii) the Registrant's domain name has been registered or is being used in bad faith.*

*The Registrant 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."*

The Arbitrator will address the three aspects of the Policy listed above.

#### **A. Identical or Confusingly Similar**

The Respondent had adopted the disputed domain name on 18.01.2017 as per WHOIS report. The Trademark TVS has acquired statutory right, the Complainant has the following Indian and foreign trademark registrations:

TRADEMARK	NUMBER	CLASS
TVS	109706	11
TVS	298601	6
TVS	487159	6

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TVS	590008	6
TVS	736638	6
TVS	736639	12

The Complainant has established that its Trademark TVS is subject of many trademark registrations in class 6, 11 and 12. The Trademark of the Complainant has become associated by the general public exclusively with the Complainant. The Complainant also has many domain name registrations and its presence on the internet.

The disputed domain name clearly incorporates the Complainant's Trademark TVS in its entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use<sup>1</sup>. A trademark registered with the Registrar of Trademarks is *prima facie* evidence of trademark rights for the purposes of the Policy.<sup>2</sup> Internet users may be confused about the association or affiliation of the disputed domain name with the Complainant.

The Respondent has registered the disputed domain name <tvsn.net.in> wholly incorporating the Trademark TVS of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy<sup>3</sup>. Internet users who enter the disputed domain name <tvsn.net.in>

<sup>1</sup> The Complainant has relied on the decisions of the Hon'ble Delhi High Court and this forum in the cases of *Gulshan Khatri Vs Google Inc* O.M.P(COMM) 497/2016 [www.googlee.in](http://www.googlee.in), and in *TV Sundram Iyengar and Sons Private Limited Vs. Matt Sexton* (INDRP Case No 740) and marked as 'Annexure G'.

<sup>2</sup> See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 1.1.

<sup>3</sup> See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that

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being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Arbitrator finds that the disputed domain name <tvsn.net.in> is confusingly similar to the website and Trademark TVS of the Complainant.

### **B. Rights or Legitimate Interests**

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name<sup>4</sup>. The Respondent has registered the disputed domain name consisting of the Trademark owned by the Complainant. The Complainant has been using the Trademark TVS since very long. The Complainant has not authorized or permitted the Respondent to use the Trademark TVS.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <tvsn.net.in> as per Paragraph 7 of the Policy.

The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark TVS of the Complainant with the intention to create an impression of an association with the Complainant.

In view of above, the Arbitrator finds that the Complainant has made out a *prima facie* case.

Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed

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the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

<sup>4</sup> See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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domain name <tvsn.net.in>.

### **C. Registered and Used in Bad Faith**

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

#### *"6. Evidence of Registration and use of Domain Name in Bad Faith*

*For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the 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 on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of*

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*the Registrant's website or location or of a product or service on the Registrant's website or location."*

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered the disputed domain name <tvsn.net.in> and he also maintains a website 'www.tvsn.net.in'. The Complainant has not granted the Respondent permission, or, a license of any kind to use its Trademark and register the disputed domain name <tvsn.net.in>. Such unauthorized registration of the Trademark by the Respondent suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <tvsn.net.in> which incorporates the Trademark TVS of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

The Arbitrator therefore finds that the disputed domain name <tvsn.net.in> has been registered by the Respondent in bad faith.

The Trademark TVS has been a well-known name. The domain disputed name <tvsn.net.in> is confusingly similar to the Complainant's Trademark TVS, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <tvsn.net.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <tvsn.net.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <tvsn.net.in> be transferred in favour of the Complainant.

**7. Decision**



Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <tvsn.net.in> is similar to the Trademark TVS in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <[www.tvsn.net.in](http://www.tvsn.net.in)> be transferred to the Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 22.05.2018



**Dr. Ashwinie Kumar Bansal**

**Sole Arbitrator**

Advocate, Punjab and Haryana High Court  
Arbitration House 6, Shivalik Enclave, NAC, Manimajra,  
Chandigarh, India-160101

Mobile: 9915004500

Email: [akbansaladvocate@gmail.com](mailto:akbansaladvocate@gmail.com)