BEFORE THE SOLE ARBITRATOR C.A. BRIJESH

.IN REGISTRY

C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

NEW DELHI, INDIA

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

Versus

Raja Manickam
The Leaders Schoo
Kadambavanam Village
Sivaganga District
Karaikudi- 630002
Tamil Nadu
India **.... Respondent**

1. The Parties

The Complainant is **TV Sundram Iyengar and Sons Private Limited**, with its principal place of business at TVS Building, 7-B, West Veli Street, Madurai-625001, Tamil Nadu, India (hereinafter referred to as the **Complainant**).

The Respondent is **Raja Manickam**, of The Leaders Schoo, Kadambavanam Village, Sivaganga District, Karaikudi – 630002, Tamil Nadu, India (hereinafter the **Respondent**).

2. The Domain Name and Registrar

The disputed domain name is <tvs.org.in>. The Registrar with which the Domain Name is registered is **ZNET Technologies Private Limited**.

3. Procedural Timeline

April 09, 2018 : The .INRegistry appointed Mr. C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.

April 10, 2018 : Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.

April 24, 2018 : Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover. Further, NIXI forwarded a soft copy of the Complaint along with the annexures to the Respondent with a copy marked to the Complainant's Authorised Representative and Arbitral Tribunal.

April 25, 2018 : Arbitral Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorised Representative and NIXI, directing the Respondent to file its response, if any, within 10 days.

May 02, 2018 : The Tribunal received an email from the Respondent stating that the domain name 'tvs.net.in' has not been renewed by the Respondent from January 2018 and the said domain has not been used by the Respondent since the registration of the

aforesaid domain name. Further, it was stated that, the Respondent has no objection to transfer the domain name 'tvs.net.in' to TV Sundram Iyenger and Sons Private Limited.

May 28, 2018: As the Respondent's letter referred to a different domain name 'tvs.net.in' and not the domain name in dispute 'tvs.org.in', the Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorised Representative and NIXI, directing the Respondent to file its response within 3 days with respect to the disputed domain name in the extant matter i.e. 'tvs.org.in'.

May 30, 2018: NIXI apprised the tribunal of an email of May 30, 2018 received by it from .IN Technical Support, wherein it was mentioned that, the Respondent does not wish to renew the domain name 'tvs.org.in' and wishes to transfer the ownership to the Complainant.

May 30, 2018: The Tribunal addressed an email to NIXI marking a copy to the Complainant's Authorised Representative taking cognizance of the .IN Technical Support's email of May 30, 2018 and intimated the parties that an award shall be passed on the basis of the .IN Technical Support's email and the material available on record

The language of the proceedings shall be English.

4. The respondent has agreed to transfer the ownership of the disputed domain name 'tvs.og.in'. Hence, for the sake of brevity, facts pertaining to the rights of the Complainant in the trade mark 'TVS' and the Respondent are not elaborated herein.

5. Contentions of Parties as summarised in the pleadings

5.1 Complainant's contentions

a) **The Domain Name is identical or confusingly similar to the Complainant's trade marks (Paragraph 4(i) of the .IN Policy)**

i. Complainant submits that it was established in the year 1911 and is the holding company of TVS Group. Complainant claims to have more than 150 outlets, sells around 1200 vehicles and services more than 600000 vehicles per annum. 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. 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.

ii. Complainant claims to have secured registrations for the trade mark TVS in India and various countries of the world in different classes. Copies of extracts of Indian trade mark registrations are attached at **ANNEXURE E**. In addition to the aforesaid trade mark registrations, the Complainant has registered a number of domain names under generic Top-Level Domains ("gTLD") and country code Top-Level Domains ("ccTLD") containing the term "TVS". Herein below is a table representing the domain names registered in the name of the Complainant.

S. No.	Domain Name	Date of registration
1.	Tvsmotor.co.in	3rd October 2003
2.	Tvsgroup.com	4th October 2004
3.	Tvs.in	6th January 2005
4.	Tvs.co.in	16th February 2005
5.	Mytvs.in	16th February 2005
6.	Tvsiyengar.com.hk	3rd February 2010

S. No.	Domain Name	Date of registration
7.	Tvsiyengar.com.tw	9th February 2010
8.	Tvsiyengar.tw	9th February 2010
9.	Tvstge.com.tw	30th June 2010
10.	Tvstge.tw	30th June 2010
11.	Tvstge.asia	30th June 2010
12.	Tvsiyengar.cn	18th May 2011
13.	Tvs-autoserv.cn	18th May 2011
14.	Tvsautoserv.es	7th June 2011
15.	Tvs-autoserv.es	7th June 2011
16.	Tvsgroup.in	9th April 2015

iii. It is further submitted by the Complainant that the mark TVS is widely identified by public at large. The Complainant has been in existence since 1915 and has the first Trade Union Registration since 1915. The aforesaid has been substantiated by a printout of the search result procured from the search engine 'google.co.in' and other documents attached as **ANNEXURE D** and **ANNEXURE H**. The extensive visibility of the Complainant is evident from **ANNEXURE F.**

iv. The Complainant further submits that the disputed domain name <tvs.org.in> incorporates the mark TVS in its entirety. Further, it has been submitted by Complainant that, use of TVS in the disputed domain name would amount not only dilution of the Complainant's rights over the mark TVS but would also result in confusion and deception amongst the end customers that Respondent has some association or affiliation with Complainant which is not the case. Therefore the Complainant submits that Domain Name is closely similar to the Complainant's trade mark in accordance with paragraph 4(i) of the .IN Policy.

b) **<u>The Respondent has no rights or legitimate interests in respect of the Domain Name (Paragraph 4 (ii) and Paragraph 7 of the .IN Policy)</u>**

i. It is the contention of Complainant that Respondent has no rights or legitimate interests in the disputed domain name.

ii. The Respondent wrongly and fraudulently adopted and registered the domain name 'tvs.org.in' in order to ride on the goodwill and reputation and then cannot have any rights or legitimate interest in the name.

iii. The Complainant submits that it has not authorised, licensed or otherwise permitted the Respondent to make any use of its TVS trade mark, nor has it permitted the Respondent to apply for or use any domain name incorporating the mark TVS.

iv. The Complainant, in addition, contends that the intention of the disputed domain name is to en-cash on the goodwill and reputation associated with the trade mark TVS and take advantage of an association with the business of Complainant.

c) **The domain name was registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the .IN Policy)**

i. Complainant asserts that the domain name <tvs.org.in> was registered and is being used in bad faith.

ii. Complainant contends that the members of the public have come to associate the trade mark 'TVS' solely with the Complainant. Therefore use of the mark TVS by the Respondent is likely to cause confusion in the minds of public that the Respondent is associated with the Complainant.

v. The Complainant asserts that a misrepresentation made to the public at large that the job offers on the impugned website www.tvs.org.in are from TVS Motor Company Limited, constitutes bad faith. A perusal of **ANNEXURE B** substantiates Complainant's aforesaid claims.

vi. The Complainant has relied on *Gulshan Khatri v. Google Inc. (O.M.P. (COMM) 497/2016 (<googlee.in>))* and *TV Sundram Iyengar and Sons*

Private Limited v. Matt Sexton (INDRP/740(<tvs.co.in>)), marked as **ANNEXURE G,** and submits that the use of such disputed domain names is considered evidence of bad faith registration.

iii. It has been further stated by the Complainant that passive holding of the domain name i.e. 'inaction' is under the ambit of bad faith. The Complainant thus asserts that the disputed domain name was registered and is being used in bad faith in accordance with Paragraph 4(iii) of the .IN Policy.

5.2 Respondent

On May 02, 2018, the Respondent stated his willingness to transfer the domain name <tvs.net.in> in favour of the Complainant. However, the disputed domain name in the extant matter is <tvs.org.in>. In view thereof, this Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorised Representative and NIXI, directing the Respondent to file its response within 3 days with respect to the disputed domain name in the extant matter i.e. <tvs.org.in>.

On May 30, 2018, NIXI apprised the tribunal of an email dated May 30, 2018 received by it from .IN Technical Support, wherein it was mentioned that, the Respondent does not wish to renew the domain name 'tvs.org.in' and wishes to transfer the ownership to the Complainant.

6. Award

Since the Respondent has agreed and consented to transfer the disputed domain name <tvs.org.in> to the Complainant, this Tribunal is of the view that there is no need to verify and assess the facts supporting the claim and/or delve into the merits of the case. Given the Respondent's consent to transfer, this Tribunal Panel deems it appropriate to grant the request to transfer. No further consideration or discussion on the elements of the Policy is deemed necessary'.

Thus, this Arbitral Tribunal directs the disputed domain name <tvs.org.in> be immediately transferred to the Complainant.

The parties shall bear their own cost.

Dated: June 25, 2018

C.A. Brijesh
Sole Arbitrator