



हरियाणा HARYANA

R 824346

BEFORE THE SOLE ARBITRATOR C.A. BRIJESH

.IN REGISTRY

C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

NEW DELHI, INDIA

TYFONE, INC.

5331 SW Macadam Avenue, Suite 251

Portland, OR97239,

USA

.... Complainant

Versus

SUN BIN

No. 9, Zhujiang Road

Pukou District, Nanjing

Jiangsu- 211 899

CHINA

.... Respondent

### 1. The Parties

The Complainant is Tyfone, Inc. of 5331 SW Macadam Avenue, Suite 251, Portland, OR97239, USA through its Authorised Representatives, Tree of Life Associates #13/2, 2<sup>nd</sup> Floor, 2<sup>nd</sup> Main, Jayamahall, Bangalore- 560 046.

The Respondent is Mr. Sun Bin of No. 9, Zhujiang Road, Pukou District, Nanjing, Jiangsu-211 899, China. The Respondent is represented by himself.

## **2. The Domain Name and Registrar**

The disputed domain name is <tyfone.in>. The said domain name is registered with 'Webiq Domain Solutions Pvt. Ltd'.

## **3. Procedural Timeline**

- November 9, 2015 :** The .IN Registry appointed C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- November 9, 2015 :** Arbitrator has accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.
- November 12, 2015 :** Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover.
- November 16, 2015 :** Arbitral proceedings were commenced by sending notice to the Respondent through e-mail, with a copy marked to NIXI, directing the Complainant's Authorised Representative to forward a soft copy of the Complaint alongwith the annexures to the Respondent within two days.
- November 17, 2015 :** Complainant forwarded a copy of the Complaint alongwith all the annexures to the Respondent with a copy of the mail marked to Arbitral Tribunal.
- November 18, 2015 :** Arbitral Tribunal addresses a notice to the Respondent, with a copy marked to the Complainant's Authorised Representative, directing the Respondent to file its response, if any, to the Complaint within ten days.





**November 30, 2015 :** Absent a response from the Respondent, the pleadings in the arbitration proceedings were closed and the Tribunal proceeded to pass an Award on the basis of the material available on record.

The language of the proceedings shall be English.

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

##### **4.1 Complainant's Activities**

The Complainant states, *inter alia*, that it is an Oregon based corporation, incorporated in the United States of America and is a pioneer in delivering comprehensive security and transaction solutions with over 100 issued and pending patents and 550 issued invention claims. The Complainant claims to have received numerous accolades and recognitions in its field of work and its customers include the US Government and top credit unions in the US such as Security Services Federal Credit Union and Star One Credit Union. The Complainant's states that its wholly owned subsidiary in India by the name of Tyfone Communications Development (India) Private Limited (Tyfone, India) has been carrying on its business in India since July 12, 2004 and primarily is engaged in the development of Hardware and software solutions for financial institutions in order to enable such institutions to offer their services on communication devices such as mobile phones. The Complainant also states that it has a regional office in Taiwan which started around 2007.

##### **4.2 Complainant's Use of TYFONE**

The Complainant states that the mark TYFONE is registered in its favour in US under multiple classes since December 16, 2008. The said mark is being used for providing security and transactions solutions in the global market. The Complainant has annexed



copy of Registration Certificate for the mark TYFONE under Registration No. 3548208 (classes 9, 35, 38 and 42) bearing the sealing date December 16, 2008.

Further, in connection with its business, the Complainant claims to have registered the domain <tyfone.com> since May 12, 2004, comprising the registered trade mark 'TYFONE'. Documents illustrating use of the mark TYFONE in its website '[www.tyfone.com](http://www.tyfone.com)' and on the Complainant's company's letterheads, email signatures, business literatures, marketing collaterals etc. as well as the WHOIS records for the domain 'tyfone.com' are on record. A perusal of the said documents indicates that the domain 'tyfone.com' was registered by Complainant on May 12, 2004 and the mark/name TYFONE is being actively used by the Complainant and Tyfone, India.

Based on the aforesaid, it is the Complainant's assertion that due to extensive and continuous use of the name TYFONE by the Complainant and Tyfone India since 2004, the name TYFONE has come to embody substantial reputation, goodwill and distinctiveness and is exclusively associated with the security and transactional solutions offered by the Complainant in the global market.

#### **4.3 Respondent's activities and its use of TYFONE**

The Respondent has registered the domain name <tyfone.in> on August 11, 2015 as it clearly discernable from the WHOIS records. Further, the Complainant has annexed a print out of the website '[www.tyfone.in](http://www.tyfone.in)', which is a SEDO parking page wherein Respondent is offering the said domain name for sale for an amount of USD 2000. A perusal of the documents marked as Annexure G clearly affirms the aforesaid.



Given that the Respondent has not participated in the present proceedings, no further information is available on its business activities and/or its use of the domain comprising the mark/name TYFONE.

## **5. Contentions of Parties as summarised in the pleadings**

### **5.1 Complainant**

#### **a) The domain name is identical or confusingly similar to a trade mark of the Complainant in which Complainant has the statutory and/or common law rights.**

- i. Complainant submits that the disputed domain includes the mark TYFONE, which is identical/confusingly similar to Complainant's registered trade mark TYFONE.
- ii. Further, it is Complainant's assertion that by virtue of long standing and continuous use of the mark TYFONE, the same has acquired wide reputation, goodwill and distinctiveness and the name TYFONE has come to be exclusively associated with the services/business provided by the Complainant. Consequently, by registering the impugned domain, the Respondent has established its intent to create a likelihood of confusion amongst the general public looking to access information about Complainant and leading them to think that the domain name <tyfone.in> belongs to the Complainant or its Indian subsidiary and is associated with the business/services offered by the Complainant and Tyfone, India.

#### **b) The Respondent has no legitimate interest in respect of the domain names**

- i. It is the contention of the Complainant that the Respondent has registered the domain name <tyfone.in> alongwith other domain names such as <pixlee.in>,





<seqirus.in>, <paywizard.in>, <laox.in>, <fril.me> with the intention of selling the domain names and thereby making illicit gains. Such conduct endorses the fact that neither the Respondent has any legitimate interest nor any proprietary rights in the mark TYFONE.

- ii. Further, the Complainant's asserts is that the Respondent has registered the domain name <tyfone.in> only for the purpose of selling the domain name and is not engaged in any business under the said domain, online or otherwise.

**c) The domain name was registered and is being used in bad faith**

It is evident from the website '[www.tyfone.in](http://www.tyfone.in)' that the Respondent has registered the domain name <tyfone.in> for the sole purpose of selling, renting or otherwise transferring the said domain name for a consideration of USD 2000. Hence the Complainant asserts that the said domain name <tyfone.in> has been registered for obtaining monetary benefits and/or commercial gain and that the Respondent has no proprietary rights or legitimate interests in and to the said domain and is not carrying on any business under the domain name. Based on the said presumption, the Complainant states that such a registration of the domain is *prima facie* evidence of Respondent's bad faith. Reliance is placed on the decisions *Avocent Corporation v. Mr. Zhou lu*, Dated August 28, 2015.; *Bacarrat SA v. Doreen Jungnickel/ Darius Herman Domcreate* dated October 06 2006; *Jagdish Purohit v. Stephen Koeing* dated July 05, 2006; *Jagdish Purohit v. Daniel Fuehrer* dated May 26, 2006; *Direct Information Private Limited v. Daniel Fuehrer* dated May 20, 2006.



## 5.2 Respondent

As per the INDRP Rules of Procedure, the Complainant has forwarded a copy of the Complaint alongwith all annexures to the Respondent on November 17, 2015 under the directions of this Arbitral Tribunal. On November 18, 2015, this Tribunal issued a notice to the Respondent directing it to file a response within ten days. Absent response from the Respondent thereto, the matter has proceeded *ex-parte*.

## 6. Discussion and Findings

As per paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), 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 rights in respect of the domain name;
- iii) The registrant's domain name has been registered or is being used in bad faith.

Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

### 6.1 Identical or confusingly similar trade/service mark

As per the WHOIS records, the Respondent has registered the disputed domain name 'TYFONE.IN' on August 11, 2015.

The Complainant is the proprietor of the registered trade mark TYFONE in the United States of America in various classes since December 16, 2008. To substantiate the



same, the Complainant has placed on record copies of Registration Certificate obtained for the trade mark TYFONE in the United States of America. Further, the Complainant also owns domain name <tyfone.com> since the year 2004 and has been extensively and continuously using the said mark/name in relation to its business/products/services.

The disputed domain name incorporates the mark TYFONE in its entirety. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed (INDRP/278)* as well as in *Indian Hotels Company Limited vs. Mr. Sanjay Jha (INDRP/148)* that when a disputed domain name incorporates a mark in entirety, it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. Similarly, in case of *Farouk Systems Inc. vs. Yishi, WIPO Case No. D2010-006*, it has been held that the domain name wholly incorporating a Complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the additions or deletions of other words to such marks.

As can be seen from above, the Complainant has registered the domain name "TYFONE.COM" on May 12, 2004; trade mark since the year 2008 and is doing/operating business/website thereunder. The Respondent on the other hand registered the domain "TYFONE.IN" much subsequent to the Complainant on August 11, 2015 and is not doing/operating business/website thereunder.

In the view of the foregoing discussions, the Complainant has satisfied this Tribunal that:

- i) The domain name in question "TYFONE.IN" is phonetically as well as visually identical/similar to the Complainant's prior registered trade mark TYFONE; and
- ii) It has both prior statutory and proprietary rights in respect of the mark TYFONE;





## 6.2 Rights and legitimate interests

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 7 of the INDRP enumerates three circumstances (*in particular but without limitation*) and if the Arbitrator finds that the Registrant has proved any of the said circumstances, shall demonstrate its rights to or legitimate interest in the disputed domain name. The said paragraph is reproduced herein under:

*“Registrant’s Rights to and Legitimate Interest in the Domain Name- Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant’s rights to or legitimate interest in the domain name for the purposes of Paragraph 4 (ii):*

- i) Before any notice to the Registrant of the dispute, the Registrant’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name with a bona fide offering of goods or services;*
- ii) The Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleading divert consumers or to tarnish the trademark or service mark at issue.”*

The Respondent has not filed any response in this case. There is nothing on record to suggest that the Respondent has used or made demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with *bonafide*



offering of goods/services; or is commonly known by the disputed domain name; or has made fair use of the domain name.

Further, as observed by the panel, in the case of *International Hotels V. Abdul Hameed (INDRP/278)*, it is well established, that trade mark registration is recognised as *prima facie* evidence of rights in a mark. Complainant, in the instant case, is the owner of the registered trade mark TYFONE in USA and has sufficiently demonstrated its rights in the trade mark TYFONE.

From the review of the webpage pertaining to the disputed domain, it is evident that the domain name <tyfone.in> is not used by the Respondent inasmuch as it does not resolve into a website '[www.tyfone.in](http://www.tyfone.in)' for offering of any goods/services.

In view of the foregoing, it is evident that Respondent has no rights or legitimate interests in the disputed domain name.

### **6.3 Bad faith**

1. Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith. The said paragraph is reproduced herein under:

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

The contention of the Complainant is that the Respondent has not created any website under the disputed domain name for offering any goods/services. Infact, the website 'www.tyfone.in' leads to a SEDO parking page wherein the Respondent is offering the said domain for sale for an amount of USD 2000. In fact, there is nothing on record to suggest that the Respondent is commonly known by the Disputed Domain Name or has conducted any legitimate business under such name. Further, at the time of filing the Complaint, the domain name <tyfone.in> did not resolve to any website. The Respondent also has registered several other domain names such as <pixlee.in>, <seqirus.in>, <paywizard.in>, <laox.in>, <fril.me> and is offering to sell the said domain names for a same amount of USD 2000. Thus, it is crystal clear that the Respondent has registered the dispute domain name in bad faith for obtaining illegal monetary/commercial gain. From the facts above, it is also evident that the





objective of registering the domain name was aimed at preventing the legitimate owner of the trade mark from reflecting the same in a corresponding domain name.

In view of the foregoing, the panel is of the view that Respondent has registered the domain name <tyfone.in> in bad faith.

## **7. Award**

From the foregoing findings, it is established beyond doubt that (1) the domain name is confusingly similar to the mark TYFONE which is proprietary to the Complainant, (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name, and (3) the domain name is registered in bad faith.

Thus, in accordance with the Policy and Rules, this Arbitral Tribunal directs the Respondent to immediately transfer the disputed domain name <tyfone.in> to the Complainant.

The parties shall bear their own cost.

**Dated:** January 08, 2016

**C.A. Brijesh**  
Sole Arbitrator