



0 MAY 2013

D. SARAVANAN

Advocate, Arbitrator & Mediator
"Orient Chambers" No. 90 (Old No. 731)
4th & 5th Floor, Armenian Street,
Chennai - 600 001.

AL 538643

DR. P. SIVAKUMAR
STATE VENDOR
No. 100 / 100
HIGH COURT CAMPUS
CHENNAI-600 104 TAMIL NADU

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: <www.walmart.in>

Wal-Mart Stores, Inc.
702, S.W., 8th Street,
Bentonville,
AK 72716-8611,
United States of America
intltm@walmartlegal.com

..

Complainant

Vs.

Ambra Berthiaume
4 rue Blaise Pascal K7,
Strasbourg cedex,
F-67081
FR
keepwalking07@gmail.com

..

Respondent

..2.



भारतीय गैर न्यायिक

पचास
रुपये

रु.50



FIFTY
RUPEES

Rs.50

INDIA NON JUDICIAL



தமிழ்நாடு தமில்நாடு TAMILNADU

18027
3 MAY 2013

D. SARAVANAN

Advocate, Arbitrator & Mediator
"Orient Chambers" No. 90 (Old No. 73).
4th & 6th Floor, Armenian Street,
Chennai - 600 001.

AD 538099
P.S. GUANADICA SUNDARAM,
STAMP VENDOR,
L No. 34 / 103 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104 (TAMIL NADU)

-2-

1. The Parties:

The Complainant is Wal-Mart Stores, Inc., a Corporation organized and existing under the laws of the State of Delaware, United States of America located at 702, S.W., 8th Street, Bentonville, AK 72716-8611, United States of America.

The Respondent is Ambra Berthiaume, 4 rue Blaise Pascal K7, Strasbourg cedex, F-67081, FR. The Respondent is not represented by any one.

2. The Domain Name and Registrar:

The disputed domain name is <www.walmart.in>. The domain name has been registered with .IN REGISTRY

..3.



3. Procedural History:

- My 02, 2013 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- May 03, 2013 : The Arbitrator has consented and submitted Statement of Acceptance and Declaration of Impartiality And Independence, to the .IN REGISTRY.
- May 10, 2013: The .IN REGISTRY has forwarded the hard copy of the complaint and annexures to the Respondent which was refused to receive by them as per the communication of Blue Dart Express Ltd., dated May 31, 2013.
- May 15, 2013: Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant, Complainant's authorised representative and .IN REGISTRY.
- May 25, 2013 : Due date for filing Response by Respondent.
- June 01, 2013 : Arbitrator sent an e-mail to Respondent notifying its default, a copy of which was marked to Complainant, Complainant's authorised representative and the .IN REGISTRY.
- : The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The Complainant is a Corporation organized and existing under the laws of the State of Delaware, United States of America located at 702, S.W., 8th Street, Bentonville, AK 72716-8611, United States of America, represented by its Authorised Representative Mr.Rahul Chaudhry.



4.2 Complainant's Activities:



The Complainant states inter-alia that the Complainant is an American multinational retailer corporation and is the world's largest retailer that runs a chain of large discount department stores and a chain of warehouse stores all over the world; Wal-Mart was founded in the year 1962 by Mr. Sam Walton with the opening of the first Wal-Mart discount store in Rogers, Ark and was incorporated as Wal-Mart Stores, Inc. i.e. the Complainant, on October 31, 1969; the Complainant is currently running more than 10,700 retail stores in 27 countries with sales of approximately \$466 Billion for the fiscal year ending 2013; the Complainant employs around 2.2 million associates worldwide and serves customers and members more than 200 millions times per week; the Complainant under the corporate name and trading style WAL-MART or WALMART operates its stores in 69 different banners across the globe. Example: In Argentina it has Walmart Supercenters, Changomas, Mi Changomas, Walmart Supermercado. In China; Walmart Supercenter, Sams Club etc. In Japan it has; Seiyu Hypermarket, Seiyu Supermarket, Wakana, Seiyu GM. In UK it has Asda Supercentre, Asda Superstore, Asda Living, Asda Supermarket. In US it has Walmart Supercenters, Walmart Discount Stores, Walmart Neighborhood Markets, Walmart Express, Sam's Club. In India it has BestPrice Modern Wholesale.

4.3 Complainant's Trading Name:

The Complainant states inter-alia that the Complainant's mark WAL-MART is registered in at least 90 jurisdictions of the world. The trademark and/or corporate name WAL-MART or WALMART is a well established and/or well known amongst the general public around the globe including in India. The Complainant under its corporate name and trading style WAL-MART or WALMART has featured regularly amongst the top three in the list of FORTUNE 'GLOBAL 500' companies, which is an annual ranking of world's largest corporations, a survey conducted by 'CNNMONEY.com'. The Complainant under its corporate name WAL-MART or WALMART has also ranked and featured regularly in 'GLOBAL 2000, THE



WORLD'S BIGGEST PUBLIC COMPANIES', an annual survey conducted by FORBES magazine. It was ranked at 16th position for the year 2012. The brand and/or the trademark WAL-MART/WALMART is amongst some of the most well-known trademarks around the world and has been ranked at 24th position in **THE WORLD'S MOST POWERFUL BRANDS** by FORBES taking into account the brand value, brand revenue and advertisement expenditure incurred by the company. In August 2007, Complainant entered into a joint venture with Bharti Enterprises, one of India's leading business group to form Bharti Wal-Mart Private Limited i.e. Complainant's Indian Subsidiary. Bharti Wal-Mart Private Limited carries on in India wholesale cash-and-carry and back-end supply chain management operations in line with Government of India guidelines through its "Best Price Modern Wholesale stores". The Complainant is the registered proprietor of the trade mark WAL-MART or WALMART in classes 16, 42 and 35 in relation to various goods and services. Details of the Indian registrations are given herein-below:

S.No.	Trademark	Reg.No.	Class	Date
1.	WAL-MART	928856	16	31.05.2000
2.	WAL-MART	1254210	42	09.12.2003
3.	WAL-MART NEIGHBOURHOOD MARKET	132736	42	23.12.2004
4.		1818858	35	15.05.2009
5.	WAL-MART	1818308	35	14.05.2009
6.		1818309	35	14.05.2009

By virtue of the aforementioned registrations and the well-known character of its trademark, the Complainant has the exclusive right to use the trade mark/corporate



name WAL-MART/WALMART in India and world-wide. The Complainant is the original, honest and prior adopter, user and registered proprietor of the trademark WAL-MART/WALMART. The trademark WAL-MART and/or WALMART has been in continuous use as part of the Complainant's trading style since its adoption in the year 1962. Wide publicity has been given to the trademark and corporate name WAL-MART/WALMART by the Complainant. Considerable expenses have been incurred in promoting and advertising the trade mark and corporate name WAL-MART/WALMART and its many variants throughout the world. The trade mark, corporate name and any domain name with the word WAL-MART or WALMART is associated exclusively with the Complainant, for all of which, the mark forms the forepart and most distinguishing feature of the name of the Complainant. The Complainant has spent a considerable amount of money promoting the WAL-MART/WALMART brand worldwide. By virtue of its continued use since the year 1962, the Complainant has acquired a substantial reputation and goodwill in the WAL-MART/WALMART brand and earned huge revenues. The Complainant's website <www.walmart.com> was created on February 23, 1995 and is equally popular among the viewers all over the world including India. The trademark WAL-MART/WALMART has also been used extensively over the internet to identify the Complainant and to associate the said mark exclusively with the Complainant. Relevant information pertaining to the Complainant and its well known brand is readily available on the website www.walmart.com. The Complainant has also registered various domain names for and containing the mark WAL-MART or WALMART, an exemplary listing of which is below:

1.	www.walmartindia.in
2.	www.walmart-india.in
3.	www.walmart-india.com
4.	www.walmartstores.com
5.	www.walmart-india.in

That recently, the Complainant became aware of the website www.walmart.in. The said website appears to be a parking page following a "pay-per-click" format and



listing various websites and/or businesses under titles such as "Online Surveys", "Airplane Tickets", "Cheat Hotel", "Download Movie" and others, which continue to change periodically. The website also goes further by providing links to other websites upon clicking on any of the links. It is clear that the website is attempting to create confusion in the minds of consumers by associating itself with the Complainant and thereby generating revenue by directing the said users, to other websites and other businesses providing other goods and services.

4.4 Respondent's Identity and activities:

The Respondent is Ambra Berthiaume, 4 rue Blaise Pascal K7, Strasbourg cedex, F-67081, FR. The Respondent is not represented by any one.

5. Parties contentions:

A. Complainant:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark in which the Complainant has rights:

The Complainant is the proprietor of the well known trademark WAL-MART/WALMART worldwide, including registrations of WAL-MART and WALMART in India, which has been in continuous, extensive and uninterrupted use since 1962. The Complainant's domain name www.walmart.com has acquired distinctiveness and is associated with the business of Complainant. The mark WAL-MART/WALMART is registered world over, including in India as evidenced from Annexures B and E. the Respondent's <www.walmart.in> domain name is deceptively similar with the Complainant's WAL-MART/WALLMART mark, as the Respondent's domain name incorporates Complainant's mark in its entirety. Complainant owns various domain names for or that include "WAL-MART" or "walmart" including but not limited to www.walmart.com, www.wal-mart.com and www.walmartstores.com. The Respondent's domain name www.walmart.in is identical to the Complainant's WAL-MART/WALMART mark, as it incorporates



Complainant's well-known mark in its entirety. In addition to the identical nature of the marks, the impugned website of the Respondent also appears to be a parking page following a "pay-per-click" format and listing various websites and/or businesses under titles such as "Online Surveys", "Airplane Tickets", "Cheat Hotel", "Download Movie" and others. The website also goes further by providing links to the other websites upon clicking on any of the links. The said links all refer to other website and is bound to cause confusion amongst users wrongfully directed to the website into believing that the same are either endorsed by or in any manner affiliated with the Complainant. The links being hosted by the Respondent on the impugned website direct users to other websites such as "www.NextGenPaidSurveys.com " etc. among others. The said website has been specifically designed to redirect users from the website of the Respondent to other provides rendering other goods and services by creating confusion as to the origin of the website and of the links being hosted therein. Given the enormous global reputation and goodwill enjoyed by the Complainant, it is apparent that the Respondent has fraudulently acquired the domain name <www.walmart.in>, which includes the identical mark of the Complainant and is also identical to the trading name / corporate name of the Complainant, solely with an intention of diverting the consumers to the www.walmart.in website and creating a likelihood of confusion with Complainant's WAL-MART/WALMART mark. The Respondent's domain name www.walmart.in is identical, phonetically and substantially similar to the well-known mark / domain name / corporate name of the Complainant. The Respondent has made use of the entire trademark and trade name of the Complainant as part of its domain name with no distinguishing feature therein, giving the impression that the domain name is that of the Complainant, referring to the Indian affiliate or Indian business of the Complainant.

(b) Respondent has no rights or legitimate interests in the domain name:

The Respondent neither has any legitimate interest in the mark 'WAL-MART' or "WALMART" nor is the lawful owner of any right relating to the Complainant's mark. The Respondent bears no relationship to the business of Complainant and is neither a licensee nor has obtained authorization of any kind whatsoever to use the



Complainant's mark. The Respondent has neither been using the said domain name or any name corresponding to the same in relation to any goods or services, to the best of the Complainant's knowledge, nor has he been commonly known by the domain name, which in fact, corresponds and is associated exclusively with the Complainant. The Complainant's website www.walmark.com was created on February 23, 1995, and the use of the mark WAL-MARK/WALMART had commenced as early as 1962. However the Respondent's website www.walmart.in was created on July 07, 2012 which is almost five decades after the Complainant had commenced the use of the mark, corporate name and domain name WAL-MART/WALMART. The Complainant being the prior user of the registered and well-known trademark WAL-MART/WALMART is the lawful owner of the trade mark/ corporate name WAL-MART/WALMART and the Respondent does not have any legitimate interest in the Domain Name which copies in entirety the trade mark/domain name of the Complainant. The Respondent is making an illegitimate and commercial use of the domain name www.walmart.in and deliberately misleading the internet users and diverting Complainant's consumers to the other websites in order to tarnish the well-known trademark and corporate name of the Complainant. It is apparent that the use of a domain name identical to that of the Complainant's domain name and trade marks along with the hosting of websites and search options is clearly an attempt to create confusion and illegally profit from the resulting association between the Complainant and the Respondent. Further, the website is following a "pay-per-click" format and the said manner of use of the website is clearly commercial. There is no evidence to suggest that the Complainant had authorized or licensed the Respondent's registration or use of the Domain Name." It is submitted that the Complainant has established, through evidence of long and uninterrupted worldwide use of the trademark WAL-MARK/WALMART and the long duration and widespread use of numerous domain names containing the mark WAL-MART/WALMART, that in fact it is the Complainant who is legitimately entitled to the domain name and that the Respondent does not have any right in relation thereto.



(c) Respondent has registered and is using the domain name in bad faith:

The circumstances indicate that the Respondent has registered or acquired the domain name with dishonest intention to mislead and divert the consumers and to tarnish the well-known trade mark / corporate name WAL-MART/WALMART of the Complainant. The Respondent has registered and is using the Domain Name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's WAL-MART/WALMART marks and from the likelihood that internet users will mistakenly believe that the impugned Domain Name and its associated websites are connected to the Complainant and its goods/ services. The Respondent has registered and is using the Domain Name primarily for the purpose of disrupting the business of the Complainant and has no prior right in and no authorization to use given by the Complainant concerning the WAL-MART trademark. The offering of other products/ services on the impugned website manifests Respondent's clear intention to attract, for commercial gain, internet users to Respondent's website by creating a likelihood of confusion with that of the Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's products. The use and registration of an identical domain name by the Respondent in an effort to gain commercial benefits is evidence of bad faith. Respondent's bad faith registration of the domain name is established by the fact that the domain name completely incorporates Complainant's WAL-MART/WALMART mark and was acquired long after the WAL-MART/WALMART mark became well-known. The Respondent uses the Domain Name www.walmart.in to operate link farms that provide links to other website promoting various products and services. The same itself amounts to evidence of bad faith. Respondent is thus not using the Domain Name for legitimate personal or business purposes. Instead, it is apparent that the intention of the Respondent is to create initial-user confusion and divert users to its website and thereafter provide links to websites providing other goods and services and thereby generating revenue for itself. Upon information and belief, particularly considering the international fame of Complainant's trademark, including in India, Complainant asserts that the Respondent intentionally registered domain name that is identical to the Complainant's WAL-MART/WALMART



trademark in order to trade off of the goodwill associated with Complainant's mark. That various website owners who are linked through the www.walmart.in website operated by the Respondent presumably provide monetary compensation for the placement of their addresses and site links upon the website. Upon information and belief, this compensation is based on the number of hits the website owners get from being listed on Respondent's site. Accordingly, Respondent receives a direct financial benefit from its diversion of Complainant's potential customers to its site. By creating a likelihood of confusion with the Complainant's WAL-MART/WALMART trademark by unlawfully capitalizing on the name, recognition and goodwill of the WAL-MART/WALMART trademark to divert Internet traffic to its site, Respondent has undoubtedly registered and has been using the Domain Name in bad faith. Respondent's bad faith use of the Domain Name is further evidenced by the fact that the Respondent has sought to profit from the Domain Name to create an affiliation with the Complainant. Respondent's use of Complainant's WAL-MART/WALMART mark bolsters the reputation of Respondent by creating an affiliation with the Complainant's famous WAL-MART/WALMART brand. The Respondent has also made fraudulent and incorrect claims while registering the impugned domain name since all registrants are required to warrant at the time of registering the domain name, under Paragraph 3 (b) of the INDRP that, "to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party." And under Paragraph 3 (d) that, "the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations".

B. Respondent:

The Respondent did not submit any response.

6. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? and Whether the Respondent has received the notice of this Arbitral Tribunal?



Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent has not refused to the Complaint but also failed to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on June 01, 2013.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or are being used in bad faith.

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark WAL-MART / WALMART and domain names in various countries including in India. The Respondent's domain name, <www.walmart.in>, consists of entirely Complainant's trademark except cc TLD ".in". Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <www.walmart.in> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.



(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.



(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks, trade names and domain names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names and domain names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.



7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <www.walmart.in> be transferred to the Complainant.

Dated at Chennai (India) on this 11th June, 2013.


(D.SARAVANAN)
Sole Arbitrator