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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR: Mr. S.SRIDHARAN

Dated: 07.12.2006

Autodesk, Inc

: Complainant

Versus

Allan Caguit

: Respondent

Sridharan
Arbitrator for

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Autodesk, Inc : **Complainant**

Versus

Allan Caguit : **Respondent**

1. The Parties

The Complainant is Autodesk Inc, a company organized and existing under the laws of United States of America, having its corporate headquarters at 111 McInnis Parkway, San Rafael, California 94903, USA, represented by its counsel Saikrishna & Associates at C7 First Floor, Sector 40, Noida.

The Respondent is Allan Caguit of 2505 Painted Rock Drive, Santa Clara California 95051, USA.

2. The Domain Names and Registrar

The disputed domain name < autocad.in > is registered with online Nic.

3. Procedural History

3.1 The Arbitrator received hardcopy of the Complaint along with Annexures on 17.11.2006. Arbitrator issued by email on 17.11.2006 to the Respondent a

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Notice setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. The Respondent did not file any reply.

3.2 On 02.12.2006, Arbitrator sent an email to the Respondent informing him that an award would be passed on 7th December 2006 and the Respondent would make any submissions, if any, for the consideration of the Arbitrator before 7th December 2006 failing which the Arbitrator would decide the Complaint on the basis of the merits of the Complaint.

3.3 The Respondent did not make any submissions to the Arbitrator but copied to the Arbitrator an email to the Complainant that the Respondent has already spoken to his domain name registrar about transferring the disputed domain name < autocad.in> to the Complainant.

3.4 The Arbitrator sent a notice on 17.11.2006 to the counsel for the Complainant to submit case laws, if any relied upon by the Complainant. The Complainant did not respond to this email. On 2.12.2006, the Arbitrator informed the Complainant by that an award would be passed on 7th December 2006 and the Complainant would make his additional or oral submissions, if any for the consideration of the Arbitrator before 7th December, otherwise the Arbitrator would decide the Complaint on the basis of the merits of the Complaint.

3.5 The Complainant expressed his intention to make his oral submissions to the Arbitrator by return mail on 2.12.2006. But till the passing of the award, the Complainant has not made any request for personal hearing in accordance with Rule 10 of INDRP Rules of Procedure and has not made any oral submissions **as intended.**

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3.6 The Arbitrator has proceeded on the basis of the merits of the Complaint and the documents filed thereto.

4. Factual Background

4.1 The Complainant is one of the world's leading design software and digital content creation companies. The Complainant helps its customers in the construction, manufacturing, infrastructure, digital media and wireless data services fields. As a worldwide design resource, the Complainant helps over 7 million design professionals in over 160 countries to model, make, manage and market their designs - from hotels, motorways, office buildings, and lifts to award winning special effects and utility district electrical plans.

4.2 The design data enterprise is an increasingly fast paced segment of the computer software industry and has a bearing upon all regular/conventional departments such as sales, operations, marketing and the entire supply chain. The Complainant is a critical business partner that keeps much of this design data enterprise well oiled by providing high quality design software solutions.

4.3 The Complainant's line of products includes AutoCAD, AutoCAD Lt, Autodesk Map Guide, Autodesk Raster Design, AutoCAD Mechanical, Autodesk Inventor Professional, Autodesk VIZ, Autodesk Revit Series, Autodesk Civil 3D, Autodesk Architectural Desktop etc.

4.4 AutoCAD is a mainstream software platform that is used extensively by architects, engineers, surveyors, interior designers, etc. AutoCAD offers high levels of specialization and customization. The products are available in India.

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4.5 The Complainant adopted the mark AutoCAD in respect of its designing software in 1984. The word AutoCAD is a coined and fanciful term. The Complainant's software under the mark AutoCAD is the leading designing software in the world. The mark AutoCAD is inherently distinctive and has acquired substantial goodwill, and has become a valuable commercial asset of the Complainant.

4.6 The Complainant is the proprietor of the trade mark AutoCAD by virtue of priority in adoption, continuous and extensive use and widespread advertising.

4.7 The Complainant has filed applications and owns registrations for the AutoCAD mark in many countries including India under various classes. The Complainant has filed copies of certificates of registration of the mark AutoCAD in select countries across the globe. Indian Application No.1347560 filed on 21.03.2005 in class 09 is still pending for registration.

4.8 The present complaint is filed on account of the unauthorized and illegal registration and use of the Complainant's registered trade mark AutoCAD as part of its domain name by the Respondent.

4.9 The Respondent has informed by email to the Complainant that he was in the middle of transferring the domain name to the Complainant. The Respondent had already spoken to his registrar in this respect and his registrar would something to transfer the domain name to the Complainant.

5. Parties' Contentions

A. Complainant

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5.1 The Complainant's mark AutoCAD is a well known trade mark. The Complainant has established both common law and statutory rights in respect of its mark AutoCAD. The disputed domain name < autocad.in> wholly incorporates and is identical to the trade mark AutoCAD of the Complainant.

5.2 The Complainant has a significant presence in India and the registration of the domain name < autocad.in> by the Respondent precludes the Complainant from obtaining a domain name registration that is India specific, which is invaluable in the marketing and sale of its products and services in the territories of India.

5.3 The unlawful and illegal registration of the domain name < autocad.in> by the Respondent causes irreparable damage and injury to the complainant's goodwill and reputation; and results in dilution of the Complainant's trade mark AutoCAD.

5.4 The Respondent has registered the domain name < autocad.in> only to capitalize on the goodwill associated with the trade mark of the Complainant. The registration is in bad faith and is without authorization from the Complainant.

5.5 The Respondent has no apparent use for the domain name other than to profit from squatting on the same. The Complainant had requested the Respondent to transfer the domain name <autocad.in> to the Complainant. The Respondent was ready to transfer and wanted to know the best offer for transferring the domain name< autocad.in> to the Complainant. The Complainant offered to reimburse the registration fee, out of pocket and other incidental expenses incurred by the Respondent in registering the domain name

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<autocad.in>. The Respondent did not reply to the offer made by the Complainant.

5.6 The web site under the domain name < autocad.in> is inactive from the date of its registration in the year 2005. It evidences that the Respondent has no bona fide intention to use the domain name < autocad.in> and the domain name is registered only for the purpose of trafficking.

5.7 The Respondent could have no justification for seeking registration of a domain name wholly incorporating the Complainant's mark AutoCAD. The act of registering a domain name which incorporates the Complainant's trade mark AutoCAD by the Respondent is likely to cause confusion, deception or persuade the internet users into believing that the domain name <autocad.in> or the Respondent is affiliated, connected or otherwise associated with the Complainant or its products.

5.8 The domain name < autocad.in> registered by the Respondent is an instrument of fraud and deception causing considerable damage to the Complainant's business interests, apart from prejudicing substantial public interest.

B. Respondent

5.9 As stated above, the Respondent has informed by email to the Complainant that he was in the middle of transferring the domain name to the Complainant. The Respondent had already spoken to his registrar in this respect

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and his registrar would something to transfer the domain name to the Complainant.

6. Discussion and Findings

A. Domain Name registered is identical or confusingly similar to a trademark of the Complainant

6.1 The Complainant is the proprietor of the trade mark AutoCAD. The Complainant has filed applications and owns registrations for the AutoCAD mark in many countries including India under various classes. The Complainant has also filed an application in India for registration of the mark AutoCAD. Thus the Complainant has established both common law and statutory rights in respect of its mark AutoCAD.

6.2 The Complainant's mark AutoCAD is a well known trade mark in India. The disputed domain name < autocad.in> wholly incorporates the Complainant's distinctive mark and is thus identical to it. The suffix ".in" does not contribute to distinguish the disputed domain name from the Complainant's trademark.

6.3 Therefore, the disputed domain name < autocad.in> is identical with and confusingly similar to the Complainant's mark AutoCAD.

B. Respondent has no rights or legitimate interests in respect of the Domain Name

6.4 In this case, the Respondent has not filed any response to the notices sent to him. But the Respondent sent an email to the Complainant. It was stated in the email that the Respondent was not able to respond immediately. The

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Respondent was in the middle of transferring the domain name to the Complainant. The Respondent had already spoken to his registrar in this respect and his registrar would something to transfer the domain name to the Complainant.

6.5 The Respondent has not made any submissions, other than the above email to the Complainant, evidencing circumstances giving rise to a right to or legitimate interests in the disputed domain name < autocad.in >

6.6 The Respondent's only response was the email communication to the Complainant and the said response to the Complainant has clearly established that the Respondent has no right or legitimate interest in the domain name.

C. Domain Name has been registered and is being used in bad faith

6.7 The facts that:

- (a) The web site under the domain name < autocad.in> is inactive from the date of its registration.
- (b) The Complainant had requested the Respondent to transfer the domain name <autocad.in> to the Complainant. The Respondent was ready to transfer and wanted to know the best offer for transferring the domain name< autocad.in> to the Complainant. The Complainant offered to reimburse the registration fee, out of pocket and other incidental expenses incurred by the Respondent in registering the domain name < autocad.in>. The Respondent did not reply to the offer made by the Complainant.

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Arbitrator

(c) The Respondent's email response on 02.12.2006 to the Complainant that the Respondent was in the middle of transferring the domain name to the Complainant. The Respondent had already spoken to his registrar in this respect and his registrar would something to transfer the domain name to the Complainant.

have clearly established that Respondent has no bona fide intention to use the domain name < autocad.in> and the disputed domain name is registered and used by the Respondent in bad faith.

6.8 The above action of the Respondent in bad faith prevents the Complainant, the proprietors of the mark AutoCAD, from reflecting the same in a corresponding domain name.

6.9 Further the conduct of the Respondent has necessitated the award of cost of the complaint to and in favour of the Complainant, including the attorney's fee.

7. Decision

7.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

7.2 It is hereby ordered that the disputed domain name <autocad.in> be transferred to the Complainant.

7.3 The cost of the Complaint including the attorney's fee is awarded to the Complainant.

S.Sridharan



Arbitrator


