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Bodhisatva Acharya, LLM
Arbitrator appointed by the (.IN Registry)
National Internet Exchange of India

ARBITRATION AWARD

In the matter of:

Disputed Domain Name: www.indiaparenting.in

Nirali Sanghi,
CEO, India Parenting Private Ltd.. **.Complainant**

Vs.

Raj Kumar Jalan. **.Respondent**

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The Complainant in this Arbitration proceeding is Ms. Nirali Sanghi, CEO of India Parenting Private Limited ("the Complainant") a company incorporated and existing under the Indian Companies Act, 1956. The Complainant is presented before me by Mr. C.V.Francis, Advocate of Francis & George, Advocates & Legal Consultants, T- 15 Green Park Extension, New Delhi 110016, Email : cvfc@bol.net.in

The Respondent in this Arbitration proceeding is Mr. Raj Kumar Jalan with the following details, which have been obtained from the WHOIS of IN Registry. :

RajkumarJalanAddress:286,1stFloorSantNagar,EastofKailash,NewDelhi110065
Email : Rajprag@sancharnet.in

The disputed domain name www.indiaparenting.in has the following details:

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2. About procedures **adopted** in the Complaint

This is a mandatory arbitration proceeding submitted for adjudication in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) for Domain Name Dispute Resolution, adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure (the Rules) was approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996, and the byelaws, rules and guidelines framed there under.

By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India (the ".IN Registry"), the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed me as a the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Name Dispute Resolution Policy and the Rules framed there under.

The arbitration proceedings commenced on 28th August 2006, when I issued notice of proceeding. In the notice, I had given 7 days to the Respondent to file his reply to the contentions of the Complainant and show cause as to why compensation and legal costs as claimed in the Complaint should not be awarded to the Complainant. In response to my notice I received a letter dated 5th September 2006 from the Respondent stating that he has received the Complaint from NIXI only on 31st August 2006 and requested for time extension to file reply up to 4th October 2006.

I sent an email to the paralegal officer of the IN Registry requesting for information on when did the IN Registry receive the complaint and when was it sent to the IN Registry and requested for the corresponding proof of delivery. In response to which I received an email from the IN Registry dated 16th September 2006 stating that IN Registry received the Complaint on 14th August 2006 from the Complainant and sent it to the Respondent on the 18th of August 2006, however the courier returned back because of shifting of the Respondent's office to 234A 1st Floor, Sant Nagar, East of Kailash, New Delhi from its old address 286, 1st Floor, Sant Nagar, East of Kailash, New Delhi (as given in the IN Registry WHOIS Database). According to the paralegal officer of IN Registry the Respondent received the complaint on the 31st August 2006. IN Registry in its mail also stated that the Proof of delivery of the same would be sent to me as soon as received from the courier company. However, IN Registry sent no proof of delivery from the courier company to me.

On the 16th of September, I received an email from one Ms. Radhika Chandrasekhar, representing herself to be the advocate of the Respondent. She wanted to know about the extension of time for filing of reply. Responding to the said email I sent an email dated 24th September 2006 to the Ms. Radhika Chandrasekhar, the Respondent, the Complainant and to the IN Registry advising her to file her vakalatnama and also advising that the considering the Respondent's request and the submissions of IN Registry the time for filing of the reply has been extended to 30th September 2006 and that no further time extension will be granted in future.

I did not receive any reply to my above email. Neither did I receive any reply to the Complaint from the Complainant, nor did Ms. Radhika Chandrasekhar file the vakalatnama. Consequently on the basis of the statements and documents submitted on record, the present Award is being passed.

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3. Parties' **Contentions**

(a) **Complaint's Contentions**

The Complainant in his Compliant contends, interalia , as follows:

The Complainant contends that has been using its name "India parenting" as its trademark ever since 1998 and has inscribed the name in all their literature, stationery, logo, works of art, etc. The Complainant owns a company called India Parenting Private Limited, incorporated under the Companies Act, 1956. It carries on, inter alia, business relating to developing, producing, publishing family related educational material on the internet, electronic, print, television and film media. . The complainant has continuously and extensively advertised the mark not only in India but worldwide. The mark "India parenting" has become synonymous with the complainant and has acquired a high degree of distinctiveness. The trade name has assumed special significance and uniqueness in the business dealings, advertisements, logos, publicity material, websites, etc. The mark "India parenting" has acquired a reputation, which is secondary to none, and misuse of the same will cause severe harm and irreprehensible damage to the complainant.

The Complainant contends that she is the owner of the website - www.indiaparenting.com , which is one of the early movers on India's internet scene. It has more than 25,000 pages of information and is the most

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comprehensive online guide for parents. Apart from being a source of information, it is an e-commerce websites offering parenting solutions to the parents world wide. Indiaparenting.com hosts the largest community of Indian parents and children around the globe. Over 50,000 unique visitors come to the site of our client each day and roughly 250,000 pages are visited each day. The website has 6 million page views a month. The Department of Education, Govt. of India has granted the status of a publisher to our client. Several venture capitalists have invested millions of dollars in the Complainant's website www.indiaparenting.com/.

The Complainant has invested a lot of knowledge, skills, time, hard work and millions of dollars in building up the website www.indiaparenting.com , publicizing it, advertising it and operating it. The website IndiaParenting.com has been featured in numerous international, national and regional newspapers, magazines, websites, television programmes and other print, electronic and broadcasting media.

The Complainant further contends that the Respondent has registered the disputed domain name www.indiaparenting.in in Bad Faith, which is evident from the communication through emails in which the Respondent has asked for Rs. 15 Lacs for the domain name www.indiaparenting.in from the Complainant. In support of this contention the Complainant has annexed Copies of the said email as Annexure I. The Complainant contends that the Respondent has primarily registered the domain name www.Indiaparenting.in for the purpose of "Cyber squatting" over the domain name in order to sell it to the complainant in excess of out of pocket costs. , Otherwise there is no reason for asking Rs. 15 lacs for a domain name worth Rs. 500|-

The Complainant contends that the Respondent had registered the disputed domain name on 16th February 2005; however, he has no intention of using the domain name. The Complainant contends that the Respondent was not using the

said domain name until the filing of this proceeding. The complainant contends that the Respondent has no intention of using the domain name and has registered the domain name in order to blackmail the complainant and to stop the complainant from reflecting its trademark on the World Wide Web.

The complainant contends in his complaint that by listing the domain name www.indiaparenting.in on his website www.pragatiinfo.net/bol.asp, the Respondent has also exploited the immense goodwill, reputation and popularity associated with the complainant and its name and trademark INDIAPARENTING to attract internet users to its website, by creating a likelihood of confusion with the complainant's name and mark INDIAPARENTING

The Complainant further submits that such a misrepresentation on the part of the Respondent has caused irreparable damage, loss and injury to the complainant's reputation and goodwill in the market both internationally and in India. Further it has caused monetary losses, harassment and agony to the complainant. The complainant submits that by registering and using the domain name www.indiaparenting.in, the Respondent has committed the tort of passing off for which the respondent is liable for compensation and damages to the complainant. The complainant has assessed such compensation and damages caused till the time of filing the proceedings to be the tune of Rs.50 lacs, which according to the

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complainant may enhance because of continued and further dilution of the complainants' goodwill and reputation.

The Complainant has further prayed in the complaint that the Respondent is also liable to pay the cost of Rs.75,000/- to the Complainant towards the legal proceedings.

The Complainant has contended that the Respondent is using the disputed domain name in bad faith and 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, and also engaged in a pattern of such conduct.

The Complainant has also contended in the complaint that the Respondent does not have any rights or legitimate interests in respect of the domain name www.indiaparenting.in

The Complainant submits that the Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant.

(b) Respondent's Contentions

As previously indicated in paragraph 2 of this award, the Respondent has not filed any response to the Complaint and has not answered the Complainant's contentions in any manner. He has however acknowledged the receipt of the complaint on 31st August 2006, while according to the IN Registry the Complaint was sent to the Respondent on the 18th August 2006. However considering the request of the Respondent and the information received from the IN Registry I gave time to the Respondent till the 30th September 2006 to file the reply and vakalatnama, vide my email sent to the Respondent

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However, no reply or vakalatnama or any other communication was received from the Respondent thereafter.

4. Discussion and Findings

The Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate non-commercial or fair use of the domain name.

Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption. *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270.

(i) The Respondent's Default

The Rules paragraph 8(b) requires that the Arbitrator ensure that each party is given a fair opportunity to present its case. Paragraph 11(a) of the Rules reads as follows:

"11. *Default*

(a) In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."

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The Respondent was given notice of this proceeding in accordance with the Rules. The IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint. The Respondent has acknowledge the receipt of the Complaint and sought time to file the reply giving the reasons that it had received the Complaint late on 31st August 2006,. though IN Registry had sent the Complaint well in advance on the 18th August 2006, Nevertheless enough time was given to the Respondent to file the reply uptill 30th September 2006, However the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainants assertions, evidence or contentions in any manner. The Respondent has been given a fair opportunity to present his case, but he has chosen not to file a reply despite seeking time. In view of the above I shall proceed to decide the case in accordance with the law.

The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances my decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply despite seeking time.

(ii) The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads as

"Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights

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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 there under."

Paragraph 4 of the INDRP thus envisages 3 elements, which are being discussed hereunder in the light of the facts and circumstances of this case.

(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

The Complainant has given substantial documents to prove that he has Intellectual property and other rights in the mark INDIAPARENTING. The name of the Complainant's company is INDIA PARENTING PRIVATE LIMITED. To support this the Complainant has produced in his complaint at Annexure C, a copy of the " Fresh certificate of incorporation consequent on name change" dated 9th June 2004. Before this the name of the company was Data magic Web solutions Private Limited, which was originally incorporated on 26th March 1999. The complainant has also produced at Annexure F of his

complaint a copy of the WHOIS record of Network Solutions certifying that the Complainant had registered the domain name WWW.INDIAPARENTING.COM on 25th December 1998

The mark is being used by the Complainant ever since 1998 and has been highly publicized and advertised by the complainant in both the electronic and print media not only in India but globally. In support of this the complainant has produced at Annexure G in the complaint copies of the news and articles published in well known national and international newspapers and magazines such as the Business world on 6th September 1999, Outlook magazine on 21st June 1999, CHIP Magazine in October 1999, India Today magazine on 15th November 1999, Times of India 28th June 1999, Midday on 31st May 1999. The Complainant contends that there are many other instances, which he has not reproduced in the complaint for the sake of brevity. The Complainant has also produced bills of expenditure on advertisements and its balance sheets.

The INDRP paragraph 3 clearly states that it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any body. Since the Complainant's mark "INDIAPARENTING" is a famous and well-known mark specially on the Internet, it is unlikely that the Respondent does not know about the Complainant's rights in the mark or the domain name.

Paragraph 3 of the **INDRP** is reproduced below:

"The Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:

- (a) *the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;*
- (b) *to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- (c) *the Registrant is not registering the domain name for an unlawful purpose; and*
- (d) *the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.*

It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."

In the absence of any response from the Respondent, and considering that the Respondent has failed in his responsibility discussed above and in the presence of the pleadings and documents filed by the Complainant, I have come to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' "INDIAPARENING" mark. Accordingly, I conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

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

The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Registrant has no legitimate right or interest in the disputed domain name.

the burden of proof on a complainant regarding this element is light, because the nature of the Registrant's rights or interests, if any, in the domain name lies most directly within the Registrant's knowledge. And once the complainant makes a prima facie case showing that the Registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the Registrant to rebut the contention by providing evidence of its rights or interests in the domain name.

The Respondent in this case has not at all filed any response to show his interest in protecting his own right and interest in the domain name. Further the Respondent has not used the domain name even after the passage of more than 1 and a half-year after it was registered. Moreover the Respondent chose not to use the domain name even after the Complainant sent a legal notice on April 1st 2006. This clearly leads to the conclusion that the Respondent does not have any legitimate interest in the domain name.

For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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

The Complainant has averred that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(ni) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Registrant has registered and used a domain name in bad faith:

(i) "Circumstances indicating that the registrant has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its 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

(Hi) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

The Complainant has annexed as Annexure I to the Complaint the correspondences of the Respondent, wherein the Respondent has shown his intention to sell the impugned domain name to the Complainant for a huge amount of Rs. 15 lacs (whereas it would have cost less than Rs. 1000 to the Respondent to register the Domain name). In these circumstances it is clear that the Respondent had blocked the domain name of the Complainant only to extort money from the Complainant.

Further the Respondent has listed the impugned domain name on its website www.pragatiinfo.net/bol.asp in order to exploit the immense goodwill, reputation

and popularity associated with the complainant and its name to attract Internet users to his website. Thus the condition (iii) of the INDRP paragraph 6 are also proved in the above circumstances.

I am of the opinion that all the three conditions given in paragraph 6 of the INDRP are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent / Registrant is a registration in bad faith.

8. Decision

The Respondent has failed in his responsibility to ensure before the registration of the impugned domain name by him that the Registrant's domain name registration infringes or violates someone else's rights as required by the Para 3 of the INDRP. The Complainant has given sufficient evidence to prove his rights and title on the impugned domain name. Further the actions of the Respondent show that he merely blocked the disputed domain name, and deprived the rightful owner, i.e. the Complainant to register and use the domain name. The Respondent has not given any reason to register the impugned domain name. The Respondent also offered to sell the domain name to the Complainant for a huge amount of Rs. 15 lacs. Further the domain name has not been used by the Respondent except for listing it on the website of the Respondent. Therefore, it can be presumed that the Respondent had registered the domain name only to

make quick money by selling the domain name to the Complainant who is the rightful owner of the impugned domain name.

As discussed above the registration of the Domain Name by the Respondent is also hit by all three elements of the Para 4 of the INDRP and is a registration in bad faith as per paragraph 6 of the INDRP. Thus it is clear that the Respondent is using the disputed domain name in bad faith.

The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant.

Considering the violation of the Complainant's rights on the mark **INDIAPARENTING** the Respondent, and considering the contentions of the Complainant in the complaint I conclude as follows:

- (i) I order the Respondent to immediately stop using the mark of the Complainant "**INDIAPARENTING**" in any manner whatsoever.
- (ii) I also direct that the registration of the disputed domain name www.indiaparenting.in be transferred from the Respondent / Registrant to the Complainant immediately. NIXI to monitor.
- (iii) The Complainant has asked in his complaint for the costs of Rs. 75,000 for the legal proceedings from the Respondent. The Respondent shall pay to the Complainant the legal costs of Indian Rupees 30,000, which was paid to the IN Registry by the Complainant and the lawyer's fees up to Indian Rupees 45,000, upon production of the evidence thereof, within 30 days of this decision, under supervision of NIXI.

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- (iv) The Complainant has asked for damages of Rs. 50 Lacs towards loss of goodwill and reputation, monetary losses, harassment and agony caused to the Complainant because of the misrepresentation of the Respondent and the blackmailing tactics. The Respondent has further endorsed the contentions of the complainant by delaying the proceedings before me. In order to compensate the Respondent and to discourage the activity of Cyber squatting, I order that the Respondent shall pay damages of Rs. 2,50,000/- to the Complainant for the damages, violation of the Complainants marks, unnecessary harassment and delays caused.



Bodhisatva Acharya

Sole Arbitrator.

Dated: 5th October 006
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