




தமிழ்நாடு தமில்நாடு TAMILNADU

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2.11.2007

**D. SARAVANAN**  
ARBITRATOR  
NEW No.346 (OLD No.161), 1 FLOOR,  
THAMBU CHETTY STREET,  
OPP. HIGH COURT, CHENNAI-600 001.

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**P. S. SHANMUGA SUNDARAM,**  
STAMP VENDOR,  
L. No. B4 / 109 / 88  
HIGH COURT CAMPUS,  
CHENNAI-600 104. (TAMIL NADU)

**BEFORE THE SOLE ARBITRATOR D.SARAVANAN  
.IN REGISTRY  
C/o.NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)  
NEW DELHI, INDIA.  
[registry@nixi.in](mailto:registry@nixi.in)**

**NBA Properties, Inc.**  
Olympic Tower  
Fifth Avenue  
New York-10022.

..Complainant.

**Vs.**

**Rickson Rodricks**  
Prakash Vazika, LT Road  
Mumbai  
Maharashtra-400 092

.. Respondent





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1. **The Parties:**

The Complainant is **NBA Properties, Inc.**, Olympic Tower, Fifth Avenue, New York-10022, U.S.A., represented by its Authorized Representative Ms.Anuradha Salhotra, LLS House, Plot No.B-28, Sector 32 (Institutional Area), Gurgaon-122 001, India.

The Respondent is **Rickson Rodricks**, Prakash Vazika, LT Road, Mumbai, Maharashtra-400 092. Respondent neither represented himself nor represented by any one.

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

The disputed domain name: **www.nba.in**

The domain name registered with .IN REGISTRY

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### 3. Procedural History:

- October 04, 2007 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- October 05, 2007 : Arbitrator has accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality And Independence to the .IN REGISTRY.
- October 06, 2007 : 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's authorized representative and .IN REGISTRY, within 10 days i.e., on or before 17.10.2007.
- October 16, 2007 : The respondent has sent a reply e-mail confirming the receipt of notices however, states that he has not received any copy of the complaint with details.
- October 18, 2007 : Arbitral Tribunal sent a notice by email to the complainant as well as the .IN REGISTRY directing them to furnish a copy of the complaint and supporting documents to the respondent forthwith.
- October 19, 2007 : Complainant's Authorised Representative sent a reply by email stating that, on an enquiry with .IN REGISTRY, they were informed that the copy of the complaint has already been forwarded to the respondent at the address mentioned in the records.
- October 19, 2007 : Upon the receipt of email from the complainant's representative, Arbitral Tribunal has sent a further communication by email to .IN REGISTRY to confirm the factual aspects as set out by the complainant with a due proof of dispatch/delivery.

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- October 19, 2007 : .IN REGISTRY has sent a reply mail with an attachment of proof confirming that the complaint and the documents was dispatched to the Respondent on 05.10.2007 and the same was received by him on 08.10.2007.
- October 22, 2007 : Arbitral Tribunal sent an e-mail to Respondent notifying his default, a copy of which marked to Complainant, Complainant's authorised representative and the .IN REGISTRY.
- October 29, 2007 : The respondent sent a reply by e-mail to .IN REGISTRY marking a copy of which to this Tribunal stating that though the delivery report does not show enough evidence of delivery, he will enquire with the concerned people.
- November 02, 2007 : The respondent has sent further communication confirming the receipt of couriered documents and upon reading the complaint and related documents by next day he will be giving reply to the complaint by Monday or Tuesday.
- November 02, 2007 : The respondent has sent further e-mail stating that few of the e-mail communications sent to him were on yahoo bulk/spam folder and he noticed the same only on November 02, 2007 at 1.1.51 P.M. and sought any scope to file his response within 24-48 hours.

The language of the proceedings in English.

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

##### **4.1 The Complainant:**

The Complainant is **NBA Properties, Inc.**, Olympic Tower, Fifth Avenue, New York-10022, U.S.A.

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#### 4.2 Complainant's Activities:

Complainant states that their Company is a duly organized, incorporated and existing one under the Laws of the State of New York, United States of America and has the exclusive licensing and merchandising agent of a World premier men's professional basketball league and carries a business as an International merchant of a diverse variety of sports goods and services related to conducting a successful business in holding basketball events and tournaments, and other related sports and educational events; manufacturing and selling of a variety of products, including toys, games, apparel, sporting goods, audio, video and computer related goods. The complainant further states that they are also involved in the production and distribution of radio and television broadcast of basketball games, marketing of consumer products and has been prominently featured in New Papers and Publications in Hundreds of Countries around the World, including India.

#### 4.3 Complainant's Trading Name:

The Complainant states that they are a World known Proprietor of the brand 'NBA' and a registered trade owner of their branded 'NBA' trade mark in various countries. The complainant has enclosed the list of registrations and applications for the word mark 'NBA' and the logo incorporating the word 'NBA' owned by them worldwide under "**Annexure A-1**". According to the complainant, they spent a considerable amount of money and resources promoting their brand "NBA' worldwide and by virtue of their continued use of their branded trade mark since 1949, the complainant has acquired substantial reputation and goodwill and also earned significant revenues of approximately \$421.8M for fiscal year 2006. Further, according to the complainant, that their trade mark is an essential part of their corporate name and its distinctive style of trading.

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The complainant further states that they have registered their NBA logo even in India during the year 1992 and 1994 under various classes such as class 25, 16, 28 and 31 and that they are the registered proprietor of such trade mark even in India which have been renewed from time to time and are valid and subsisting. In this respect, the complainant has filed the registration certificate of such trade marks under "**Annexure A-2**". According to the complainant, their application filed under Clause 41 is still pending registration in India and such pending application as advertised has been filed under "**Annexure A-3**".

The complainant further states that their trade mark is a World famous mark widely recognized in India and throughout the world. As regards their popularity in India, the complainant has filed certain copies of a sampling of articles published in India, under "**Annexure A-4**". That apart, the complainant further states that they have had wide television coverage throughout the world of its games and events, including India where NBA broadcasts offered by the complainant's broadcasts partners, ESPN India and Star Sports India, has the potential to reach a combined total of approximately 27 million households in India. Further, their website "nba.com" operated by them is equally popular and very famous among the people worldwide. According to the complainant, their website www.nba.com is one of the hundred most popular sites in United States of America and that the complainant has filed a copy of the traffic ranking from a Web Information Company ALEXA in respect thereof under "**Annexure A-5**". Further, as per a study carried out by Comscore, complainant's website had approximately 12.5 million visitors in April, 2007 and copies of sampling articles discussing the setting of new records by their website are filed under "**Annexure A-6**". That be so, in June 2007, the complainant attempted to register 'nba.in', however, the said Domain name was not available, as it was previously registered by another party and on the same day when a search was performed for www.nba.in, it was directed

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to an empty page. The complainant has filed the said print out of the web page assessed on June 14, 2007 under "**Annexure A-7**". Upon which, when the complainant conducted a .IN WHOIS search from the website of .IN REGISTRY and they came to know that the Domain name 'nba.in' was registered in the name of the respondent. The complainant: has filed the copy of .IN WHOIS search under "**Annexure A-8**". The complainant has also further asserts that a similar case of typo-squatting was registered against the respondent pertaining to the Domain names 'ttarget.com' and 'ttarget.info' and the National Arbitration Forum has decided the dispute against the respondent on October 28, 2005. The complainant: has also filed a copy of the said decision under "**Annexure A-9**". By stating so, the complainant claims against the respondent who is the current registrant of the Domain name 'www.nba.in' on the following grounds inter-alia that (i) the respondent's Domain name is identical or confusingly similar to the trade 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 <nba.in> has been registered in bad faith.

#### **4.4 Respondent's Identity and activities:**

The Respondent is the registrant of the Domain Name <nba.in> which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as **Rickson Rodricks**, Prakash Vazika, LT Road, Mumbai, Maharashtra-400 092.

#### **5. Parties contentions:**

##### **A. Complainant:**

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

i) The Complainant submits that they are the worldwide proprietor of the well known trade mark 'NBA', including registrations of the NBA logo in India and they have adopted the Domain name www.nba.com

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and similar variants registered in many countries which has acquired the distinctiveness that is associated with their business. The respondent's Domain name <nba.in> is identical with the complainant's 'NBA' mark which incorporates the complainant's mark in its entirety and there are no alterations existing which distinguishes the respondent's Domain name from their mark as it is exactly the same as complainant's mark. The complainant has filed a list of Domain names incorporating 'NBA' registered by the complainant and its units under "**Annexure A-10**". Thus, it is apparent that the respondent has fraudulently acquired the Domain name <nba.in> which is identical to the trading name/corporate name of the complainant, solely with a malafide intention of extorting money and/or deriving illicit gain.

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

According to the Complainant, the respondent neither has any legitimate interest in their trade mark nor is the lawful owner of any right relating to the complainant's mark and that the respondent bears no relationship to the business of complainant neither as a licensee nor has obtained any authorization or whatsoever to use the complainant's mark. Further, according to the complainant, since the date of registration i.e., February 16, 2005, the respondent has neither used nor made any demonstrable preparation to use the Domain name in connection with bonafide offering of goods or services.

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

i) According to the Complainant, the circumstances, under which the respondent has registered or acquired the domain name indicates the dishonest intention and such registration is only for the purpose of selling, renting or transferring the Domain name at an exorbitant price and according to the complainant, their registered trade mark is a well known

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brand throughout the world and the respondent must have been aware of the longstanding, enormous reputation of the NBA name. Further, the complainant has also based their claim that the respondent's Domain name is part of their corporate name; therefore the respondent's use of such Domain name will attract complainant's customers by causing them mistakenly to believe that the respondent's activities have been endorsed by the complainant; they owns and controls the Domain name such as [www.nba.com](http://www.nba.com), [www.nba.de](http://www.nba.de), and [www.nba.co.jp](http://www.nba.co.jp); and that the Domain name is more than mere internet address which identifies the internet site to those who reach it and sends the message that the site is owned by, sponsored by, affiliated with or endorsed by the person with name, or owning the trade mark, reflected in the Domain name; and the present case is a clear case of cyber-squatting by the respondent whose intention is merely block the Domain name and deprive the complainant's right so as to take advantage of substantial reputation of the complainant's brand and its trade mark and its prominent presents on the internet in order to confuse the: public to the detriment of the complainant.

**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 did not choose to submit any

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response, which ought to have been filed on or before October 17, 2007, and that non-submission of the Response by the Respondent had also been notified to the Respondent on October 22, 2007.

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 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 and logo being NBA. The Respondent's domain name, **<nba.in>**, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name **<nba.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.

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**(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 sufficient opportunities to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent, despite sufficient opportunities, 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 bonafide 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.

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**(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 and trade names of the Complainant. It is clear that 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 and the respondent's Domain name seems to be an empty page since the date of registration till the assessment made on June 14, 2007 by the complainant, this Arbitral Tribunal draws the inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy, so as to block the Domain name and to deprive the rightful owner i.e., complainant's right to register and use the Domain name and held complainant's mark being infringed by the respondent. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose 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

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the domain name for its own commercial purpose or through the sale of the disputed domain name to the complainant itself to a competitor for higher price 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.

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 <nba.in> be transferred to the Complainant. In the facts and circumstances of the case, there is no order as to costs.

**Dated at Chennai (India) on this 5th day of November, 2007.**

  
**(D.SARAVANAN)**  
**Sole Arbitrator**