

दिल्ली DELHI

R 227800

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry - National Internet Exchange of India

In the matter of:

G.D. Vashisht and Associates Pvt. Ltd.,
AD-40-41A, Power Apartments,
Near Power House, Pitampura,
Delhi 110088

Complainant

and

J.K. Sabharwal,
G8, Green Park,
Mahesh Nagar, Ambala Cantt.,
Haryana 133001

.Respondent

AWARD

1) The Parties:

The Complainant is **G.D Vaishist and Associates** which is a duly incorporated company under the provision of law of India having its registered office at AD-40-41A, Power Apartments, Near Power House, Pitampura, Delhi-110088 (hereinafter referred to as "Complainant"). The Complainant is represented by its authorized representative Gurpreet Singh of Amarjit & Associates, Suite 404 Law arcade, 18 Pusa Road, New Delhi-110005, who has submitted complaint against the domain name. The Respondent is **J.K. Sabharwal** G8, Green Park, Mahesh Nagar, Ambala Cantt., Haryana 133001.

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.lalkitabamrit.co.in. The Registrar is Direct Internet Solutions Pvt. Ltd dba, PublicDomain Registry.com(R5-AFIN). The Registrant is J.K. Sabharwal(Respondent), G8, Green Park, Mahesh Nagar, Ambala Cantt., Haryana 133001.

3) Procedural History:

The Complainant filed this complaint with the .IN Registry and the .IN Registry appointed "Ranjan Narula" ("The Arbitrator") as the Sole Arbitrator under clause 5 of its policy. On 3rd September, 2011 the arbitrator confirmed his acceptance of complaint via e-mail and followed with formal statement of acceptance and declaration of impartiality and independence on September 07, 2011. The Arbitrator issued notice to the Respondent on September 08, 2011 at the Respondent's email address with a deadline of 10 days to submit their reply to the arbitration; however, there was no reply.

Thereafter the Arbitrator once again wrote to the parties on 26th September, 2011 granting Respondent final opportunity to file it's response on or before 3rd October 2011, and informing that the Respondent's right to file the response will stand closed after this period. As no response had been filed by the Respondent and sufficient opportunity being granted, therefore, the Complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

4) Summary of the Complainant's contentions in the Complaint:

The Complainant in support of their case have made the following Submissions:

- a) Complainant is in the business of providing services relating to astrological prediction, horoscope preparation and consultation relating to astrological science. The Complainant through their predecessor in interest and title is carrying the above activities and providing services since the year 1992. The Complainant has adopted the mark "LAL KITAB AMRIT" in the year 2009 for providing services relating to astrology and the report created by the company on the basis of the individual credentials provided by their clients.



The Complainant is carrying on its business activities from the domain www.lalkitabamrit.in since the year 2010 and also has various registered domain names under different gTLDs and ccTLDs incorporating the mark 'LAL KITAB AMRIT', the list for which is filed as **Annexure C**.

- b) The Complainant is providing their services and products in more than 53 countries around the world. The product LAL KITAB AMRIT is also been promoted by the complainant in their television programme 'BAS AB DUKH AUR NAHIN' since the year 2009 which is aired regularly through different media channels. The Complainant also has a call center to provide sale services to clients relating to astrology and receive more than 20,000 calls a day for 'LAL KITAB AMRIT',
- c) Complainant has also applied for trademark registration with the Registrar of Trade Marks for registration of the mark LAL KITAB AMRIT in classes 9, 16, 25, 35, 36, 41, 42 and 45. The representation sheet of the trademark application is filed as **Annexure D** of the complaint.
- d) Complainant has also spent high publicity and marketing expenses to promote its mark 'LAL KITAB AMRIT' since the year 2009.
- e) The Respondent's domain name is identical to the registration and Marks, as well as Complainant's domain names www.lalakitabamrit.in, among others, in which the Complainant enjoys substantial goodwill. The addition of ".co" to Complainant's marks does not change the likelihood of confusion, as ".co" is an irrelevant distinction. The Complainant has filed offending website pages as **Annexure K**.
- f) The Respondent is in no way associated with 'LAL KITAB AMRIT' and the contents of the impugned domain also do not suggest that the respondent is providing any product or services relating to 'LAL KITAB AMRIT' in which the Complainant has rights. The Respondent by registering the impugned domain name is confusing the general public as to the source of goods and services provided by him. The goods and services of the Respondent are identically similar to that of the Complainant and any user availing the services of the Complaint is bound to get confused.
- g) The Respondent is not listed as an owner of any pending/ registered trademark containing a formative of the term "**LAL KITAB AMRIT**", Moreover, there is no evidence that the Respondent, as an individual, business, or other organization has been commonly known by the offending domain name.
- h) The Respondent by registering the impugned domain name LALKITABAMRIT.CO.IN is trying to confuse online users as to the source of goods and services as being offered by the complainant since 2009 throughout their domain names ASTROSCIENCE.IN and LALKITABAMRIT.IN.
- i) The Respondent has adopted the domain name with a view to attract the web users to the Respondent's website, who would actually be searching for the Complainant. Such use of a domain name does not provide a legitimate interest under the Policy.



- j) The Respondent is not commonly known by the domain name and does not own any proprietary rights in the mark LAL KITAB AMRIT. The mark LAL KITAB AMRIT has been adopted and used by the Complainant since the year 2009 extensively and has acquired goodwill and reputation in the minds of general public and the consumer of the services offered by the Complainant.
- k) By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the Respondent's website.
- l) Registration of a well-known trademark in a domain name, of which the Respondent must reasonably have been aware of, constitutes opportunistic bad faith. Further, the offending website does not contain any statement that makes it explicitly clear that the website is not associated with the Complainant.
- m) The use of the Complainant's marks simply for the purpose of driving traffic to Respondent's website and to competitors of Complainant is not a *bona fide* attempt to officer goods and services to the public.
- n) It is not possible to obtain every variation of how Complainant's marks may be registered or used as a domain name and the Respondent has devised a variation that has not been contemplated by the Complainant.
- o) The Respondent has registered the impugned domain name LALKITABAMRIT.CO.IN in bad faith knowingly that the Complainant is the proprietor of the mark LAL KITAB AMRIT with a clear intention of encashing upon the goodwill and reputation of the Complainant's mark LAL KITAB AMRIT.

5) Decision/s Upholding The Complainant's Rights

The Complainant has relied on the following principles that have been laid down in the following cases:

BC Northern Lights Enterprises Ltd. Vs. Sunlight Sheds. D2007-1098:

- a) If a mark prior to the registration of the disputed domain name was a common law trademark, that is considered enough evidence for showing rights in the trademark.
- b) No rights or legitimate interests can be established when there is no evidence that the Respondent was commonly known by the Domain name.
- c) Where a domain name is found to have been registered with an intention to attract internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration.

Royale Indian Rail Tours Limited Vs. Divino Indian Memoirz Tours Pvt. Ltd, D2010-2107:

- a) On the question of recognizing common law rights and unregistered rights of a Complainant's mark, in order to establish such unregistered trademark rights in a term, a Complainant must show that the term has become a distinct identifier associated with the Complainant or its goods and services.



- b) Where a domain name is likely to mislead the public and internet users that the disputed domain name refers to the Complainant, In the Panels view, a domain name that gives false impression of users does not confer rights or legitimate interests.
- c) Where a domain name is found to have been registered with an intention to attract internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration.

6) Respondent

The Respondent has not filed any response to the Complaint though they were given opportunity to do so. In any case it has been confirmed by the .IN Registry that the Respondent was successfully served with the copy of the Complaint by courier, thus indicating that the Respondent has received the Complaint and elected not to file its response. Therefore, the Complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

7) Discussion and Findings:

The submission and documents filed by the Complainant in support of their prior adoption, use and registration of the mark/domain name "LALKITABAMRIT" leads to the conclusion that the Complainant have better and prior rights in the domain name. Further, they have registered a number of domain names containing the mark "LALKITABAMRIT".

Based on the submissions and documents on record, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy:

- 1) *The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.*

It has been established by the Complainant that he has trademark rights on account of prior and longstanding use in the "**LAL KITAB AMRIT**" mark. The Complainant has in support submitted substantial documents. The disputed domain name contains Complainant's "**LAL KITAB AMRIT**" trademark in its entirety. The mark is being used by the Complainant worldwide including in India in relation to its business. The mark has been highly publicized and advertised by the Complainant in electronic media.

- 2) *The Respondent has no rights or legitimate interests in respect of the disputed domain name.*

The Complainant has not authorised the Respondent to register or use the "**LAL KITAB AMRIT**" trademark. Further, the Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration of the disputed domain name in favour of the Complainant,

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show their interest in protecting their right and interest in the domain name. Further, the Respondent is offering similar services as that of Complainant in order to take advantage of the goodwill of that of the Complainant in the name 'LAL KITAB AMRIT'. Further, the Respondent is not



commonly known by the disputed domain name and has registered the identical domain name in order to attract, for commercial gain, internet users to Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the Respondent's website.


The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name www.lalkitabamrit.co.in. Its primary intention is to trade upon the reputation of the Respondent.

3) *The disputed domain name has been registered or is being used in bad faith.*

It has been contended by the Complainant that the Respondent has registered the disputed domain name in bad faith as they have build substantial reputation in the business of providing services relating to astrological science and also provide astrology, vastu and numerology and palmistry related services. The Respondent has failed to respond to the Complaint even after opportunity being granted. Thus the Respondent is deemed to have admitted the contentions in the Complaint leading to an adverse inference being drawn as to their adoption of an identical domain name.

8) Decision:

For the reasons discussed above the Arbitrator directs that the disputed domain name www.lalkitabamrit.co.in be transferred to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

October 17, 2011