

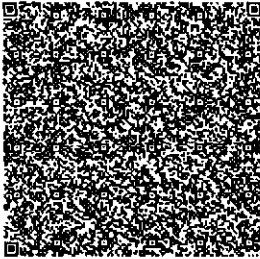
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL64969910943216L
Certificate Issued Date : 08-Jan-2013 10:44 AM
Account Reference : IMPACC (IV)/ dl851803/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL85180329727793146884L
Purchased by : V K AGARWAL
Description of Document : Article Others
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : V K AGARWAL
Second Party : NA
Stamp Duty Paid By : V K AGARWAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line.

NATIONAL INTERNET EXCHANGE OF INDIA
Incube Business Centre, 5th Floor,
18, Nehru Place,
NEW DELHI – 110 019
VFS Global Services Pvt. Ltd., v. Mr. Rahul Sharma

AWARD

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AWARD

1. The Parties

The Complainant is VFS Global Services Pvt. Ltd., 9th Floor, Tower A, Urmi Estate, 95, Ganpatrao Kadam Marg, Lowewr Parel (W), Mumbai – 400 013

The Respondent is Mr. Rahul Sharma, U/G-310, Dreams the Mall, Station Road, Bhandup West, Mumbai 400 078

2. The Domain Name and Registrar

The disputed domain name is <www.vfscanada.in>.

The particulars of registration of the disputed domain name are as follows:

(a) Name of the Registrant	: Mr. Rahul Sharma
(b) Domain ID	: D6791971-AFIN
(c) Created on	: 04 October 2012
(d) Expiration date	: 04 October 2013
(e) Sponsoring Registrar	: GoDaddy.com, LLC (R101-AFIN)
(f) Registrant ID	: CR125517417

3. Procedural History

(a) A Complaint dated January 13, 2013 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.

(b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator received the Complaint on February 5, 2013. The arbitrator finds that he was properly

Vinod K. Agarwal

appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

- (c) In accordance with the Rules, the Sole Arbitrator formally notified the Respondent along with a copy of the Complaint by speed post. The Respondent was required to submit his defence within 15 days. The Respondent was informed that if his response was not received within that period, he would be considered in default and the matter will proceed ex-parte.
- (d) No response has been received from the Respondent. On the contrary, the postal authorities have returned the letter containing a copy of the Complaint sent through speed post as "Unclaimed Returned to Sender".

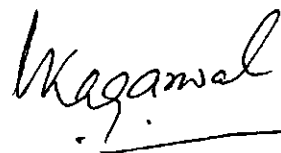
4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

In these proceedings at present the name of the Complainant is VFS Global Services Pvt. Ltd. The said name was adopted on 16th January 2009. The Complainant has, in the past, changed its name on a number of occasions. Initially it was known as *Fastrac Visa Facilitation Services Pvt. Limited*. The Complainant is carrying on the business of providing technological and logistics support services to various Embassies and Diplomatic missions in India as well as other parts of the world. The technological and logistics support includes administrative and non-judgmental task such as distribution of visa application forms, accepting Visa Applications at its Visa Application Centers, forwarding the Visa Applications to the concerned Embassy or Diplomatic Mission, collection of passports and return the same to the Applicants, and performs other related services.

Respondent's Identity and Activities



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Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

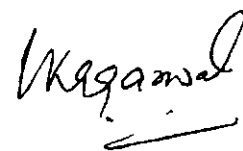
In relation to element (i), the Complainant contends that its name is VFS Global Services Pvt. Ltd. The Complainant undertakes the distribution of visa application forms for Canada, accepting Visa Applications at its Visa Application Centers for Canada, forwarding the Visa Applications to the Canadian Embassy, collection of passports and returned the same to the Applicants. The disputed domain name is <www.vfscanada.in>. Thus, the disputed domain name contains the name plus the activity of the Complainant. The addition of the words "in" is insignificant.

In support of its contentions, the Complainant has relied on the decisions in the cases of *PepsiCo. Inc. v. PEPSI, SRL* (a/k/a P.E.P.S.I.) and *EMS Computer Industry* (a/k/a EMS) (WIPO Case No. D2003-0696); *Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing Ltd*, WIPO Case No. D2006-0762.

The word "VFS" is a trademark of the Complainant adopted and used in many countries. Therefore, the Complainant is well known to its customers and visa applicants as well as in business circles as VFS all around the world.

The Complainant contends that it has several domain names containing its trade name and VFS Global, (many of them include the name of the countries also) such as, <www.vfs-au-in.com>; <www.vfs-be-in.com>; <www.vfs-austria.co.in>; <www.vfsglobal.com>; <www.vfs-canada.co.in> <www.vfs-france.co.in>; <www.vfsglobal/bulgaria/>; <www.vfsglobal.in>; etc.

In relation to element (ii), the Complainant contends that the



Respondent (as an individual, business, or other organization) has not been commonly known by the mark “vfscanada”. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.vfscanada.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

In support of its contentions, the Complainants have relied on the decisions in the cases of *Pfizer Inc. v. NA*, WIPO Case No. D2005-0072; *AT&T Corp. v. John Zuccarini d/b/a Music Wave and the Domain name RaveClub Berlin*, WIPO Case No. D2002-0440; *America Online Inc., v. Anson Chan*, WIPO Case No. D2002-0004; *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163.

B. Respondent

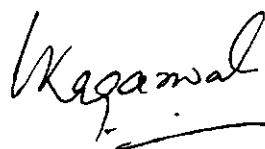
The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.vfscanada.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (i) The 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 interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

The Complainant contends that since 2002 its trademark “VFS” is registered in many countries of the world including China, Germany, Mauritius, Republic of South Africa, State of Qatar, Taiwan, Uganda, United States of America, etc, in different Classes. Thus, the Complainant is the owner and registered proprietor of the mark “VFS”.

In India, the Complainant owns registration of the trademark “VFS” since 2003. It is registered in class 35 (To provide full visa administration services to Diplomatic Missions, etc.) By virtue of this registration, the Complainant has the exclusive rights to use the said trademark in India. The Complainant has also produced a letter dated 10th December 2012 from the High Commission of Canada confirming that “VFS Global Services (Pvt) Ltd., operates Canada Visa Application Centers (VACs) o behalf of the High Commission of Canada in New Delhi, India”.

The present dispute pertains to the domain name <www.vfscanada.in> The Complainant possesses a number of other domain names, as mentioned above, with the word “vfs”. The Complainant is also the owner of trademark “VFS”. Most of these domain names and the trademarks/certification marks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is very much similar or identical to these domain names and the trademarks/service marks of the Complainant.

Therefore, I hold that the domain name <www.vfacanada.in> is confusingly similar to the Complainant’s marks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

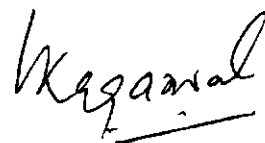
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- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

VFA Global is the name of the Complainant. The trade mark "VFS" has acquired unique importance and is associated with the Complainant. A mention of the said trademark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Rahul Sharma. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. The Complainant has no relationship whatsoever with the Respondent.

The decisions relied upon by the Complainant support its contentions that the use of domain name consisting of a trademark to divert users to another commercial websites is not a bona fide offering or goods or services and cannot confer any rights or legitimate interests upon the Respondent.


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I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or 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 that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent 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 the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to the disputed website. According to an e mail message of the Respondent, he has already sold the disputed domain name to another person.

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The Respondent's registration of the domain name <www.vfscanada.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In the light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.vfscanada.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: March 14, 2013