

# Domain Name

## DISPUTE RESOLUTION

“The Domain Name System (DNS) helps you find your way around the Internet. Feature of DNS names is their hierarchical structure. This is reflected in the anatomy of the domain name”

## Domain Name: Indian Aspect And Dispute Resolution Procedure

### INTRODUCTION :

Domain name is defined by Merriam-Webster as a sequence of usually alphanumeric characters that specifies a group of online resources (as of a particular company or person) and that forms part of the corresponding Internet addresses.



The Domain Name System (DNS) helps you find your way around the Internet. Feature of DNS names is their hierarchical structure. This is reflected in the anatomy of the domain name.

For example, the domain name “whois.icann.org” has three levels of hierarchy: “org” is the top-level, “icann” is the second-level, and “whois” is the third-level.

As seen by users, each level of the hierarchy is separated by a . At each , management authority, that is, the ability to create, edit, or remove names within that level or below, can be assigned or delegated to another party. Continuing to use “whois.icann.org” as an example:

- The ICANN community sets the rules creating, editing, or removing top-level domains;
- The organization that operates the “org” top-level domain sets the rules registering domain names within “org” (e.g., registration policy); and
- The ICANN organization, which registered the “icann.org” name, sets the rules domain names under “icann.org” and using those rules, creates the name “whois.icann.org”.

So, when you register a domain name, you are creating a new realm in the DNS and giving that realm a name, which is the domain name that you registered.

## Contact Us

Paras KKHURANA

Phone number :

+91-9582153601

(India)

### DOMAIN NAME IN INDIA

The only one organization that protects domain name as trademark or services is ICANN ( Internet Corporation for Assigned Names and Numbers).

In India the domain name can be granted protection under the provisions of Trademark Act 1999 and the registration is granted only when the domain name fulfill all requirements to be properly registered under the Act. Once the domain name is registered as trademark it will be having all the rights which are owned by the owners of the registered trademark or services.

*In the case of Bigtree Entertainment v Brain Seed Sportainment held by the Delhi High Court:*

**Facts:** The Plaintiff operates a popular online ticketing platform known as bookmyshow. It has also secured registration in BOOKMYSHOW word marks and logos. The Defendant operates www.bookmysports.com, an online platform used for booking sporting venues and other sporting facilities. The suit was filed claiming infringement and passing off of the Plaintiff's mark by the Defendant and asking for a permanent injunction restraining the same.

**Held:** The Hon'ble court denied the Plaintiffs, interim injunction against the Defendant's use of the domain bookmysports.com.

The court, considering that prefix BOOKMY of the Plaintiff's trademark BOOKMYSHOW was descriptive, not an arbitrary coupling of words and the Plaintiff's failure to prove that "BOOKMY" has acquired distinctiveness or secondary meaning, dismissed the application for interim injunction filed by the Plaintiffs.

Therefore, the domain name place a vital role for specially those business which are only online as the domain name serves as an important element in trade and any commercial activities. Hence it is essential to protect the domain name

*In the case of Global Car Group PWT Limited & Anr vs. Vienna Solution Private Limited:*

**Facts:** Complainant no. 1 is a registered proprietor and user of the trademark "Cars 24" and domain name "Cars24.com" and the complainant is using the same domain name in various countries . That the Complainant has been openly continuously and expensively using the mark "Cars24" as its trade name, corporate name, business name, trading style , trademark worldwide since its incorporation. That the complainant came to know in June 2017 that consumer are misguided and calling on the domain of the Respondent instead of calling on the contact number of Complainant no. 2.

That the Respondent said that they have registered their domain name "Cars24.in" on 3rd January 2007 and the Respondent also said that they are registered on register of company since January 20th 2006 and deals in IT solutions since its inceptions. In 2007 they entered into the business of second hand cars.

In the year 2001 the domain name of the complainant was put on sale and the complainant was not doing any business of sale, resale of second hand cars and that the said domain name "Cars24.com" was also on sale on 2003, 2004 and 2005. In the year 2007 till 2014 the complainant was in the business of digital and other things.

Further the Respondent is in the business of sale and purchase of second hand cars since 2007 and the complainant started their business of the same in the year 2014.

**Held:** The Hon'ble court said that the complainant was conducting business activities in India since 12.08.2015 under the domain name "Cars24.com" thought there domain name was registered in 2001 but there was no actual use of the domain name till 2005 and from 2007 to 2014 they were merely posting Ads of digital and not operating any legitimate website on it. On the other hand the court found from the website www.archive.org that the disputed domain name of the Respondent was continuously in operation w.e.f 2007.

The court said even though the complainant is a registered proprietor of the trademark "Cars24.com" since 2016 and using the same since 2015, it cannot prevent the respondent from using the disputed domain name which the respondent is using since 2007. Further as per the provision of section 34 of Trademark Act 1999, "proprietor of a trade mark does not have the right to prevent the use by another party of an identical or similar mark where that user commenced prior to the user or date of registration of the proprietor"

Therefore it was held that though the domain name of the Respondent is similar or identical to the registered trademark of the Complainant, it does not preclude the Respondent from using the same and that for the reason tribunal finds that the disputed domain name has not been registered and used in bad faith by Respondent under the policy.

### GROUNDINGS FOR FILING COMPLAINT THE .IN REGISTRY

- If the Registrant's domain name is identical or confusing, similar to a name, trademark or service mark in which the Complainant is having rights,
- If the Registrant has no rights or authorized interests in respect of the domain name:
- If the Registrant's domain name has been registered or is being used in bad faith.

### PROCEDURE FILING COMPLAINT RECOVERING OF A DOMAIN NAME

Domain name which are registered under .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP) can be recovered. Certain procedure and rules need to be followed the same. The Rules and procedure are mentioned under INDRP.

Any person who thinks that someone else's domain name is in conflict his Intellectual property rights and that the other person has taken that domain name in bad faith then that person can file complaint under INDRP as per the rules and guidelines.

Nation Internet Exchange of India (NIXI) facilitates a ground exchange of domestic Internet traffic. The .IN registry is a part of NIXI and maintains the .in domain name in India.

INDRP have Rules and Procedure which needs to be followed and Once NIXI has received your request, and your filing fee, it will assign an arbitrator and you will receive additional communications.

All dispute shall be subject to the jurisdiction of Delhi courts only.

### STEPS FILING A COMPLAINT

#### Step1: Address

Anyone can file. Copies to be send:

IN Registry

c/o NIXI (National Internet eXchange of India)

Regd. Off.: 6C,6D,6E Hansalaya Building  
15, Barakhamba Road, New Delhi-110001 India  
Tel.: +91-11-48202011,

Tel. : +91-11-48202000,

Fax: +91-11-48202013

E-Mail: registry@nixi.in

Or any other address that may be published on the Registry? website from time to time.

#### Step 2: Details in the Complaint

Three copies of the complaint along annexure should be send and same should be send by mail.

The complaint should incorporate the following details:

- A request that the Complaint be submitted to arbitration in accordance the Dispute Resolution Policy and the Rules framed thereunder,
- Details of Name, postal and e-mail addresses, and the telephone and facsimile numbers of the Complainant.
- Name of the Respondent and all information (including any postal and e-mail addresses and telephone and facsimile numbers) known to the Complainant regarding how to contact the Respondent including contact

information based on any pre-Complaint dealings, to allow the .IN Registry to send the Complaint to the Respondent.

- The domain name which is the subject of the Complaint;
- Details of Registrant of Domain Name
- The trademark(s) or service mark(s) on which the Complaint is based and, for each mark, describe the goods or services, if any, which the mark is used. Also other goods and services which complainant intends, at the time the complaint is submitted, to use the mark in the future;
- describe, in accordance the Domain Name Dispute Resolution Policy, the grounds on which the Complaint is made including,
- Specify, in accordance the Dispute Resolution Policy, the remedies sought;
- Identify any other legal proceedings that have been commenced or terminated in connection or relating to the domain name that is the subject of the Complaint;
- Conclude the following statement followed by the signature of the Complainant or its authorized representative
- Annex any documentary or other evidence, including a copy of the Policy applicable to the domain name in dispute and any trademark or service mark registration upon which the Complaint relies, together a schedule indexing such evidence.

**(NOTE : A separate Complaint is required to be filed dispute relating to each domain name.)**

#### **Step 3: Notification**

- If the complaint is in accordance Dispute resolution policy and Rules of procedure and also on the receipt of the prescribed fee the .IN Registry shall forward the complain 3 working days.
- In three working days the complainant shall be notified the defects and the complaint shall be given 5 working days to clear the deficiencies otherwise same shall be deemed as withdrawn.
- That after the deficiencies being cleared the .In Registry shall appoint a Arbitrator from the list of arbitrator and will thereafter send the copies of complaint and documents to the Arbitrator and the Respondent.
- The date of commencement of the arbitration proceeding shall be the date on which the Arbitrator issues notice to the Respondent as stipulated under Paragraph 5 (c) of these Rules of Procedure.

#### **Step 4: Arbitrator**

- .IN Registry shall maintain the list of arbitrator and shall appoint an arbitrator within 5 working days once the defects are cleared.
- Once the arbitrator is appointed the parties shall be notified.
- The award shall be passed within 60 days of the proceeding. In exceptional circumstances this period may be extended by the Arbitrator maximum 30 days. However, the Arbitrator shall give the reasons in writing such extension.
- Within 3 days from the receipt of the complaint the Arbitrator shall issue a notice to the Respondent.
- The Arbitrator shall ensure that copies of all documents, replies, rejoinders, applications, orders passed from time to time be forwarded to .IN Registry immediately for its records and for maintaining the transparency in the proceedings.
- The Arbitrator conducts the arbitration proceedings in accordance with the Arbitration & Conciliation Act 1996 and the IDR Policy and Rules. The Registrant is required to submit to the mandatory arbitration proceeding.

#### **Step 5: Appeal to the award**

Since the INDRP follows the Arbitration Proceedings in accordance with the Arbitration and Conciliation Act 1996, the appeal provisions contained in that Act will apply to the INDRP as well. This means that a person has 90 days to appeal the decision of the Arbitrator.

#### **General:**

- Communication: No unilateral communication with the Arbitrator. All communications between a Party and the Arbitrator, or between a Party and the .IN Registry shall be made in the manner prescribed in these Rules of Procedure.
- Language : English . Any documents submitted in a language other than English shall be accompanied by a true copy of its translation in English.
- In-Person Hearings: There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference), unless the Arbitrator determines, in his sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the Complaint.

- Fee: The Complainant shall pay to the .IN Registry the prescribed fee, in accordance with the .IN Registry's schedule of fees, within the time and in the amount required. All cheques/drafts towards the . IN Registry administration charges and payment of the Arbitrator's fee shall be drawn in favour of 'NATIONAL INTERNET EXCHANGE OF INDIA accompanied by an amount of Rs.30,000/- + Service Tax payable by way of Cheque or Demand Draft or Wire Transfer.

---

*Fees :*

---

IN Registry's Administration Fee	₹10,000/-
Arbitrator's Fee	₹20,000/-
Total Amount	₹30,000/- + GST (18%)
For personal hearing	₹2,000/- + GST (18%) per hearing Maximum TWO hearings

---

---