

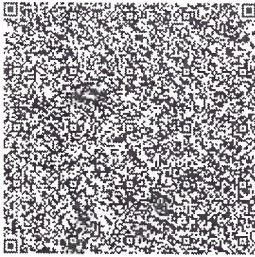
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BEFORE SHRI SANJAY KUMAR SINGH, SOLE ARBITRATOR
NATIONAL INTERNET EXCHANGE OF INDIA
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (ANDRP)
IN RE:

Deloitte Touche Tohmatsu -- Complainant

vs

Yitea

-- Respondent

Sanjay Kumar Singh
1/12/2018

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BEFORE SHRI SANJAY KUMAR SINGH, SOLE ARBITRATOR,
NATIONAL INTERNET EXCHANGE OF INDIA
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN THE MATTER OF:-

Deloitte Touche Tohmatsu
Schutzengasse 1
8001 Zurich, Switzerland
THROUGH ITS ATTORNEYS
Remfry&Sagar
Remfry House at the Millennium Plaza
Sector-27, Gurgaon -122009
Email: remfry-sagar@remfry.com
ca.brijesh@remfry.com
shreyosi.pal@remfry.com
navya.chopra@remfry.com

COMPLAINANT

VERSUS

Yitao
Apex Consulting
75 Bloor Street, East
Toronto, Ontario-M4W 3R8
Canada
Phone: +222.5585588
Email: sunong@live.com

RESPONDENT

NAME AND ADDRESS OF THE REGISTRAR

Netlynx Technologies Pvt. Ltd. (R62-AFIN)
 103, Tirupati Udyog Premises
 I.B. Patel Road
 Off. Western Express Highway
 Goregaon East
 Mumbai-400063
 Tel: +91.22.40811133; +91.22.40811144

PREFERRED MODE OF COMMUNICATION:

To the Complainant's Attorneys by e-mail and/or post

DISPUTED DOMAIN NAME: "Deloitte.co.in"

I. FACTS OF THE CASE:

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A. Complainant's Contentions:

1. The Complainant 'DeloitteTouche Tohmatsu' is a SwissVerein with a place of business at Schiitzengasse 1, 8001Zurich, Switzerland.

The Complainant has submitted that licensed the DELOITTE Marks to its network of independent member firms ("Deloitte Member Firms") that provide services to clients around thy world(including both public and private entities) such asaccounting, auditing, consulting, financial advisory, riskmanagement and tax services (either directly or through their affiliated entities). All goodwill developed from the useof the DELOITTE Marks (and domain namesincorporating the DELOITTE Marks) by Deloitte MemberFirms inures to the benefit of Complainant.

2. The complainant has submitted that the complainant andthe Deloitte Member Firms collectively comprise one of the world's largestmultinational professional services organizations. Thecompany now known as Deloitte was first established in the year 1845 and is one of the four largest professional services networks in the world, offering audit, assurance, tax, consulting, advisory, actuarial, corporate finance and legal services. DELOITTE is the brand of the Complainantunder which tens of thousands of dedicated professionals in independent firms throughout the

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world collaborate to provide audit, consulting, financial advisory, risk advisory, tax and related services to select' clients.

3. The complainant has submitted that each Deloitte Member Firm provides services in a particular geographic area and is subject to the laws and professional regulations of the particular country or countries in which it operates. Complainant itself does not provide services to clients. Complainant and the Deloitte Member Firms around the world are each separate and distinct legal entities, which cannot obligate the other entities, and which are each only liable for their own acts or omissions and not those of one another.

4. The complainant has submitted that Deloitte serves approximately four out of every five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries. Together, this network brings world-class capabilities, insights, and high-quality service to address the needs of Deloitte Member Firm clients that often involve the world's most complex business challenges.

5. The complainant has submitted that in India, Deloitte ToucheTohmatsu India LLP, a member firm, has been present for more than 20 years through its various successors and subsidiaries such as Deloitte Consulting India Private Limited (incorporated on

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March 15, 2003), Deloitte & Touche Consulting India Private Limited (incorporated on April 2, 2007), Deloitte Tax Services India Private Limited (incorporated on June 9, 2004), Deloitte Support Services India Private Limited (incorporated on June 7, 2004), Deloitte Touche Tohmatsu India LLP (Incorporated on January 10, 2015), Deloitte Financial Advisory Services India Private Limited (incorporated on June 7, 2004), Deloitte & Touche Assurance & Enterprise Risk Services India Private Limited (incorporated on June 4, 2004), and Deloitte Special Projects India Private Limited (incorporated on May 27, 2014) etc. The complainant has further submitted that in the year 1995, Deloitte Touche Tohmatsu India LLP (previously known as Deloitte Touche Tohmatsu India Private Limited) opened at the address -12, Dr. Annie Besant Road, Opp. Shivsagar Estate, Worli, Mumbai -400018, Maharashtra, India, and since has expanded its offices to various locations in India. The complainant has further submitted that as of now, Deloitte Touche Tohmatsu India LLP has offices across various locations including Ahmedabad, Bangalore, Chennai, Gurgaon, Hyderabad, Kolkata, Mumbai and Pune.

6. The complainant has submitted that the Complainant and the Deloitte Member Firms use the well-known trade/service marks/names 'DELOITTE', 'DELOITTE & TOUCHE' and other DELOITTE formative marks upon and in relation to its business, which is its extremely valued intellectual property. The complainant has

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further submitted that The trade/service mark/name DELOITTE also forms integral part of the corporate name of the Complainant and serves as its principal trade/service mark and domain name. The trade/servicemark/name DELOITTE/DELOITTE formative marks being the most valued Intellectual Property, the Complainant has taken utmost care to secure statutory rights therein through trade/service mark registrations in numerous jurisdictions of the world including in India. The complainant has further submitted that its trade/service mark/name DELOITTE is subject of around more than 500 trade/service mark registrations/applications in about 150 jurisdictions around the world. The complainant has annexed a list showing a sampling of the Complainant's worldwide registrations for the trade/service mark DELOITTE as Annexure-A. It has also annexed collectively and marked as Annexure - B (Colly), the copies of Registration Certificates in respect of the Complainant's trade/service mark DELOITTE from the United States of America, Canada, China and various other jurisdictions including international marks registered under the World Intellectual Property Organization's Madrid System.

6. The complainant has submitted that in India, the Complainant's earliest registration for a DELOITTE formative mark was first filed in 1996. The complainant has given the details on each of the

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Complainant's Indian trade/service mark registrations for the :
DELOITTE mark follow below:

- Trade Mark: DELOITTE - Registration No. 1261053 dated January 14, 2004 in Classes 9, 35, 36 and 42.
- The said mark was advertised in Trade Marks Journal No. 1328 dated February 14, 2005 and is valid and subsisting on the Register.
- Trade Mark: DELOITTE & TOUCHE- Registration No. 731601 dated September 4, 1996 in Class 9

The said mark was advertised in Trade Marks Journal No. MEGA 1 Vol. D dated August 23, 2003 and is valid and subsisting on the Register.

- Trade Mark: DELOITTE~ TOUCHE- Registration No. 733866 dated September 13, 1996 in Class 16.

The said mark was advertised in Trade Marks Journal No. J 340 dated March 15, 2006 and is valid and subsisting on the Register.

- Trade Mark: DELOITTE GREENHOUSE Registration No. 2610037 dated October 9, 2013 in Classes 35, 36 and 42.

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The complainant has submitted that the said mark was advertised in Trade Marks Journal No. 1707 dated August 24, 2015 and subsisting on the Register.

The complainant has submitted that the aforesaid Registrations are valid and subsisting on the Register of Trade Marks and copies of the Certificates of Registration issued by the Indian Trade Marks Registry in respect of the aforesaid Registrations has been annexed by complainant as Annexure-C.

7. The complainant has submitted that the complainant and the Deloitte Member Firms have invested time, capital, efforts and resources in advertising and promoting its products under the trade/service mark/name DELOITTE across the globe through all forms of media in various countries of the world. The Complainant and the Deloitte Member Firms have also been featured in a wide variety of press releases and coverage by the press. The complainant has further submitted that the aforesaid press releases and coverage have left an indelible impression in the minds of the public so much so that the trade/service mark/name DELOITTE is exclusively associated with the Complainant and the Deloitte Member Firms and none other. Copies of press releases and other media coverage featuring the Complainant's trade/service mark/name DELOITTE in various jurisdictions of

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the, World Including India has been annexed by complainant as Annexure - D.

8. The complainant has submitted that it operates a comprehensive website at www.deloitte.com which provides a detailed overview of the professional services offered by Deloitte Member Firms under the trade/service mark/name DELOITTE, as well as a wealth of information for consumers, businesses and investors, including market reports, newsletters, research and other commentary and publications. Complainant's Member Firm in India has a dedicated site at https://ww2.deloitte.com/in/en.html?icid=site_selector_in. The complainant has submitted that the mark/name DELOITTE is prominently displayed on all the pages of the website, on all publications, and on all related online social media accounts and pages, including those at Facebook, LinkedIn, YouTube, Twitter, Instagram and Google+. The www.deloitte.com website and the pages dedicated to the Indian member firm are extremely popular and provide a valuable source of information and knowledge with respect to the Complainant, its Indian member firm, and the products and services offered by Deloitte Member Firms under the trade/service mark/name DELOITTE. Complainant's www.deloitte.com website is visited by a significant and noteworthy number of unique visitors every month. To elaborate, for the period of January 1, 2015 to October 27, 2015, there were more than 34.2

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million hits on the said website. The complainant has submitted that it is apparent that the goodwill and reputation of the Complainant as regards the trade/service mark/name DELOITTE pervades both the real and online worlds. The Relevant extracts from the Complainant's www.deloitte.com website and the pages dedicated to its member firm in India reflecting extensive, exhaustive and substantial use of the mark/name DELOITTE has been annexed by complainant as Annexure-E.

9. The complainant has submitted that it has registered numerous domain names that incorporate the trade/service mark/name D.ELOITTE at several generic top level domain names (gTLDs) such as 'deloitte.com', 'deloitte.net', 'deloitte.org', 'deloitte.biz' etc. Complainant has also registered "DELOITTE" domain names at a number of country code top level domain names (ccTL.Ds) such as 'deloirtte.hk,' 'deloitte.au,' etc. In addition to the aforesaid, Complainant also has '.deloitte' as gTLD for instance: 'nic.deloitte', Further, to safeguard Complainant's rights over the mark/name DELOITTE and prevent misusers from exploiting the goodwill/reputation vested in the mark DELOITTE, the Complainant has registered domains for variants and common misspellings of the mark/name DELOITTE such as 'delloitte.biz', 'delloitte.org', 'deloiitte.corn', 'deloite.biz', 'deloite.net', 'deloite.org', 'deloitee.corn' etc. The complainant has annexed a list of over 600 domain names

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registered in favour of the Complainant along with the WHOIS, details in respect of a few domains as Annexure - F (Colly.).

10. The complainant has submitted that owing to the excellent quality of the services provided by Complainant's Member Firm under the trade/service mark/name DELOITTE, the same commands tremendous popularity and has been renowned extensively the world over. The complainant has further submitted that the Deloitte network's aggregate revenues exceeded \$36.8 billion in 2016 and \$38.8 billion in the year 2017, clearly establishing the reputation and goodwill of its trade/service mark/name DELOITTE. The complainant has submitted that the DELOITTE brand of the Complainant has achieved substantial commercial success and accomplishment worldwide and products/services under the mark/name DELOITTE are consistently ranked among the world's best in the fields of accounting, auditing, management consulting and tax advisory.

11. The complainant has submitted that Deloitte member firms' businesses under the trade mark/name DELOITTE is continually advertised and reviewed in major newspapers, and internet publications and international distribution. The complainant has submitted that it also promotes activities, achievements and sponsorship under the mark/name DELOITTE via the website

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www.deloitte.com and by distributing global press releases available internationally including in India.

12. The complainant has submitted that it has successfully enforced its rights in the mark/name DELOITTE and the said mark/name has been held to be internationally well-known by different Tribunals: Deloitte Touche Tohmatsu v. Deloitte Daniel, Deloitte Consulting I Whois Privacy (enumDNSdba), WIPO Case No. 02015-1901, 'at §6.B; Deloitte Touche Tohmatsu v. Richard Yarning, Trademark Worx, LLC, WIPO Case No. 02014-1360, at §6.A; Deloitte Touche Tohmatsu V. Supervision Audio Video Inc., Search-Universal.com, WIPO Case No. D2011-0187, at §6.B; Deloitte Touche Tohmatsu v. H3B, WIPO Case No. D2011-0181, at §6.13; Deloitte Touche Tohmatsu v. Open Water Enterprises Limited, Louise S., WIPO Case No. D2008-1632, at §6.C; Deloitte Touche Tohmatsu v. Pluto Domain Services Private Limited/Private Whois for dpelprip 1703, WIPO Case No. 02008-1617, at §6.C; Deloitte Touche Tohmatsu v. CostNet aka Domain Manager, WIPO Case No. 02003-0619, at §6.A.

B. Respondent:

1. The complainant has submitted that it became aware of a domain name viz. deloitte.co.in registered in the name of one Yitao of Apex Consultancy (hereinafter referred to as the "Registrant"). The complainant has further submitted that it was shocked and dismayed to learn that the said domain was also parked for sale by the

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Registrant without using or making any bonafide use of the same. It is pertinent to mention here that the Registrant of the domain name deloitte.co.in has no affiliation with the Complainant. The said domain name deloitte.co.in was created on April 12, 2011. The complainant has annexed the WHOIS records in respect of the domain name in question as Annexure - G.

2. The complainant has submitted that no website is active under the domain name in question, with merely a parked site which requests viewers to fill up certain details including the price (in USD) for which they may be willing to purchase the disputed domain name. The complainant has submitted that in addition, on the impugned website, an advertisement for sale of the said domain with the caption 'the domain deloitte.co.in may be for sale. Click here to inquire about this domain' is reflected. The complainant has annexed the Copy of the parked website pertaining to the domain deloitte.co.in as Annexure. H.

3. The complainant has further submitted that a search of all WHOIS for other domains registered by the Registrant identified 292 additional domain names on which the Registrant is the listed owner. The complainant has annexed the details of the reverse WHOIS records as Annexure-I. The complainant has submitted that a perusal of Annexure -I clearly indicates that the Registrant has not only registered over 250 domain names but nearly all of the domain names owned by the Registrant incorporate well-known

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trademarks, Examples of the Registrant's other domainnames that incorporate \globally well-known trade/service marks/names include applestore.in, bankofamerica.co.in, marcjacobs.in, diageo.co.in, to name a few.

4. The complainant has submitted that under paragraph 6(ii) of the Policy, the Registrant's pattern of extensive domain registrations and cybersquatting to prevent trade mark owners from reflecting their marks in corresponding domainnames further demonstrates the Registrant's bad faith registration of the domain in question. The exorbitant number of domain names that the Registrant has registered demonstrates that the Registrant has engaged in a clear pattern of registering domain names in bad faith to block the legitimate and superior rights of trade mark owners . in those domain names only to later ransom the domain names to the trade mark owner. The complainant has placed reliance on RebookInternational Limited v. C J Reebok, INDRP Case NQ. 618 (Oct. 10, 2014).

5. The complainant has submitted that it is writ large from the above that the Registrant is a habitual cyber squatter who is set out at making illicit gains by registering domain names identical to well-known trade/service marks, corporate names/trading styles, domain names, etc .

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6. The complainant has submitted that it is evident that the Registrant is using the objectionable domain name illegally and dishonestly to derive unjust pecuniary gains.

7. The complainant has submitted that there is no iota of doubt that the impugned domain name is the Complainant's trade/service mark/name/domain name DELOITTE. In the circumstances, the Complainant submits that the Registrant's impugned domain name 'deloitte.co.in' may be transferred to the Complainant or the same may be cancelled forthwith on the following, amongst other grounds, which are exclusive and without prejudice to each other:

GROUND:

(i) PRIOR RIGHTS REGISTRATIONS AND TRADE MARK REGISTRATIONS:

The complainant has submitted that Paragraph 3(b) of the INORP enjoins the Registrant to ensure that to the Registrant's Knowledge, the registration of the domain name will not infringe upon or otherwise violate the right of any third party. The complainant submits the following in support of paragraph 4(i) of the INDRP and paragraph 3(b)(vi)(l) of the INORP Rules of procedure, that the Registrant's domain name is identical to the trade mark in which the Complainant has rights:

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(ii) The Registrant's impugned domain name 'deloitte.co.in' is identical to and comprises in entirety the Complainant's trade/service mark/name DELOITTE which was registered in a number of countries prior to the creation of the domain name, including India. The complainant has submitted that the Registrant has registered the impugned domain name 'deloitte.co.in' with the mala fide intent to trade upon the immense goodwill and reputation enjoyed by the Complainant in its well-known mark/name/domain name DELOITTE and thereby gain undue leverage from it and make illicit pecuniary gains. It is evident that the objectionable domain name has no commercial meaning or significance independent of the Complainant's trade/service mark/name DELOITTE. This is a clear case of infringement and passing off which is violative of the rights enjoyed by the Complainant in its well known and established trade/service mark/name/domain name DELOITTE. The complainant has submitted that the Registrant's use of the Complainant's well known and reputed trade/service mark/name DELOITTE clearly establishes that the Registrant registered the impugned domain name with full knowledge of the Complainant, its business activities and intellectual property.

(iii) The Complainant has stated that the impugned domain name 'deloitte.co.in' is identical to, inter alia, the following domain names registered in the name of the Complainant:

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S.No	Domain name	Registrant's domain name
1	deloitte.com	deloitte.com
2.	deloitte.net	
3.	deloitte.org	
4.	deloitte.hk	
5	deloitte.au	
Note: The list is illustrative and not exhaustive		

(iv) The complainant has further submitted that the impugned domain name was created on April 12, 2011 whereas the Complainant's domain 'deloitte.com' was created on April 20, 1995. Further, the Complainant's establishment goes back to the year 1845 and: the earliest trade mark registration in respect of the trade/service mark/name DELOITTE dates back to the July 10, 1989 in the United-Kingdom. The complainant has submitted that the trade/service mark/name DELOITTE & TOUCHE is also registered in India under No. 731601 since September 4, 1996 and the mark/name DELOITTE per se is registered since January 14, 2004 under No. 1261053. Thus, the Complainant's adoption of the trade/service mark/name/domain name DELOITTE is much prior to the Registrant's registration of the impugned domain name 'deloitte.co.in'. The complainant has submitted that in view of the same, it is crystal clear that the Complainant has

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prior rights in the trade/service mark/name/domain DELOITTE vis-a-vis the Registrant.

(B) REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS IN THE DOMAIN NAME:

Paragraph 7 of the INDRP states as under:

"7. Registrant's Rights to and Legitimate Interests in the Domain Name.

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its valuation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii) :

(i) before any notice to the Registrant of the dispute, the Registrant'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:

(ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or

*Signed for Lyle
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(iii) the Registrant 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 complainant has submitted that the Registrant has to establish one or more of the circumstances enumerated in paragraph 7 of the INDRP to assert proprietary rights over the domain in question. The complainant has submitted that the Registrant cannot take refuge in any of the referred conditions. This is unequivocally demonstrated herein below:

(iv) As regards Paragraph 7(i), it is submitted that the Registrant is not offering any goods/service, under the domain name 'deloitte.co.in'. A review of the website under the objectionable domain name 'deloitte.co.in' reflects that the said domain is parked and being offered for sale by the Registrant. Further, the statement 'the domain deloitte.co.in may be for sale. Click here to inquire about this domain' clearly evidences that the Registrant hopes to sell the domain name at a profit and has no intent to use the domain name in connection with any other businesses or services. Therefore, by no stretch of imagination can the Registrant demonstrate any use of the domain name relating to bona fide offering of goods or services before an~ notice of this dispute or at any point in time whatsoever.

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(v) Regarding paragraph 7(ii), it is submitted that the Registrant is not commonly known by the domain name 'deloitte.co.in' or 'Deloitte' and has not been authorized or licensed 'by the Complainant to use its mark/name DOELOITTE in a domain name or in any other manner. The Complainant's domain deloitte.com and various other domains comprising the mark DELOITTE is identified exclusively with the Complainant by the trade and public at large. Further, the Complainant has registered the DELOITTE mark in approximately 150 jurisdictions around the world, including India, with the earliest registration secured for the DELOITTE mark dating back to July 10, 1989 in the United Kingdom. The complainant has submitted that due to the extensive and continuous use of the mark, the same has become well-known and come to be exclusively associated with the Complainant and the Deloitte Member Firms and no one else. Hence, the Registrant cannot establish any association with the domain name in question for any reason/s whatsoever.

(vi) With respect to paragraph 7(iii), it is submitted that the Registrant is not making any legitimate non-commercial or legitimate fair use of the domain name. In fact, the conduct of the Registrant as highlighted above cannot come under the definition of bona fide use. Registration of the impugned domain is aimed to gain leverage from the immense goodwill and reputation of the Complainant's trade/service mark/name DELOITTE, divert

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visitors/customers by creating confusion\ and thereby commercially profit from use of the Complainant's trade/service mark/name DELOITTE. Thus, the Registrant is (i) indulging in unfair use of the domain name with an intention to reap profits therefrom, (ii) misleading/diverting customers to competitor websites, and (iii) tarnishing the goodwill and reputation enjoyed by the Complainant's well-known trade/service mark/name DELOITTE. The Registrant, therefore, cannot justify any legitimate interest in the domain name 'deloitte.co.in',

(C) BAD FAITH:

Paragraph 6 (i), (ii) and (iii) of the INDRP provides guidelines to the Arbitrator to adjudicate on the 'bad faith' of the Registrant in registering the domain name and subsequent use thereof. The said paragraph states as under:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4 (iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant 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 bears the name or is the owner of the

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trademark or servicemark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's 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

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, Sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location. "

The complainant has further submitted that, Paragraph 3(b) (vi) (3) of the INORP Rules of Procedure states that the Complainant needs to prove 'why the domain name in question should be considered as having been registered and being used in bad faith.' 'Bad faith' is a legal term which the Black's Law Dictionary (Seventh Edition) defines as "dishonesty of belief or purpose. Also termed *asmala fides*". The Complainant has also submitted that its case is established under the circumstances covered in Paragraph 6 (i), (ii) and (iii) of the INDRP and paragraph 3(b)(vi)(3) of the IND RP Rules of Procedure as under:

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(iv) Insofar as Paragraph 6(i) is concerned, it is submitted that the Registrant has registered the impugned domain name 'deloitte.co.in' with the sole purpose of selling/transferring the same for excessive consideration to make illicit gains, as is evident from the Registrant's website extract filed herein evidencing that the domain is available for sale (Annexure H). Further, registration of the objectionable domain name much subsequent to the Complainant's registration of more than 600 domains comprising the name/mark DELOITTE since the year 1998 onwards clearly establishes (mis) use of the Complainant's well-known trade/service mark/name/domain DELOITTE to gain illegal benefits.

(v) Insofar as Paragraph 6(ii), it is beyond doubt that the Registrant registered the impugned domain name 'deloitte.co.in' knowing fully well of the Complainant, the Deloitte Member firm, and their affiliated businesses. Mere registration of the domain name comprising Complainant's well-known trade/service mark/name DELOITTE and not using the same establishes Registrant's intention to prevent the Complainant from reflecting the mark in corresponding domain name. The registration of the domain name 'deloitte.co.in' by the Registrant has resulted in the Registrant's mis(ue) of the Complainant's trade/service mark/name/ domain(s) DELOITTE for undue pecuniary gains. The Complainant has already established that more than 600 TLQs/ccTLDs comprising DELOITTE

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including the domain 'deloitte.com' is owned and managed by the Complainant. Further, a reverse WHOIS indicates that the Registrant has registered 292 domains, nearly all of which, like deloitte.co.in, incorporate the trademarks of well-known global companies, and which are being offered for sale. The complainant has mentioned applestore.in, marcjacobs.in, Diageo.co.in, etc.

(vi) As regards Paragraph 6(iii), the website appearing at the Registrant's domain name has been constructed in a manner so as to portray an association/affiliation with the Complainant and/or the Deloitte Member Firms. The conduct of the Registrant clearly proves its mala fide intention to attract Internet users to its website by using the mark/name of the Complainant and consequently creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Registrant's website and/or of a service on the Registrant's website. Further, Internet users desirous of accessing the Complainant's website may get attracted to the impugned website/domain comprising Complainant's trade/service mark/name, thereby creating confusion in their minds. Such conduct of the Registrar clearly establishes the Registrant's mala fide to gain illicit benefits and cause harm to the Complainant's and its Member Firms' business.

(D) OTHER GROUNDS:

*Seymour 1 am 23h
1-12-2018*

(i) Paragraph 3(b) of INDRP obligates that the Registrant's registration of the domain: name does not infringe upon or otherwise violate the rights of any third party. In the instant case, as elaborated hereinabove, the Registrant's domain name 'deloitte.co.in' comprising the Complainant's registered trade/service mark DELOITTE and DELOITTE formative marks infringes upon the statutory and proprietary rights of the Complainant vesting in the said trade mark.

(ii) Paragraph 3(c) of INDRP states that 'the Registrant is not registering the domain for an unlawful purpose'. In the instant case, the Registrant has registered the impugned domain name 'deloitte.co.in' with mala fide intention to mislead innocent customers and prospective customers of the Complainant's Indian member firm to its website thereby making unjust pecuniary gains therefrom and in the process tarnish the Complainant's and its member firms' goodwill and reputation vesting in the trade/service mark/name DELOITTE.

(iii) Paragraph 3(d) of INDRP obligates the Registrant not to use the domain name in violation of any applicable laws or regulations. In this regard, it is humbly submitted that registration of the impugned domain name 'deloitte.co.in' violates not only INDRP/INDRP Rules of Procedure but is also in violation of the provisions of the (Indian) Trade Marks Act, 1999 and opposed to the principles of business ethics.

Satyam Kumar Gyl
1-12-2018

RESPONDENT

The Respondent has neither filed his response nor any document in his defence despite repeated notices. Hence he is proceeded exparte and the complainant is being decided on the merit of the complaint and as per law of the land.

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "**Deloitte.co.in**"
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
6. The complainant has prayed for an award in the above matter for transfer of the domain name "**Deloitte.co.in**" in favour of the complainant.
8. On 01-10-2018 I issued notice to the respondent and informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/reply and rejoinder with the supportive document/evidence within TEN days of receipt of notice.

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9. On 12-10-2018 NIXI was directed to serve the copies of the complaint and the annexures to the Respondent.

10. The Respondent was not served with the complaint and the annexures as such the service of the hard copies of the copies of the complaint and the annexures was dispensed with. NIXI was requested to send the soft copy of the complaint and annexures to the respondent at his email address though the copies of the complaint and the annexures were sent to the respondent on 12-10-2018.

11. On 12-10-2018 NIXI complied with the directions and sent the soft copy of the complaint and annexures to the respondent at his email address.

12. On 26-11-2108 I again issued notice to the respondent and further directed the respective parties to the complaint, to file his counter/ reply with the supportive document/evidence within Ten days of receipt of notice. It was made clear to the Respondent that if the respondent failed to submit the reply / response and documents in his support then the complaint would be decided exparte on the merit of the complaint and as per law of the land.

However the Respondent did not comply the directions and did not file any response / reply.

13. I have perused the records and have gone through the contents of the complaint and Annexures. Since respondent has not filed any reply and document hence the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.

14. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that

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the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth the reply and nor provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

15. the apex court has held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. It is held in above case that in modern time's domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

16. The Respondent has not submitted his reply / counter or documents or evidence in his defense despite notices issued to him. Thus in view of the contentions of complainant and the law as discussed the conclusion is that the domain name "**Deloitte.co.in**" is identical and confusingly similar to the trademark of complainant "**DELOITTE**" and the complainant has established that he has right in the trademark and further the respondent has got registered his domain name "**Deloitte.co.in**" in bad faith.

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RELIEF:

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "**Deloitte.co.in**", as it has established its bonafide rights in trademark in facts and circumstances and as per law discussed herein above. Hence, I direct that the Domain name "**Deloitte.co.in**" be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 01-12-2018.


(Sanjay Kumar Singh)
Arbitrator