

ADNDRC

**Asian Domain Name Dispute Resolution Centre -
Kuala Lumpur**
(Kuala Lumpur Office)

**ADMINISTRATIVE PANEL DECISION
SOLE PANELIST :: MR.D.SARAVANAN**

Case No.	:KLRC/ ADNDRC – 364 – 2014
Complainant	:Ms.Jayashree Iyer
Respondent	:Mr.K.P.Sivadass
Disputed Domain Names	:<equitassfb.com>, <equitassmallfinancebank.com> and <equitasbank.com>

1. The Parties and Contested Domain Name:

The Complainant is Ms.Jayashree Iyer, having address at Phase II, 4th Floor, Spencer Plaza, No.769, Anna Salai, Chennai 600 002, through its Authorized Representative Mr.H.Mahalingam, Phase II, 4th Floor, Spencer Plaza, No.769, Anna Salai, Chennai 600 002.

The Respondent is Mr.K.P.Sivadass, having address at Chaitanya Sheel, Thane, Maharashtra – 421 202.

The domain name at issue is **<equitassfb.com>**, **<equitassmallfinancebank.com>** and **<equitasbank.com>** (“Disputed Domain Names”) registered by the Respondent with GoDaddy.com.

2. Procedural History:

Pursuant to the Internet Corporation For Assigned Names and Numbers (ICANN) Uniform Domain Name Policy (“**the Policy**”), the Rules of Uniform Domain Name Dispute Resolution Policy (“**the Rules**”) and the Asian Domain Name Dispute Resolution Centre Supplementary Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules For the Uniform Domain Name Dispute Resolution Policy (“**the Supplemental Rules**”), the

Complainant filed a Complaint in English language with the Kuala Lumpur Office of the Asian Domain Dispute Resolution Centre (“**ADNDRC-KL**”) and elected to have the case in question be dealt with by a single member panel.

The ADNDRC-KL sent the Complaint Transmittal Coversheet (CTC) to the Respondent along with a copy of the complaint stating that ADNDRC-KL once checked the Complaint to determine that it satisfies the formal requirements of the Policy, ADNDRC-KL will forward an official copy to the Respondent and then the Respondent have 20 calendar days within which to submit a Response to the Complaint under Form R.

- January 13, 2016 The ADNDRC-KL sent an email to D.SARAVANAN enquiring from him whether he could act as Panelist and if so, whether he could act independently and impartially in the matter in question, a copy of the email was marked to the Complainant and Respondent wherein it was mentioned that ADNDRC-KL did not receive any response under Form R from the Respondent within the time provided.
- January 13, 2016 D.SARAVANAN made a declaration in writing that he was willing to act and if appointed would act independently and impartially.
- January 14, 2016 The ADNDRC-KL notified the parties that D.SARAVANAN had been appointed as a sole panelist.

3. Factual background:

A. Complainant

The Complainant claims that they are the lawful owner of the Trademark viz., ‘equitas’ and that the registration of domain names in reference i.e., **<equitassfb.com>**, **<equitassmallfinancebank.com>** and **<equitasbank.com>** by the Respondent is in bad faith for lawful gain and misuse with the intention of preventing the Complainant, who

is the owner of the trademark 'equitas', from reflecting the said trademark in its domain name in India.

B. Respondent

The Respondent is Mr.K.P.Sivadass, having address at Chaitanya Sheel, Thane, Maharashtra – 421 202 is the registrant/ owner of the Disputed Domain Names.

4. Parties' Contentions:

A. Complainant

The Complainant's contentions are that the Complainant Equitas Holdings Limited is the registered proprietor of company and domain name is EQUITAS.IN in various countries and has been using it in connection with its on-going business; the Complainant has legitimate interest in the 'EQUITAS' trademark in India as it had registered the said mark on 21st September, 2007 and has been openly, continuously and extensively using it for more than 8 years; by virtue of long and extensive use and servicing the 'EQUITAS' company name has become well known mark; in and around September, 2015 they became aware of Respondent's disputed domains and on perusal of the disputed domain the Complainant notices that the Respondent had registered the domain immediately after the announcement from Reserve bank of India about the applicant name for a specific business liaison and that the Complainant had through its President & Group CTO Mr.H.Mahalingam sent an email on 23rd September, 2015 to the Respondent informing him to refrain from using the disputed domain name which is identical and/or confusingly similar to the Complainant's prior registered company name and domain names; the Respondent has deliberately registered the disputed domain names with the intention of preventing the Complainant who is the owner of the company name "**EQUITAS**" from reflecting the said trademark in its domain name in India.

B. Respondent

The Respondent has not submitted any formal response within the stipulated time frame. Therefore, the Respondent is in default.

5. Discussion and Findings:

A) CONSTITUTION OF ADMINISTRATIVE PANEL:

It has to be asserted as to Whether the Constitution of Administrative Panel was proper? and Whether the Respondent has received the notice of this Administrative proceedings?

Having gone through the procedural history, this Administrative Panel comes to the irresistible conclusion that the Administrative Panel was properly constituted and Respondent has been notified on 14th January, 2016. However, the Respondent did not choose to submit any response.

B) Under paragraph 4(a) of the Policy, 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 is being used in bad faith.

C) Identical/Confusing Similarity:

(i) Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. The Complainant has proved by documentary evidence under certificate issued by the Trademark Registry, Government of India that they are the registered owner of trademark i.e., EQUITAS. That apart, the Complainant themselves had registered the domain name consisting their trademark 'EQUITAS', i.e., <equitas.in>, <equitashf> and <equitasvf.in> with the .IN Registry, National Internet Exchange of India during September, 2007 and December, 2011.

(ii) As noted, the Disputed domain Names **<equitassfb.com>**, **<equitassmallfinancebank.com>** and **<equitasbank.com>**, composes of "EQUITAS" and ".com". "EQUITAS" is identical to the registered trademark and domain names of the Complainant. ".com" is a generic code top-level domain name (gTLD) suffix. It is non-distinctive and is incapable of differentiating the Disputed Domain Name from the Complainant's registered trademark.

(iii) Based on the "EQUITAS" being a registered trademark of the Complainant, the Panel finds that the Disputed Domain Names are identical or confusingly similar to the Complainant's registered trademark.

(iv) Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(i) of the Policy.

D) Respondent's Rights or Legitimate Interests:

(i) The fact that the Complainant's adoption and first use of the registered domain names and trademark predates (i.e., 2007 and 2011 respectively) the Respondent's Disputed Domain Names have the practical effect of shifting the burden of proof to the Respondent in establishing that the Respondent has legitimate rights and/or interests in the Disputed Domain Name.

(ii) The Respondent is in default and has not filed any Response, in particular, the Respondent has not discharged the burden of proof under Paragraph 4(c) of the Policy. 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. 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 bona fide offering of goods or services nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 4(c)(i) or 4(c)(iii) of the Policy apply.

(iii) Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(ii) of the Policy.

E) Registration and use in Bad Faith:

I (i) Paragraph 4(b) of the Policy provides that:

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

(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of a such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competition; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Interest users to you web site 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 your web site or location or of a product or service on you web site or location”.

(ii) On the information and materials available before the Panel, the Panel finds that the Respondent registered and used the Disputed Domain Name in bad faith.

II. In reaching this conclusion, the Panel takes into account of a number of facts into consideration:

1. The Respondent has no rights or legitimate interests in the Disputed domain Names, which is in itself evidence of bad faith.

2. The disputed Domain Name does not reflect or correspond to the Respondent’s own name.

3. The fame of "EQUITAS" trademark makes it inconceivable that the Respondent was not aware of the Complainant's "EQUITAS" trademark when it acquired the Disputed Domain Names.

4. It is well established that the Respondent's registration and use of the Disputed Domain Names must involve malafides where the registration and use of it was and continues to be made in the full knowledge of the Complainant's prior rights in the "EQUITAS" trademark, and in circumstances where the Respondent did not seek permission from the Complainant, as the owner of the trademark, for such registration and use.

5. The Panel agrees that due to the fact that (i) the Disputed domain Name is identical to the Complainant's "EQUITAS" trademark; (ii) the Respondent's name does not correspond to the Disputed Domain Names; and (iii) the Respondent must have been aware of the Complainant and its "EQUITAS" trademark when it registered the Disputed Domain Names, it is lawful to infer that the Disputed Domain Names were registered and are being used to mislead and confuse users into believing that the Disputed Domain Names are associated with the Complainant and its "EQUITAS" trademark, in order to increase the number of users that access the Disputed Domain Names, for commercial gain.

6. Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, the Panel is satisfied that the Complainant has sufficiently proved the existence of all three elements pursuant to paragraph 4(a) of the Policy. In accordance with Paragraph 4(a) of the Policy and Paragraph 15 of the Rules, the Panel orders that the Disputed Domain Names **<equitassfb.com>**, **<equitassmallfinancebank.com>** and **<equitasbank.com>** be transferred to Complainant.

D.SARAVANAN

Sole Panelist

January 18th, 2015.