

Legal Issues in ‘Domain Name Disputes’

Issue: Can an Arbitrator conduct Independent Research in INDRP Proceedings?

Relevant Legal Provisions

❖ **Rule 8(a), IN Domain Name Dispute Resolution Policy (INDRP) Rules of Procedure**

“8. General Powers of the Arbitrator

a. An Arbitrator shall conduct the arbitration proceeding in such manner as it considers appropriate in accordance with the Arbitration and Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy and its by-laws, and guidelines, as amended from time to time.”

Relevant Legal Provisions (Contd.)

❖ **Rule 8(b), IN Domain Name Dispute Resolution Policy (INDRP) Rules of Procedure**

“8. General Powers of the Arbitrator

b. The Arbitrator shall at all times treat the Parties with equality and provide each one of them with a fair opportunity to present their case.”

Relevant Legal Provisions (Contd.)

❖ **Rule 13(a), IN Domain Name Dispute Resolution Policy (INDRP) Rules of Procedure**

“13. Arbitral Award

a. An Arbitrator shall decide a Complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the Arbitrator deems to be applicable, as amended from time to time..”

Relevant Legal Provisions

❖ Section 34(2), The Arbitration And Conciliation Act, 1996

“34. Application for setting aside arbitral award.—

2. An arbitral award may be set aside by the Court only if—

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

Relevant Judicial Decisions (Contd.)

❖ *Indeed Inc. v. Deepak Singh [INDRP Dispute Case no: INDRP/987, NIXI Administrative Panel Decision, Decision dated May 28, 2018]*

“..pursuant to Paragraph 8(a) and 12(a) of the Rules, the Panel considers itself competent to conduct limited but independent research of its own if it deems fit. The Panel, therefore, visited the impugned domain name <www.indeedjob.org>... upon visiting the disputed domain name, it came to the attention of the Panel that the Respondent has completely removed the website previously hosted on the disputed domain name.... this further indicates the bad faith of the Respondent under the present circumstances..” (Emphasis supplied)

Relevant Judicial Decisions (Contd.)

❖ *Bright Simons v. Sproxil, Inc & Anr [2023/DHC/000232, High Court of Delhi, Order dated January 5, 2023]*

34. “Merely, because an application of Trademark Registration has been given a passing reference by the Arbitrator cannot inevitably lead to the conclusion that the principles of natural justice have not been complied with and the award is rendered as perverse. **This Court is satisfied that there has been no violation of Rules 8(a) and 12(a) of the INDRP Rules.**”(Emphasis supplied)

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Relevant Judicial Decisions (Contd.)

❖ *Rational Intellectual Holdings Ltd. v. Mr. Sunny Karira, & Anr. [O.M.P. (COMM) 446/2017, High Court of Delhi, Judgement dated April 11, 2018]*

22. “Concededly, respondent no.1 had not placed any material before the Arbitral Tribunal to address the petitioner’s complaint. Thus, apart from the complaint filed by the petitioner, there was no other material before the Arbitral Tribunal to arrive at the conclusion that it did. However, **the Arbitral Tribunal has founded its decision based on the research conducted by the Arbitrator.**” (Emphasis supplied)

29. “..if the Arbitral Tribunal found itself compelled to, *sou moto*, make a detailed inquiry, **it was necessary for the Arbitral Tribunal to provide a full opportunity to the petitioner to respond to the evidence or the material collected by the Arbitral Tribunal.**” (Emphasis supplied)

Relevant Judicial Decisions (Contd.)

❖ *Microsoft Corporation v. Zoai Founder [O.M.P. (COMM) 188/2019, High Court of Delhi, Judgement dated July 3, 2023]*

19. *“As far as factual findings are concerned, I am of the view that it is not open to an arbitral tribunal to conduct independent research to supply evidence which an absent respondent has not cared to place before it. The principle that an arbitrator should not rely upon evidence which he/she has gathered– at least, without putting it to the affected party – is, in fact, an aspect of fairness, and of giving the party an opportunity to be heard in terms of Section 18 of the Act.”(Emphasis supplied)*

Conclusion

- ❖ While precedents and guidelines have laid down the extent of “independent legal research” that may be conducted by an arbitrator in UDRP proceedings, this extent has been laid down differently by Courts with respect to INDRP Proceedings.
- ❖ While the Court has also laid down that no extent of independent research is permissible if the parties have themselves failed to bring it on record, they have examined if the independent research so carried out was consequential to the merits of the findings of the Arbitral Tribunal.
- ❖ Decisions rendered towards the permissibility of “limited independent research” appear to have been derived from UDRP precedents due to the lack of such precedents on INDRP Rules, which warrants the formulation of conducive guidelines on independent legal research in INDRP proceedings.

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THANK YOU!
Questions?

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