

Exhibit # 3

to the Petition to Deny the
Application filed by Tata Telecom INC

September 25, 2010

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

**Tata Sons Ltd.
Bombay House
24, Homi Mody Street
Mumbai 400 001.**

(Complainant)

-vs-

**Mr. Manmohan Singh Thamber
1808 Hornby Rd.
Hornby
Ontario
L0P 1E0
CA**

(Respondent)

Case No: D-2009-0671

Disputed Domain Name:
<tata-telecom.com>

RESPONSE

(Rules, para. 5(b))

I. Introduction

[1.] On June 03, 2009, the Respondent received a Notification of Complaint and Commencement of Administrative Proceeding from the WIPO Arbitration and Mediation Center (the **Center**) by e-mail informing the Respondent that an administrative proceeding has been commenced by the Complainant in accordance with the Uniform Domain Name Dispute Resolution Policy (the **Policy**), approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**), approved by ICANN on October 24, 1999, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**). The Center set 23rd June, 2009 as the last day for the submission of a Response by the Respondent. However, due to late appointment of legal representative for defending the claims of the complainant, there has been some delay in filing the response with the center. The respondent retained Amarjit and Associates to represent their cause before the Panel. By e-mail of 4th July, 2009, the respondent exercised the option for reference of the dispute to a Panel of three arbitrators in terms of Paragraph 5 (C) of the UDRP Rules and remitted the fee of USD 2000 with the center on July 6, 2009. The respondent also informed the center in view of the fact that the arbitrators to adjudicate upon the complaint were yet to be appointed in accordance with the policy, the respondent would submit its

response at an early date. The center was also informed by e-mail of 1.7.2009 that copies of all files and communications (especially the complaint with its appendices) in connection with the above mentioned case should be directed to be supplied so as to enable the respondent to file the response. In the absence of delivery of all files and communications as well as the copies of the appendices to the complaint, the respondent was handicapped to make the effective representation of its case before the center within the prescribed period of time. The collection of documents by the respondent also took some time. There are, thus, exceptional circumstances due to which the response of the respondent was delayed and the said delay is liable to be condoned in terms of Paragraph 5 (d) of the Rules. The principles of natural justice also demand that the response filed by the respondent, before the appointment of the arbitrators in the present dispute, is taken on record and consideration for just decision in the case.

II. Respondent's Contact Details
(Rules, para. 5(b)(ii) and (iii))

[2.] The Respondent's contact details are:

Name: **Mr. Manmohan Singh Thamber**
Address: **8108 Hornby Rd. Hornby Ontario L0P 1E0 CA**
Telephone: **001 416 875 8296**
Fax: **001 905 693 9467**
E-mail: **msthamber@tata-telecom.com**

[3.] The Respondent's authorized representative in this administrative proceeding is:

Name: **Amarjit & Associates**
Address: **Suite 404, Law Arcade, 18 Pusa Road, New Delhi-110005**
Telephone: **(+91-11) 287 56797, 287 53141, 287 55155**
Fax: **(+91-11) 287 54798**
E-mail: **info@amarjitassociates.com**

[4.] The Respondent's preferred method of communications directed to the Respondent in this administrative proceeding is:

Electronic-only material

Method: **e-mail**
Address: **Suite 404, Law Arcade, 18 Pusa Road, New Delhi-110005**
Contact: **Gurpreet Singh**
E-Mail: **gurpreet@amarjitassociates.com**

Material including hardcopy

Method: **Courier**

Address: **Suite 404, Law Arcade, 18 Pusa Road, New Delhi-110005**

Fax: **287 54798**

Contact: **Gurpreet Singh**

III. Response to Statements and Allegations Made in Complaint

(Policy, paras. 4(a), (b), (c); Rules, para. 5)

[5.] The Respondent hereby responds to the statements and allegations in the Complaint and respectfully requests the Administrative Panel to deny the remedies requested by the Complainant, inter alia for the following preliminary objections :-

- i. The complainant has failed to discharge the onus of establishing any of the circumstances listed in Paragraph 4 (a) of the policy.
- ii. The complainant has not produced any evidence to show or to establish its claims of proprietary right in the trademark TATA.
- iii. The complainant has not produced copy of any Certificate of registration of trademark TATA alleged to have been registered in terms of the list filed as Annexure N to the complaint.
- iv. The complainant has not produced copies of the certificate of registration of the trademark TATA alleged to have been registered as per the details mentioned in Annexure N to the complaint with a view to suppress the name (s) of the companies in whose favour the said registrations have been granted.
- v. The complainant TATA SONS LIMITED is not registered proprietor of any of the trademarks listed in Annexure N to the complaint.
- vi. None of the registrations relied upon by the complainant for the trademark TATA in India cover the telecommunication services in classes 35 and 38 of the 4th Schedule of the Trademark Rules 2002.
- vii. The complainant has not produced copy of any Certificate of registration of trademark TATA in foreign countries alleged to have been registered in terms of the list filed as Annexure O to the complaint.
- viii. The complainant has not produced copies of the certificate of registration of the trademark TATA in foreign countries alleged to have been registered as per the details mentioned in Annexure O to the complaint with a view to suppress the name (s) of the companies in whose favour the said registrations have been granted.

- ix. The complainant TATA SONS LIMITED is not registered proprietor in foreign countries in respect of any of the trademarks listed in Annexure O to the complaint.
- x. None of the registrations relied upon by the complainant for the trademark TATA in foreign countries cover the telecommunication services.
- xi. The complainant is merely an investment holding company as per allegations made in the complaint and is not engaged in any legitimate use of the trademark TATA in relation to any goods or services.
- xii. Tata Communications Limited came into existence only in February, 2008 with the change of the name of V.S.N.L., which is a date subsequent to the date of adoption, use and registration of domain <tata-telecom.com> on the part of the respondent.
- xiii. The existence of Tata Communications Limited is much later in point of time to the bonafide adoption, honest and fair use of TATA derived from the first alphabet of respondent's trade name TORONTO ASIA TELE ACCESS TELECOM, INC. and the registration of domain <tata-telecom.com>.
- xiv. TATA is a common surname in India is not inherently distinctive and is not capable of distinguishing all goods and/or services as originating from the source of different independent juristic companies in which the complainant claims to be the principal investor. As a matter of fact, the complainant is neither legitimate user of any mark nor registered proprietor thereof.
- xv. The geographical area of the respondent's business is primarily Canada, U.S.A. and the countries of European Union. In the said geographical region, the complainant has no presence in relation to any goods or services and more particularly in the area of telecommunications.
- xvi. There is no concept of "Group of Companies" recognized under the provisions of the Indian Companies Act. The claims made by the complainant being the principal investment holding company of the so called TATA GROUP OF COMPANIES is thus contrary to the statutory provisions of law. Each company is incorporated with its individual Memorandum and Articles of Associations, objects and purpose. The business activities of each of the independently incorporated companies listed by complainant are allegedly engaged in distinct and different areas of activities other than communication in which the respondent is engaged. The complainant is subsequent in the business of communications to that of the respondent.

xvii. Lastly, the word TATA, as per complainant's own showing is commonly being used in the trade by different juristic personalities. No evidence has been produced on record to show that in each of the so called Tata Group of Companies, the alleged investment is made therein by the complainant. There can not be any presumptions, in fact or in law, to establish the claims of the complainant being the principal investment holding company of Tata Tea, Tata Nano, Tata Steel, Tata Motors, Taj Hotels, Tata Communications, Tata Tele Services Ltd. and so forth.

A. The Respondent at the out set denies all the allegations made by the Complainant in the Complaint.

B. The Respondent submits that he is carrying on his business activities since 1996 in respect of calling cards in Europe. The Respondent bonafidely, honestly adopted the mark TATA after deriving the same from the first alphabet of its corporate name TORONTO ASIA TELE ACCESS TELECOM, INC. At the time of the adoption and use of the mark TATA on the part of the Respondent, no such mark was in used on the part of the complainant in relation business of calling cards or telecommunications. The Respondent provided discounted reliable services in Tele Communications under there house mark "TORONTO ASIA TELE ACCESS TELECOM INC.(TATA)". The samples of the calling cards are annexed herewith as **Annexure -1**.

The Respondent launched their services in Canada in the year 2002 and provided services to Asians in which the said name "Toronto Asia Tele Access Telecom Inc. (TATA)". in the course of time, the Respondent also incorporated a company by the name of TATA Telecom, Inc.

C. The Respondent have also signed various contract with the third parties with their company "TATA Telecom Inc." The Respondent provided back up solutions under its house mark "Toronto Asia Tele Access Telecom Inc. (TATA)" to various companies including:-

1. Global Line Holding, Switzerland
2. World Telecom Network, Switzerland
3. Swiss data communication Switzerland
4. Global Tele link, Switzerland
5. Global line Gmbh, Germany
6. Global Tele link Ltd, Italy
7. Global Tele link, Austria
8. WTN Limited, Spain

9. GTS Ltd, Greece

“TATA Telecom Inc.” Provided the back up solutions to all the above companies working independently in the field of telecom in Europe since 2002. Some of the contracts of the Respondent Company with the third parties are annexed to the response as **Annexure-2**.

- D. The Respondent denies that the Complainant has statutory rights and/or any right in common law by alleged long and continuous user or being the registered proprietor thereof. The Complainant has not provided any evidence to substantiate its claim with regard to the alleged use of the mark TATA or reputation allegedly accrued thereto in Europe, Canada, United States in which Respondent solely have rights to do business under the mark “Toronto Asia Tele Access Telecom Inc.(TATA)” for telecommunications or in any other country in the world or even in India.

The Respondent submits that he is continuously and interruptedly using the mark TATA for providing telecommunications services in Europe, Canada and United States of America since 2002 to the knowledge of the complainant.

- E. The Respondent denies that he does not have any right or legitimate interest in the disputed domain name. The Respondent submits that he is prior in adopting the mark “Toronto Asia Tele Access Telecom Inc. (TATA)” for telecommunications services in Canada, Europe and United States of America. Being prior in adoption and use, the Respondent has proprietary rights to the exclusive use thereof.

The Respondent further submit that the Complainant started its business activities for telecommunications in India much later in the year 2008, as per their own case before the centre.

- F. The Respondent denies that the domain name <tata-telecom.com> has been registered and being used in bad faith. The Respondent submits that he has honestly adopted the mark TATA as an abbreviation from Toronto Asia Tele Access Telecom Inc. in the year 2002 and has been legitimately using the said domain for doing its business activities.

The Respondent denies the allegations made in Para 11(a) of the Complaint. The Respondent submits that it has bonafidely, honestly and without any reference or knowledge of Complainant adopted the mark TATA as an abbreviation from the first letters of its corporate name “Toronto Asia Tele Access Telecom Inc.” which is registered company in Canada.

- G. The allegations made in Para 11(b) of the Complaint are wrong and denied. It is

denied that the name TATA was adopted as early as 1917 by the Complainant and the same is rare patronymic name having all the trappings of an invented word. It is further denied that on account of alleged highly distinctive nature and pioneering activities of its founder, Mr. Jamsetji Nusserwanji Tata, the name TATA acquired any reputation from the beginning and down the decades or the said name has consistently been associated with, and has denoted the goods and business of the "House of TATA" –which is a common reference to the conglomeration of TATA Companies, as also the high quality of the products manufactured/services rendered under the trademark TATA or associated with the House of TATA. The claims made by the complainant that the word TATA has trappings of an invented word are wrong as is apparent on record. The word TATA is a surname and is in common use. There is no concept of use of TATA recognized under the provisions of the Indian Companies Act. Given the conglomeration of different companies independently incorporated does not create any other juristic personality, The terms "House of Tata" or "Group of Companies" has no legal recognition or personality of their own.

The Respondent submits that TATA is a surname and not an invented word as alleged or otherwise and it is the surname which was adopted by the Complainant Company. The Respondent further submits that the Complainant did not had any presence in the telecommunications business till the year 2008 in India or in any other parts of the world. The Respondent further submits that the mark TATA has been adopted by the Respondent as an abbreviation from Toronto Asia Tele Access Telecom Inc. in the year 2002 which is much prior to the complainant's adoption of the TATA in India in late 2008 for telecommunication business.

- H. It is further denied that the Complainant is the principal investment holding company of the TATA Group of Companies, which is India's oldest, largest and best-known conglomerate, with a turnover that is over US\$21 Billion. The Respondent submits that the law does not recognize the concept of "Group of Companies" as alleged by the Complainant in its Complaint. It is submitted that every company has its own independent juristic personality in the eyes of law.

The Respondent further denies that the Complainant has been continuously and consistently using the trademark TATA for its alleged business activities. It is further denied that the enterprises promoted by the Complainant and the so called TATA Group have laid the foundation in the industrial core sectors, pioneering the textiles, iron & steel, power, chemicals hotels and automobile industries in India. It is further denied that the so-called TATA Group has any presence in the field of automobiles, steel, power, chemicals, telecommunications, retailing, computer software, tea, financial services and mutual funds. It is vehemently denied that TATA Enterprises entered various field of commercial activities and most of these

companies use TATA as the initial part of their trade name. None of the companies are alleged to have been engaged in any overlapping business activities as compared to that of the Respondent.

The allegations of continuous and consistent use of the trademark TATA alleged to have been made by the Complainant are based on assumptions and presumptions without there being any cogent evidence on record to support the said allegations. Similarly, the allegations made by the Complainant for its alleged international presence are also based on assumptions and presumptions without there being any cogent documentary evidence produced on record. Respondent annex herewith Statement of Account from the year 2006-2009 as **Annexure-3**.

A. Whether the domain name/s/ /is/are/ identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(Policy, para. 4(a)(i))

- The Respondent challenges the claims made by the Complainant to the proprietary rights in the mark TATA as they are not substantiated by any evidence of use or registration in the present proceedings.
- No evidence has been produced on record to show any use of the mark TATA on the part of the Complainant or any of other companies allegedly financed by it.
- No evidence has been produced to show the reputation, if any, acquired by the word TATA in favour of the Complainant for any goods or services much less the business of communications.
- No details of the adoption of word or use of mark TATA in relation to different business activities and more particular communications have been furnished.
- No Certificate of Registration of the Trademark TATA in India or any foreign countries has been produced on record.
- The names of the companies who are alleged the registered proprietors of the trademarks detailed in Annexures N and O have not been furnished. There cannot be an assumption of registration of trade mark without production of valid certificates of registration.

- Without prejudice to the above contentions, the Respondent submit that the mere registration of the trademark is not the evidence of use or reputation as per the law laid down by the Hon'ble Supreme Court of India in the judgement reported AIR-1960 SC142. Copy of the said judgement is annexed hereto as **Annexure 4.**
- The Complainant has failed to establish any common law right to exclusive use of the mark TATA for any goods or services much less the business of communication.
- The Complainant has failed to establish any statutory right to the mark TATA in India or in any other foreign jurisdiction.
- The Complainant in any event is subsequent in adoption and use of the mark TATA in relation to telecommunications business as against the Respondent's use.
- The use of the domain tata-telecom.com by respondent is not likely to cause confusion and /or deception.
- The Complainant fails to establish its proprietary rights in the word TATA and element of confusion or deception.
- The Complainant has no right in the domain name <tata-telecom.com>.
- The business of Tata Tea is restricted to tea and is completely distinct and different from the business of telecommunications.
- The business of the manufacture of cars under the trademark Nano by Tata Motors has also nothing to do with the business of communications calling cards.
- The manufacture of steel by Tata Steel has no nexus with the business activities of communications.
- The business of automobiles or acquisitions of brands Jaguar or Land Rover has no connection with the business of communications.
- The business of hotels is also distinct and different from the

business of communications.

- The articles filed as Annexures F, G, H and I to the complaint are inadmissible for evidence being in the nature of press reports and hear say evidence.
- The nature and purpose of business of respondent is different and distinct from the business allegedly done by complainant's so called group companies.
- The services as are subject matter of present dispute are being offered by respondent prior in point of time to that of complainant.
- The class of customers and relevant section of public do not associate the word TATA with complainant for any goods or services much less the business of communication.

B. Whether the Respondent has rights or legitimate interests in respect of the domain name/s/;

(Policy, para. 4(a)(ii))

- The Respondent has a legal right and legitimate interest in respect of domain name <tata-telecom.com>.
- The Respondent did not register the domain name <tata-telecom.com> with a view to sell it to the Complainant or any of its competitors.
- The Respondent is not engaged in any squatting by registering domains.
- The Respondent bonafidely and honestly adopted the domain <tata-telecom.com> after deriving the same from the first alphabet of its corporate name.
- The Respondent is prior in adoption and use of the mark TATA in respect of calling cards and the business of telecommunications.
- The Respondent is prior in obtaining registration of the domain name <tata-telecom.com> in respect of its business of

telecommunications.

- The Complainant is not engaged in any business activity or providing any service and is merely an investment holding company.
- The Complainant has no locus standi to file this present complaint.
- The Complainant has neither used the mark TATA in the course of any business nor hold any registration in respect thereof.
- The Indian Companies who are alleged to have used the mark TATA or have obtained registrations are engaged in the business of different and distinct character than the business of the Respondent.
- The Complainant has failed to establish that by the utilization of domain name <tata-telecom.com> there has been any confusion.
- The Respondent has made and is making fair use of the domain name <tata-telecom.com>.
- It is the Respondent who is commonly known by the mark TATA and domain name <tata-telecom.com> in the geographical areas of its operation i.e. USA, Canada and European Union in relation to business of communications.
- The Complainant has never done any business of communications and / or calling cards in order to provide any services in the geographical region of USA, Canada and European Union.
- The Respondent is not doing any business of calling cards or telecommunications in India.
- The Respondent had no knowledge about the Complainant or its mark TATA at the time of use of its company Toronto Asia Tele Access Telecom Inc. or adoption of the mark TATA deriving therefrom.
- The class of users of the services offered by the Respondent is

totally different from the class of purchasers of the goods of the companies in which Complainant allegedly holding controlling Stake.

- The Respondent has legitimately made honest commercial and fair use of the domain name.
- The Respondent's website does not contain any advertisements.
- The Respondent's website does not allow internet users to browse any link site.
- The Website of the Respondent offers information in connection with the business of the Respondent.
- The Complainant has failed to discharge the burden of proof to establish that the respondent has no legitimate right in the domain.
- The complainant has failed to establish use or bad faith registration on the part of respondent.
- The factors as are necessary to determine the case of "fair use" are all present in the case.
- The mark TATA has been used by the respondent in such a manner as is reasonably necessary to identify the product.
- The calling cards of the Respondent do not suggest sponsorship or endorsement of (WIPO D-2003-0399).

I. It is denied that TATA has become a house mark of TATA Group and source indicator of the diverse goods & Services that have provided by the complainant.

It is wrong to suggest that the TATA has been actively engaged at the international level besides India. It is further denied that the presence of TATA group is a well established fact, which gets substantiated from its new global takeovers, acquisitions and new ventures.

Respondent submits that none of the ventures mentioned by the complainant in the complaint relates to the Telecommunication business, which is subject matter of present complaint. The respondent further submits that it is the respondent,

who has adopted the mark TATA as an abbreviation of TORONTO ASIA TELE ACCESS, which is the registered company of the complainant in Canada.

- J. It is further denied that the complainant is one of the India's leading Telecom Companies. As per the submissions of the complainant they themselves admit that TATA Communication Limited was incorporated in February, 2008. The respondent submits that one of the respondents sister concern WTN Limited, Spain, powered by Toronto Asia Tele Access (TATA) entered into a contract for providing back up solution to VSNL in the year November, 2002. A copy of the said contract is annexed herewith as **Annexure -5**.

It is denied that TATA Communication is a member of leading global provider of a new world communications. It is denied that Tata Communications Limited is India's largest telecommunication company in international long distance, enterprise data and internet services in India.

- K. It is denied that TATA Tele Service Limited (TTSL) is a part of TATA Group of Companies. The respondent submits that TATA Tele Service Limited (TTSL) is an individual juristic personality and is a legal entity in the eyes of law. It is further denied that the TATA Tele Service Limited (TTSL) forms part of TATA Group's presence in the Telecommunication Industry in India, along with Tata Teleservices (Maharashtra) Limited and Tata Communications limited.

Respondent submits that TATA Tele Service Limited (TTSL), who is alleged to run and operate under the domain name tatateleservices.com has no connection with the disputed domain name <tata-telecom.com> of the respondent. It is further submitted that as per the admission of the complainant, the share holding of TATA Tele Service Limited (TTSL) has been sold to Avaya Inc and now the company is renamed as Avaya Global Connect and the complainant are not using TATA Telecom as their brand name any more.

- L. It is wrong to suggest that people across the global associate the name TATA exclusively with the Complainant and the multifarious goods, services and activities of the companies promoted by the Complainant, which are collectively referred to as the House of TATA.

The complainant themselves admitted that the information regarding their businesses activities are accessed by internet users through the Website tata.com, tataindicom, tatacummincation.com, tatamotors.com amongst others and not through <tata-telecom.com>.

- M. It is denied that the Complainant is the proprietor of trade mark TATA by virtue of priority in adoption, continuous and extensive use and advertisements and the reputation consequently accruing thereto in the course of trade.

The respondent submits that the complainant has not put on record any document to substantiate their claims with regard to their adoption, use, advertising and the reputation of the mark TATA in Canada, Europe or United States of America, where the business activities of the respondent are well-known and are associated with them and none else. It is further submitted that as per the "Annexure N" filed by the Complainant along with the complaint, the Complainant does not hold any registration with respect to telecommunication business in India, Europe, Canada or United States of America. Even if assumed that the Complainant has got registrations in these countries, no use has been made by them in respect of Telecommunication business by the Complainant till date. The Complainant has failed to provide any documentary evidence to substantiate its claim, as alleged in the complaint.

- N. It is denied that the Complainant is the registered proprietor of the TATA trade mark in various classes and such trade marks are licensed to companies promoted by it which manufacture the goods and sell them under the said trade marks. The respondent submits that the complainant has failed to provide any documents or the license or assignment deed to substantiate its use in the territory of Canada, Europe or United States of America for Telecommunication business.

**REPLY TO DECISIONS OF THE COURTS UP-HOLDING THE
COMPLAINANT'S ALLEGED TRADE MARK RIGHTS:**

- 1) The decision in the case of TATA Sons Vs. Suresh Jain filed as "Annexure Q" is a decision rendered by a court in an uncontested matter. No adjudication of any right of complainant was made by the Court.
- 2) The cases cited in "Annexure R" are primarily Ex Parte ad interim orders purported to have been issued by the Court before this causing service to the Respondents. In none of the cases the Respondent was a party. None of the cases relate to the business of telecommunications. None of the cases determine the right of any of the parties claiming to be prior in adoption and use of the mark TATA in relation to business of telecommunications or prior registration of the domain with the word TATA in relation to telecommunications. The facts of each case were different and cannot be cited as precedent against the respondent. The respondent is not bound by any of such uncontested decisions.

- 3) None of cases cited in “Annexure R” deal with the issue of fair use. None of the cases deal with the issue of trademarks rights being territorial in nature and being subject to national laws.
- 4) The mere list of cases does not prove either the orders or the judgments of the courts. Neither copies nor certified copies of the orders have been placed on record. “Annexure-S” is an ex parte order.
- 5) None of the defences as raised by the Respondent in the present proceedings were raised or dealt with or determined by any Court, whose decisions are referred upon by the complainant.
- 6) In the WIPO proceedings in case No.D-2000/0049 filed a “Annexure T” no response was filed by the Respondent and therefore the order is without contest.
- 7) In the WIPO proceedings in case No.D-2000/0049 filed a “Annexure U” no response was filed by the Respondent and therefore the order is without contest.
- 8) In the WIPO proceedings in case No.D-2000/0049 filed a “Annexure V” no response was filed by the Respondent and therefore the order is without contest.
- 9) In the WIPO proceedings in case No.D-2000/1713 filed a “Annexure T” no response was filed by the Respondent and therefore the order is without contest.
- 10) In the WIPO proceedings in case No.D-2001/0974 no response was filed by the Respondent and therefore the order is without contest.
- 11) In the WIPO proceedings in case No.D-2004/0083 no response was filed by the Respondent and therefore the order is without contest.
- 12) In the WIPO proceedings in case No.D-2005/0783 no response was filed by the Respondent and therefore the order is without contest.
- 13) In the WIPO proceedings in case No.D-2006/0572 filed a “Annexure” the Respondent failed to provide any evidence. In the present case complainant has failed to provide any evidence.
- 14) In the WIPO proceedings in case No.D-2007/1924 no response was filed by the Respondent as he failed to provide any evidence.
- 15) In the WIPO proceedings in case No.D-2006/0285 no response was filed by the Respondent and therefore the order is without contest.

16) In the WIPO proceedings in case No.D-2003/0489 no response was filed by the Respondent and therefore the order is without contest.

A. Whether the domain name(s) (is/are) identical or confusingly similar to a trade mark or service mark in which the Complainant has rights:

- (i) It is denied that the disputed domain name TATA-Telecom.com is identical in part and confusingly similarly as a whole to the well-known and registered trade mark and service mark in which the Complainant has a statutory right as well as rights in common law by virtue of long and continuous use and being its registered proprietor thereof.

The respondent submits that the Complainant admits that the mark TATA is being used by number of individual companies as provided in Annexure 'E' (colly) by the Complainant. Therefore, it is not uniquely identified by any one company as the source of goods and services manufactured or provided by the Complainant. The respondent further submits that the Complainant does not hold any statutory right or common law rights in respect of the mark TATA in Europe, Canada and United States of America in respect of Tele communication business, as alleged or otherwise.

It is denied that the scope of confusion in the minds of relevant groups of consumers by respondent's website TATA-Telecom.com is enhanced further due to the fact that it incorporates complainant's registered trade mark in full and conducts the business i.e. similar to that of the complainant company's. The respondent reiterates that the mark TATA is not a registered trade mark in Canada, Europe and United States of America for telecommunication services, as alleged by the Complainant. Respondent further submits that the respondent's website clearly mentions Toronto Asia Tele Access prominently along with its abbreviation TATA to differentiate the products and services of the complainant as that of the respondent.

- (ii) It is wrong to suggest that use of the word TATA in the initial part of the domain name would be understood as a reference to the Complainant because it is a registered and well-known trade mark. The respondent submits that to qualify the mark as a well-known trade mark in a particular jurisdiction, the complainant must establish its use by way of evidence to which it has failed to do so in the present case. The Complainant has also failed to provide any registration certificate to the panel which gives the registration details of the mark TATA in the name of the Complainant for telecommunication business in Canada, Europe and United States of America. It is a well-known fact that

the trade mark rights are territorial and can only be enforced in other jurisdictions on the basis of extensive use in a particular jurisdiction.

B. Whether the respondent has rights or legitimate interests in respect of the domain name(s)

- (i) The contents of paragraph no. B(O) of the complaint are wrong and denied. It is denied that the domain name tata-telecom.com resolves to complainant's website. The respondent submits that the website of Toronto Asia Tele Access (TATA) is operational since the year 2003 and provides information about the calling cards and the solutions provided by the company to its customers clearly without any intention of creating confusion or deception in the minds of the consumers to link the activities of the Complainant with the respondents. The respondent submits that the Complainant has misguided the panel by making such false and frivolous statements w.r.t. the resolution of respondent's domain name to the complainant's website. It is further denied that the respondent had any knowledge of the complainant's world famous trade mark TATA and the performance on behalf of the registering the domain name tata-telecom.com is only to encash the goodwill attached to the complainant's trade mark or name by selling the domain name for profits or in alternative, preventing the complainant from registering the domain name.

The respondent submits that it is the complainant, who has the knowledge of the trade mark TATA of the respondent by way of the contract being made between WTN Group powered by TATA and Videsh Sanchar Nigam Limited (VSNL) in November, 2002.

The complainant admits that they hold stakes in VSNL and were actively involved in the business activities and services provided by the company. The complainant has failed to substantiate their claim that the respondent has ever approached or offered for sale the domain name tata-telecom.com for sale to the complainant for profits at any point of time.

The respondent submits that they are doing legitimate business since the year 2002 under the mark TATA, which is much prior to the date of the complaint's allegedly entering into telecommunication business in February, 2008. Moreover, the complainant has full knowledge of respondent's rights and business activities from November, 2002 when the contract between WTN and VSNL was entered into.

It is denied that the respondent does not have any rights or legitimate interest in the domain name and the sole purpose of registering the domain name is to

misappropriate the reputation associated with the complainant's trade mark TATA. The respondent submits that it is doing legitimate business under the mark TATA since the year 2002 and has never intended any misappropriation with the reputation of the trademark TATA. It is reiterated that the TATA is an abbreviation of TORONTO ASIA TELE ACCESS, which is adopted by the respondent in the year 2002.

It is wrong to suggest that the respondent is not commonly known by the domain name nor he has made any demonstrable preparation to use the domain name tata-telecom.com in connection with the bonafide offering of the goods and services.

The respondent has attached print outs of its website tata-telecom.com to prove its preparation and continuous use of the website till date to offer services in respect of the calling cards, telecommunication and other business activities through its website tata-telecom.com. It is submitted that the Complainant has unnecessarily harassed the respondent by making such false, frivolous goods which goes contrary to the facts, which are on record.

In addition to this the complainant has not provided a single piece of evidence to substantiate its trade mark rights or any legitimate use of the trade mark TATA in the jurisdiction, where the respondent carries its business activities.

It is further denied that the respondent has not made any demonstrable preparations to use the disputed domain name <tata-telecom.com> in connection with bonafide offering of goods or services.

It is wrong to suggest that the respondent has not commonly known by the disputed domain name <tata-telecom.com>. Respondent submits that the website of the respondent exists since the yea 2003 and he is making legitimate fair use to offer services relating to telecommunications since then to the consumers at large.

It is denied that the name of business of the respondent is not Tata telecom. The respondent submits that the complainant himself has annexed as Annexure B reflecting the name of the company as 'Tata Telecom'.

The respondent submits that it has not published any content on the website tata-telecom.com, which in any way suggest the source of providing of the services of Tata Sons. It clearly mentions Toronto Asia Tele Access is providing inputs under the trade mark TATA on its websites, which does not in any way confused any internet user to think that the services are being provided by the Complainant and not by the respondent. The respondent

would like to mention that internet is not accessed by the illiterate class of people who cannot make a difference between the source of services as being provided by the respondent and the complainant.

C. The domain name was registered and is being used in bad faith

- s) The contents of paragraph (s) of the complaint are wrong and denied for the reasons stated herein above. It is denied that the disputed domain name <tata-telecom.com> is registered by the respondent incorporating a well-known trade mark of the complainant. The respondent submits that TATA is an abbreviation of TORONTO ASIA TELE ACCESS, which is the registered company of the respondent in Canada and the respondent has registered the domain name for doing legitimate business activities in the field of telecommunication in Canada, Europe, United State of America, where the complainant and does not even have any presence, whatsoever. The respondent further submits that he is prior in adopting the mark TATA for telecommunication business in 2002, whereas, as per complainant's own admission they are much prior in entering into telecommunication field in February, 2008.
- t) The contents of paragraph (t) of the complaint are wrong and denied for the reasons stated herein above. The respondent submits that the website hosted on the domain name tata-telecom.com clearly states the company name of the respondent TORONTO ASIA TELE ACCESS along with its abbreviation TATA and it is the prima facie proof of respondent's intentions to do legitimate business and not to confuse the internet users to believe the same as being operated by the complainant.
- u) The contents of paragraph (u) of the complaint are wrong and denied for the reasons stated herein above.
- v) The contents of paragraph (v) of the complaint are wrong and denied for the reasons stated herein above.
- w) The contents of paragraph (w) of the complaint are wrong and denied for the reasons stated herein above. It is denied that the complainant first became aware of the use of the 'Tata Telecom' name in the month of July, 2008 when the complainant began contacting many international carriers to obtain suppliers and customers for voice termination. The respondent submits that the complainant became

aware of the business activities of the respondent on the day when WTN Limited entered into a contract with VSNL in which the complainant admittedly have stake and was active in doing the business activities under the name of Videsh Sanchar Nigam Limited. The respondent has placed its reliance on the contract, which is annexed as Annexure 5 to the reply. It is denied that many of the existing and potential clients of the complainant are contacted by the respondent believing that the respondent is associated in any way with the complainant. The complainant has not provided any correspondence to substantiate its claims with this regard.

It is note worthy that the respondent is doing business since the year 2002 under the abbreviation of its company TORONTO ASIA TELE ACCESS (TATA) of which complainants are aware of the business activities due to various contracts that the sister companies of the respondent have in India. It is evident from the email dated 23.07.2008 of the respondent to the complainant that the respondent does not have any intention to trade upon the reputation of the complainant in any manner, whatsoever. On the contrary, respondent is seeking to have good business relationship in future with the complainant as they had in the past with other service providers.

The respondent request the panel to decline the remedies requested by the complainant for the transfer of the disputed domain name tata-telecom.com in view of the above facts and circumstances of the case.

IV. Administrative Panel

(Rules, paras. 5(b)(iv) and (b)(v) and para. 6;
Supplemental Rules, para. 7)

- [6.] The Respondent elects to have the dispute decided by a “*three-member Administrative Panel*”. *The respondent has already paid an amount of US\$ 2000 towards a three number administrative panel as set out in supplement rules Annexure –D.*

V. Other Legal Proceedings

(Rules, para. 5(b)(vi))

Respondent submits that there are no other legal proceedings pending with respect to disputed domain name in any other Forum.

VI. Communications

(Rules, paras. 2(b), 5(b)(vii); Supplemental Rules, para. 3)

A copy of this Response has been sent or transmitted to the Complainant on 15.07.2009 by email.

VIII. Certification

(Rules, para. 5(b)(viii), Supplemental Rules, para. 12)

- [9.] The Respondent agrees that, except in respect of deliberate wrongdoing, an Administrative Panel, the World Intellectual Property Organization and the Center shall not be liable for any act or omission in connection with the administrative proceeding.
- [10.] The Respondent certifies that the information contained in this Response is to the best of the Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,

Gurpreet Singh
Amarjit & Associates

Date: 15.07.2009

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