

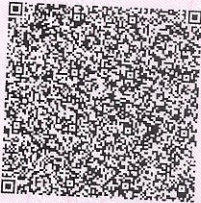


सत्यमेव जयते

# INDIA NON JUDICIAL Chandigarh Administration

## e-Stamp

Certificate No.	: IN-CH22463760824784S
Certificate Issued Date	: 29-Feb-2020 10:42 AM
Certificate Issued By	: chsanjkui
Account Reference	: IMPACC (GV)/ chimps07/ E-SMP MANIMAJRA/ CH-CH
Unique Doc. Reference	: SUBIN-CHCHIMPSP0744880289118187S
Purchased by	: ASHWANI KUMAR BANSAL
Description of Document	: Article 12 Award
Property Description	: 3650 HOLDREGE AVE LOS ANGELES CA90016 UNITED STATES OF AMERICA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: MEUNDIES INC
Second Party	: YANGJIN ZHOU CHAO YANG GUANG SHEEN NORTH
Stamp Duty Paid By	: MEUNDIES INC
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



-----Please write or type below this line-----

### ARBITRATION AWARD

(On Stamp Paper)

ADL

1

SR 0011412388

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.



**INDRP ARBITRATION  
THE NATIONAL INTERNET EXCHANGE OF INDIA  
[NIXI]**

**ARBITRAL TRIBUNAL CONSISTING OF  
SOLE ARBITRATOR:  
DR. ASHWINIE KUMAR BANSAL, L.L.B; PH.D.  
Advocate, Punjab & Haryana High Court, Chandigarh**

MeUndies, Inc., 3650 Holdrege Ave., Los Angeles CA 90016, United  
States of America.

...(Complainant)

Versus

Yangjin Zhou, Chao Yang Guang Shun, North Road 33 Yards,  
Fulltech Plaza 1011, Beijing, China.

...(Respondent)

**COMPLAINT REGARDING: DISPUTED DOMAIN NAME:**  
**<MEUNDIES.IN>**

**1. The Parties:**

**Complainant:** MeUndies, Inc., 3650 Holdrege Ave., Los Angeles CA  
90016, United States of America, E-mail:  
safir@anandandanand.com

AB-1



**Respondent:**

Yangjin Zhou, Chao Yang Guang Shun, North Road 33 Yards,  
Fulltech Plaza 1011, Beijing, China, e-mail: [693807577@qq.com](mailto:693807577@qq.com)

2. **The Domain Name and the Registrar:** The disputed domain name <meundies.in> is registered with GoDaddy.com LLC, 144-55 North Hayden Rd Suite 219, Scottsdale AZ 85260, United States, 1-480-505-8800, E-mail: [legal@godaddy.com](mailto:legal@godaddy.com) (the "Registrar").

3. **Procedural History [Arbitration Proceedings]**

The Complaint has been filed with the National Internet Exchange of India (NIXI) which appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole Arbitrator in this matter. The Arbitrator has already submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI informed the parties about appointment of arbitrator vide its E-mail dated 10.01.2020 and also sent soft copy of the Complaint along with annexures by e-mail on 10.01.2020 to the Respondent. The e-mail was duly delivered to him as he had replied to the same vide e-mail dated 11.01.2020. The Respondent is deemed to have been duly served. A copy of Complaint and Annexures as well as notices issued by the Arbitrator were communicated to the

AB ✓



Respondent by E-mail. Hence, service of the Respondent is complete by this mode also.

The Arbitrator vide email dated 11.01.2020 directed the Respondent to file his reply within 10 days and the e-mail was duly delivered as the same has been replied by the Respondent. The arbitrator vide e-mail dated 22.01.2020 again directed the Respondent to file his reply within 10 days. The Respondent has responded on 22.01.2020 by sending e-mail to arbitrator as under:

"This is just a nonprofit personal blog about how to choose undies for women and how to choose underwear for men.

It also contains some tips about how to make limeade and so on.

Thank you so much !"

The arbitrator vide his e-mail dated 06.02.2020 gave a final opportunity to file a detailed reply within 3 days but Respondent failed to file detailed response to the complaint.

The Complainant had filed whois report relating to disputed domain name as Annexure-J referred in para g at para 7 of complaint but it was found that this report relates to another domain name meundies.com and not the disputed domain name mentioned in the

AB



complaint. Hence, an opportunity was given to the Complainant to supply whois report in respect of disputed domain name meundies.in in the interest of justice vide e-mail dated 04.03.2020 and same has been supplied by NIXI as well as by the Complainant vide e-mail dated 05.03.2020 which is taken on record.

#### **4. Factual Background**

The Complainant, MeUndies, Inc. is a lifestyle brand and has created a mark in the clothing industry globally. The trademark MEUNDIES was adopted by the Complainant in the year 2010 and ever since adoption, the Complainant has extensively and continuously used the trademark.

The Respondent has registered the disputed domain name <meundies.in> on 25.02.2017 wholly incorporating Trademark MEUNDIES of the Complainant. Hence, present Complaint has been filed by the Complainant against the Respondent.

#### **5. Parties Contentions**

##### **A. Complainant**

The Complainant under its trademark and trading style MEUNDIES is also the trading style, which appears on all the products of the Complainant. The trademarks/ trading style MEUNDIES forms an integral part of the Complainant on all the products and serves as a stamp of high quality and reliability. The trademark MEUNDIES was



adopted by the Complainant when no such mark was known or in use. Ever since adoption, the Complainant has extensively and continuously used the trademark/ trading style MEUNDIES internationally as well as in India through its online boutique store operative at [www.meundies.com](http://www.meundies.com) in connection with a range of clothing including loungewear, T-shirts and socks among others.

The Complainant under its trademark and trading style MEUNDIES offers consumers the latest branded products along with outstanding customer service. The Complainant's has production facilities at Los Angeles, China, Guatemala, Turkey, Sri Lanka and its products are available in several countries worldwide and territories through an international network of authorized dealers, as well as distributors.

The Complainant's mark MEUNDIES has acquired global as well as trans-border reputation which has also percolated into India even before its first commercial use in India. On account of its long and continuous use, the superb quality of goods associated with the MEUNDIES brand, and extensive promotional efforts, MEUNDIES has acquired trans-border reputation. Trans-border reputation has always been the foundation of Complainant's successfully running organization. The Company and its products reflect a combination of style, quality, and value which is appreciated and demanded by consumers worldwide. Global travelers are well acquainted with MEUNDIES through their diversified domestic and international



distribution channels and targeted multi-channel marketing which includes advertising on television, in magazines and other printed media, billboards, posters, promotional events, and social media. MEUNDIES has become an international brand that caters to a very broad population demographic. The Complainant uses Lenzing MicroModal, a sustainably sourced, naturally soft fiber that starts with beechwood trees and ends with the most amazing fabric ever experienced. This stands as one amongst the reason for the brand securing its trans-border reputation.

The Complainant's trademark/trading style MEUNDIES is an invented mark and is prima facie distinctive to the goods of the Complainant. The uniqueness in adoption and long and continuous use has led to the exclusive association of the mark with the Complainant. Any use of the trademark/ trading style MEUNDIES or any similar sounding and looking mark whether in relation to the same goods or any other goods would inevitably result in an association of such mark and its corresponding goods with the Complainant. As evidenced by the printouts of searches conducted on Dictionary.com, Merriam-Webster and OxfordDictionaries.com, Complainant's MEUNDIES trademark is an invented and coined word with no dictionary meaning, hence affords the highest level of protection afforded to inventive marks.

AB ✓



The Complainant also has a domain name registration for the trademark/ trading style MEUNDIES i.e. [www.meundies.com](http://www.meundies.com). The said domain name registration for the mark MEUNDIES is itself illustrative of the importance of the said mark to the complainant and also the popularity enjoyed by the products under the said mark.

Apart from the extensive use, promotion and advertisement and sales of goods under the mark MEUNDIES, the said mark has also featured in numerous articles and publications under the mark MEUNDIES. Clearly this is an indicator of the fact that an "aura of recognition" surrounds the mark MEUNDIES and any adoption or alleged use of an identical and / or deceptively similar mark by any third unrelated party would be construed as that of the complainant and clearly guided to take undue advantage of the reputation and goodwill of the Complainant's mark.

The search on the Internet for the mark MEUNDIES generated numerous hits. Such a high number of hits are additionally demonstrative of the popularity of the complainant's product under the mark MEUNDIES and the well-known character enjoyed by the said mark. Further, as Internet is accessible across the world including widely in India, the knowledge and awareness of the complainant's products under the mark MEUNDIES is a foregone conclusion, even more so to the relevant trade.

AB



Further, the Complainant has also made its mark on reputed social networking websites like twitter, instagram, facebook etc., thus indicating knowledge of the brand MEUNDIES flowing amongst the general public at large.

The Complainant's reputed trademark MEUNDIES is a registered trademark in multiple countries like USA, Canada, Sri Lanka, EUIPO, India etc. With specific reference to India, the Complainant has registrations for the mark MEUNDIES in class 25. These registrations are valid and subsisting and confer upon the Complainant the exclusive right to use the mark MEUNDIES.

The Respondent in the present instance has registered the domain name [www.meundies.in](http://www.meundies.in) on 25.02.2017 which incorporates in its entirety the Complainant's reputed mark MEUNDIES.

The Respondent's domain name is identical to the trading style and trademark in which the Complainant has prior rights. The Complainant already has a domain name as [www.meundies.com](http://www.meundies.com) and thus the consumers and the members of the trade would get confused that the impugned domain name also belongs to the Complainant and is its India specific domain name.

The Respondent's domain name incorporates in its entirety the reputed mark MEUNDIES of the Complainant in which the Complainant has statutory rights as well as rights under common law since at least 2010.

ABL



Further the impugned domain name attempts to associate itself to the Complainant's business under the mark MEUNDIES by incorporating the name of the business in full, thereby causing loss of the Complaint's prime domain name. The Complainant has spent several years building up "search engine trust" in a domain. Any Indian user searching for the Complainant's business online as MEUNDIES will be taken to the Respondent's domain name, which enhances the possibility of confusion and/or deception.

The addition of the country code ".in" (INDIA) to the Complainant's trademark MEUNDIES makes the resulting domain name <meundies.in> deceptively/ confusingly similar to the Complainant's trademark and its domain name www.meundies.com, thereby diluting the trademark of the Complainant and causing harm to its reputation.

The Internet user or the general public who do not know that the Complainant and the Respondent have no affiliation with each other or that the Complainant has not licensed or authorized or endorsed the use of its reputed and protected mark MEUNDIES which will confuse the Respondent's activities as those authorized or endorsed or affiliated with the Complainant which would lead to the dilution of the Complainant trademarks.

Since the disputed domain name comprises the reputed trademark MEUNDIES in which the Complainant has sole and exclusive

AB L



interests, it is evident that the Respondent cannot have any rights or legitimate interest in the domain name.

Further, the Respondent's choice of the Complainant's reputed trademark MEUNDIES as part of its domain name is totally unnecessary and the sole purpose of carrying on business through the use of the disputed domain name incorporating the Complainant's reputed trademark is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website.

Upon information and belief, MEUNDIES is not the Respondent's personal name, neither is the Respondent commonly known by the domain name and Respondent is not known to the public under the name MEUNDIES.

The Respondent despite having registered the domain name in 2017, does not operate a website on the domain [www.meundies.in](http://www.meundies.in) which link is re-directed to a Facebook page. This itself is indicative that Respondent's adoption is not bona fide since the Respondent has simply blocked the domain name with the sole intent to trade on the fame and recognition of the Complainant's reputed trademark in order to cause initial interest confusion and bait internet users to accessing its website and force the Complainant to buy the domain name from the Respondent in order to avoid said confusion as is typically the strategy of cyber squatters. The Respondent has not

AB



engaged in any activity to show it has legitimate rights or interest in the impugned domain name. Given that the disputed domain name was only created on 25.02.2017, it is inconceivable that the Respondent was unaware of the existence of the Complainant at the time of registration.

Hence the Respondent has no rights or legitimate interest in the domain name. Further it is apparent that the sole purpose of registering the domain name is to misappropriate the reputation associated with the Complainant's trademarks and extort money from the Complainant.

The disputed domain name MEUNDIES.IN incorporates the Complainant's reputed mark MEUNDIES as the same is evident that the Respondent can have no rights or legitimate interest in the domain name. Rather the sole purpose of the adoption of the Complainant's reputed trademark MEUNDIES.

Because the Complainant's mark MEUNDIES is reputed, the Respondent is presumed to have had knowledge of the Complainant's mark at the time, it registered the confusingly similar domain name. This knowledge indicates Respondent's bad faith use and registration. Therefore, the Respondent is bound to have had prior knowledge of the fame and reputation of the Complainant's reputed trademark MEUNDIES. This establishes bad faith intention of the Respondent to misappropriate the Complainant's trademark.

AB



There is a great likelihood that an actual or potential visitor to the Respondent's future web page that the subject domain name resolves to, will be indicated to believe that the Complainant has licensed the trademark MEUNDIES to the Respondent or has authorized the Respondent to register the disputed domain name or that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant.

### **Respondent**

The Respondent has not filed a detailed Response to the Complaint in spite of opportunity given to him. The Respondent had sent 4 e-mails dated 10.01.2020, 11.01.2020, 22.01.2020 and 04.03.2020 in which he has only claimed that the impugned domain name is being used only for personal use.

### **6. Discussion and Findings**

The Complainant has to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

AB ✓



#### "4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Registrant's domain name is identical or confusingly similar to a name, Trademark or service mark in which the Complainant has rights;

(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and

(iii) the Registrant's domain name has been registered or is being used in bad faith.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator has examined the Complaint and documents filed by the Complainant and brief response given by the Respondent and he will address the three aspects of the Policy listed above.

#### **A. Identical or Confusingly Similar**

The Complainant has produced trademark certificates for registration of its Trademark MEUNDIES issued by various authorities along with the Complaint which demonstrates his trademark rights in the Trademark MEUNDIES. The Trademark of the Complainant has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration meundies.com incorporating its Trademark

AB



MEUNDIES which leads to website containing information on the various products of MEUNDIES.

The disputed domain name was registered by the Respondent on 25.02.2017, which wholly incorporates Trademark MEUNDIES of the Complainant.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy<sup>1</sup>. Internet users who enter the disputed domain name <meundies.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Respondent has registered the disputed domain name <meundies.in> incorporating the Trademark MEUNDIES of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the disputed domain name <meundies.in> is confusingly similar to the website and Trademark MEUNDIES of the Complainant.

---

<sup>1</sup> See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

ABJ



## **B. Rights or Legitimate Interests**

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name<sup>2</sup>. The Respondent has registered the disputed domain name consisting of the Trademark owned by the Complainant. The Complainant has been using the Trademark MEUNDIES since very long. The Complainant has not authorized or permitted the Respondent to use the Trademark MEUNDIES.

The Respondent has not filed a detailed Response to rebut the Complainant's *prima facie* case and the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name <meundies.in> as per Paragraph 7 of the Policy.

The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark MEUNDIES of the Complainant with the intention to create an impression of an association with the Complainant. The Arbitrator finds that the Complainant has made

---

<sup>2</sup> See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

AB



out a prima facie case. Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <meundies.in>.

### **C. Registered and Used in Bad Faith**

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

#### *"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 Trademark or service mark, 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

ABJ



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."

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered domain name <meundies.in> with the .IN Registry incorporating the Complainant's well-known, prior used and registered Trademark MEUNDIES. The domain name is also identical to the prior registered domain of the Complainant i.e. meundies.com. There can be no plausible explanation for the registration and use of the impugned domain name <meundies.in> by the Respondent as the trade/service mark MEUNDIES of the Complainant is a coined mark and exclusively used by the Complainant and its group companies for its products and services. The impugned domain name <meundies.in> has been created by the Respondent very recently on 25.02.2017. The Respondent thus

AB



has deliberately acquired an identical name in which the Complainant has substantial interest being its registered Trademark. The Respondent is presumed to have constructive notice of the commercial value and significance of the Trademark MEUNDIES which forms a conspicuous part of the disputed domain name.

The Respondent is making actual use of the domain name leads to facebook page on which information on under garments has been provided by the Respondent. The use of the impugned domain name <meundies.in> by the Respondent will diminish the strength and the distinctive value of the trade/service mark MEUNDIES resulting in its dilution and tarnishment.

The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known Trademark MEUNDIES in any manner. The disputed domain name clearly incorporates the Complainant's Trademark MEUNDIES in its entirety. Such unauthorized registration of the domain name by the Respondent incorporating the Trademark of the Complainant suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <meundies.in> which incorporates the Trademark MEUNDIES of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

AB



The Arbitrator therefore finds that the disputed domain name <meundies.in> has been registered by the Respondent in bad faith.

The Trademark MEUNDIES has been a well-known name. The domain disputed name <meundies.in> is confusingly similar to the Complainant's Trademark MEUNDIES, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <meundies.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <meundies.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <meundies.in> be transferred in favour of the Complainant.

## **7. Decision**

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <meundies.in> is similar to the Trademark MEUNDIES in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <meundies.in> be transferred to the Complainant.

The award has been made and signed at Chandigarh on the date given below.

ASL



Place: Chandigarh

Dated: 05.03.2020

*Ashwinie*

**Dr. Ashwinie Kumar Bansal**  
**Sole Arbitrator**

Advocate, Punjab and Haryana High Court  
Arbitration House 6, Shivalik Enclave, NAC,  
Near Housing Board Chowk,  
Chandigarh, India-160101  
Mobile: 9915004500

Email: [akbansaladvocate@gmail.com](mailto:akbansaladvocate@gmail.com)