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R 333682

**ARBITRATION AWARD**

**.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy  
INDRP Rules of Procedure**

**IN THE MATTER OF:**

DUX Design AB  
235 East 58<sup>th</sup> Street  
New York, NY 10022  
USA

.....Complainant

**VERSUS**

Mr. Jiaai  
EAC (HK) Internation Co  
Limited  
No 400 Floor 8<sup>th</sup>,  
Hong Kong

.....Respondent

1. **THE PARTIES:**

The Complainant in this administrative proceeding is DUX Design AB, a company incorporated under the laws of U.S.A., having its address at 235 East 58th Street New York, NY 10022 U.S.A. Represented through their Representative DePenning & DePenning, 120 Velachery Main Road, Guindy, Chennai – 600 032, India.

The Respondent is Mr. Jiaai, having address at No 400 Floor 8th, Hong Kong.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <DUXIANA.IN> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Directi Internet Solutions Pvt. Ltd.

3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Mr. Mr. Jiaai, having address at No 400 Floor 8th, Hong Kong. The NIXI verified that the Complaint together with the Annexures to the Complaint had satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **August 23<sup>rd</sup>, 2011**. The parties were notified about the appointment of an Arbitrator on **August 23<sup>rd</sup>, 2011**.

3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on **August 23<sup>rd</sup>, 2011**. In accordance with the rules, paragraph 5(c). The Respondent was



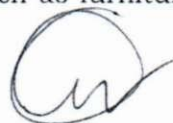


notified by me about the commencement of arbitration proceedings and the due date for filing his response.

- 3.3 The Respondent failed and/or neglected and/or omitted to file formal response to the Complaint within 10 days as was granted to him by the notice dated **August 23<sup>rd</sup>, 2011**. The respondent was further granted a final opportunity of 3 days vide notice dated **September 8<sup>th</sup>, 2011**, however, the Respondent failed and/or neglected and/or omitted to file any response.
- 3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

4. **FACTUAL BACKGROUND**

- 4.1 The Complainant in these administrative proceedings is DUX Design AB, having its address at 235 East 58th Street New York, NY 10022 U.S.A.
- 4.2 The Complainant is a global company in the business of providing furniture, mirrors, picture frames, articles made of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother of pearl, meerscham, celluloid, substitutes for all these materials in plastic. The complainant company was incorporated in the year 1926 and claims to have employed a large number of employees worldwide and also has a huge customer base internationally.
- 4.3 The Complainant submits that he is in the said business since the year 1926 and operates on an international scale with offices around the world and its headquarters at Sweden and it also sells its goods throughout the world with its shops called DUXIANA and are available through a franchising system. The complainant also started to run hotels and with indoor shops, selling goods included in the class 20 and 24 such as furniture beddings etc.



The information about the DUXIANA hotels is put up on the website [www.hotels.com](http://www.hotels.com)

- 4.4 The Complainant submits that it has registered trademark DUXIANA under application no. 536736 in class 20 in India and also registered worldwide. The mark DUXINA has been extensively used in commerce worldwide since 1926. The complainant manufactures and markets (through licensees) various products and sale of various goods mentioned above. The complainant claims that it owns intellectual property of all the worldwide applications and registrations of the brand name "DUXIANA". The complainant is the owner/proprietor and registrant of the various domain names including [www.duxiana.com](http://www.duxiana.com). The said domain names were registered on 26<sup>th</sup> June, 1996 and the associated websites were launched in subsequent years. The website of the complainant provides information about the complainant products. The complainant also claims a large number of hits to the complainants various websites one of them being [www.duxiana.com](http://www.duxiana.com), thus, generating business and efficient service, goodwill and repute. The complainant also claims to have spent a considerable amount of money promoting its brand DUXIANA worldwide.
- 4.5 The Complainant submits that website [www.duxiana.com](http://www.duxiana.com) proclaim and advertise about the goods manufactured and marketed on behalf of the complainant. The Complainant claims that it is engaged in the production and sales of various goods under different classes of the international classification and promotes the goods online, using the internet and worldwide web through their domain names [www.duxiana.com](http://www.duxiana.com) as well as through various other country level domain (ccTLDs).
- 4.6 The Complainant further submits that in India, the Complainant has obtained registration of the trade mark "DUXIANA" as detailed below:



Trademark	Country	Application No	Registration No.	Goods/Services
DUXIANA	INDIA	536736	536736	Class 20: Furniture, mirrors, picture frames, articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, method of pearl, meerschaum, celluloid, substitutes for all these materials or of plastics

- 4.7 The Respondent has registered the disputed domain name duxiana.in on 16<sup>th</sup> April, 2011 through the Registrar, Direct Internet Solutions Pvt. Ltd, dba.
- 4.8 The Respondent has not submitted formal reply to the contentions raised by the Complainant in the Complaint.

## 5. PARTIES CONTENTIONS

### 5A COMPLAINANT

5A(1) The Complainant Company was found in 1926 and is engaged predominantly in the business of providing furniture, mirrors, picture frames, articles made of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother of pearl, meerschaum, celluloid, substitutes for all these materials in plastic. Thereafter, the Complainant company also started to run hotels and indoor shops selling goods included in class 20 and 24 such as furniture, beddings etc.

5A(2) In India, the Complainant has obtained registrations of the trade mark "DUXIANA" and is the registered proprietor of the trademark as detailed below:



Trade mark	Country	Application No	Registration No.	Goods/Services
DUXIAN A	INDIA	536736	536736	Class 20: Furniture, mirrors, picture frames, articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, method of pearl, meerschaum, celluloid, substitutes for all these materials or of plastics

The aforesaid trademark is valid and subsisting on the records of the Trade Marks Registry.

5A(3) The Complainant also has pending applications/registrations of the mark DUXIANA in a number of countries around the world.

5A(4) The Complainant submits that the overwhelming success of DUXIANA products has resulted in Complainant gaining extensive goodwill and reputation in the said mark/name worldwide and in India. The members of the trade and public exclusively associate the mark/name DUXIANA with the business of the Complainant and none other.

5A(5) The Complainant owns the Intellectual property in the trade mark and domain name "DUXIANA" including its trade mark registrations and domain names registrations. The Complainant is the registrant and user of several domain names containing the DUXIANA mark e.g.

- i. [www.duxiana.com](http://www.duxiana.com)
- ii. [www.duxiana.ch](http://www.duxiana.ch)
- iii. [www.duxiana.co.uk](http://www.duxiana.co.uk)
- iv. [www.duxiana.co.za](http://www.duxiana.co.za)
- v. [www.duxiana.com.eg](http://www.duxiana.com.eg)
- vi. [www.duxiana.de](http://www.duxiana.de)
- vii. [www.duxiana.dk](http://www.duxiana.dk)
- viii. [www.duxiana.es](http://www.duxiana.es)
- ix. [www.duxiana.eu](http://www.duxiana.eu)
- x. [www.duxiana.fi](http://www.duxiana.fi)
- xi. [www.duxiana.hk](http://www.duxiana.hk)
- xii. [www.duxiana.jp](http://www.duxiana.jp)

5A(6) The Complainant also owns the websites [www.duxiana.com](http://www.duxiana.com), which are accessible from worldwide and is available for use by users globally, including those in India. The complainant submits that it is common for every business and household in India to use the Internet for emails, browsing web-sites, entertainment etc. In India, where there is a huge user base with a large youth population that uses Internet for communication and entertainment, the Complainant's mark/name DUXIANA is well-known and is popular amongst them.

5A(7) The Complainant submits that it is first to conceive, adopt, use and promote the mark DUXIANA in respect of the goods mentioned above. The Complainant is also the first to conceive, adopt, use and promote [www.duxiana.com](http://www.duxiana.com), which gets a large no of hits, thus generating business and efficient service, goodwill and repute.

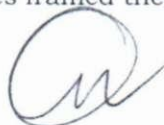
5A(8) The Complainant claims that on account of extensive usage of the mark DUXIANA in India and worldwide, the said mark is identified solely and exclusively only with the complainant and none other. This has resulted in creating a huge customer based internationally for the DUXIANA brand which is associated and recognized only with the complainant.

**B. RESPONDENT**

5B(1) The Respondent has been twice given opportunity to file his response to the Complaint by the panel by its notice dated 23 August, 2011 and notice dated 8 September, 2011.

5B(2) The Respondent has, however, failed and/or neglected and/or omitted to file any response to the Complaint filed by the Complainant.

5B(3) The Panel, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record and in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder.



6. **DISCUSSIONS AND FINDINGS**

- 6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.
- 6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.
- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 In accordance with the principles laid down under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.
- 6.5 The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of





all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.

- 6.6 The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain unrebutted and unchallenged.
- 6.7 The onus of proof is on the Complainant. As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <DUXIANA.IN> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.
- 6.8 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.9 The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad** - AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).
- 6.10 The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.11 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.



6.12 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

A. **IDENTICAL OR CONFUSINGLY SIMILAR**

6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

6A.2 The Complainant is the registered proprietor of the following mark in India:

Trademark	Country	Application No	Registration No.	Goods/Services
DUXIANA	INDIA	536736	536736	Class 20: Furniture, mirrors, picture frames, articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, method of pearl, meerschaum, celluloid, substitutes for all these materials or of plastics

6A.3 The Complainant submits that the Respondent has registered the identical domain name [www.duxiana.in](http://www.duxiana.in) with the .IN Registry. It is submitted that the aforesaid domain name incorporates the Complainant's well-known and prior registered mark DUXIANA.

6A.4 The Complainant further submits that on account of extensive use and popularity of the domain name/trademark DUXIANA across the world, the DUXIANA mark/name is well recognized by different fragments of society. Therefore, the respondent can have no plausible reason for adoption of a domain name phonetically, visually and conceptually identical to the Complainant's well-known and highly distinctive trade mark and domain name DUXIANA. The Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant's trade mark/domain name DUXIANA.



- 6A.5 The Complainant further submits that it will suffer incalculable harm and injury to its goodwill, reputation and business in general if the Respondent is allowed to maintain its registration of domain name DUXIANA.IN. The loss and damage will not only be to the Complainant's reputation but also result in confusion and deception among the trade and public who would subscribe to the Respondent's service assuming it to be sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant. The trade and public may also assume that there exists connection between the Complainant and the respondent which is likely to further harm the reputation enjoyed by the Complainant.
- 6A.6 It is a settled proposition of law that where there is copying, dishonesty ought to be presumed. In the present case, copying by the respondent is evident from its adoption of an identical domain name. Furthermore, respondent's intention is clearly to take a free ride on the goodwill and the unique sales appeal that the Complainant's goods under the mark/domain DUXIANA has achieved over a period of time.
- 6A.7 The Complainant submits that the intention of the Respondent is primarily to register the domain name so as to offer it to a third party for sale. The mark/name DUXIANA has been used by the Complainant since its inception and the Complainant already had built a considerable reputation in the marked DUXIANA and also has common law rights in the corporate name, which has DUXIANA in all prominence and is only identifiable name of the Complainant since its inception. Thus, the mark/name DUXIANA exclusively refers to the Complainant and none else. Further, given the worldwide publicity of the DUXIANA mark and domain and considering the highly distinctive nature of the DUXIANA mark and name in respect of the Complainant's aforesaid business activities, the adoption and registration of an identical domain name and mark cannot be a coincidence. Therefore, the registration of the domain is in bad faith intended to derive monetary and commercial gain. In the circumstances, the present case is clearly that of cyber-squatting. Further, use of an identical domain name by the Respondent is likely to mislead/divert consumers and also tarnish the reputation of the trademark or service mark of the Complainant.





6A.8 The Complainant submits that on a mere look at the Respondent's website, it is clear that the Respondent is not carrying out any activities from the aforesaid site. The [www.duxiana.in](http://www.duxiana.in) domain name currently displays "sponsored listings", but does not have any substantive content. The Complainant further submits that the Respondent has registered the domain name [www.duxiana.in](http://www.duxiana.in) for the purpose of reselling and not for carrying out any business.

6A.9 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name [www.duxiana.in](http://www.duxiana.in) is identical and/or deceptively similar to the earlier registered trade marks and Domain names of the Complainant. The whole of Complainant's trade mark /domain name has been incorporated in the disputed domain name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name [www.duxiana.in](http://www.duxiana.in) is identical and/or confusingly similar to the trademark DUXIANA of the Complainant.

**B. RIGHTS OR LEGITIMATE INTERESTS**

6B.1 The Respondent has no rights or legitimate interests in respect of the domain name.

6B.2 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

6B.3 The Complainant submits that the domain name was registered by the respondent on October 8, 2010. At this time, the Complainant had prior trade mark/domain name [www.duxiana.com](http://www.duxiana.com) registration and considerable reputation in the DUXIANA mark and domain name in India and abroad. The Complainant is the registered proprietor of the mark DUXIANA in numerous classes in India since 1990. The mark/name DUXIANA was used by the Complainant since 1926

6B.4 The Complainant submits that the respondent is not and has never been known by the DUXIANA name or by any similar name. The



respondent does not have any active business operations in the name of DUXIANA.

6B.5 The Complainant submits that the respondents' domain name/web-site does not have an active content and has been merely blocked/registered with an intention to benefit from the sale of a famous domain name. The web-site does not contain any substantive material and, therefore, there is no legitimate business interest of the respondent in blocking/registering the said domain name. The web-site contains 'sponsored listings' only and therefore there is no legitimate business interest of the respondent in blocking/registering the said domain name. The sole purpose of registering the domain name [www.duxiana.in](http://www.duxiana.in) by the respondent is to derive illegal profits by offering the domain name for sale.

6B.6 The Complainant submits that the respondent is not even based in India but Hong Kong as per the contact details available online and therefore, there is no legitimate business interest in registering the domain names with the .IN Registry.

6B.7 The Respondent did not dispute any of the contentions raised by the Complainant in its Complaint. The case set up by the Complainant is deemed to be admitted as not disputed by the Respondent. The Panel also finds, on the basis of the material available on record, that the respondent has no legitimate right or interest in the disputed domain name. The respondent has failed to show any justification for the adoption, use or registration of disputed domain name.

6B.8 The Panel, therefore holds that the circumstances listed above demonstrate rights or legitimate interests of the Complainant in the domain name [www.duxiana.in](http://www.duxiana.in) and holds that Respondent has infringed the rights of the Complainant by registering the Domain Name and has no legitimate right or interest therein.

### **C Registered and used in Bad Faith**

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.



6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

1. The complainant submits that circumstances indicating that the Registrant has registered or the Registrant has 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 our documented out-of-pocket costs directly related to the domain name; or
2. The Complainant further submits that 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 you have engaged in a pattern of such conduct; or
3. The Complainant submits that by using the domain name, the Registrant has intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location".

6C.3 The Complainant further submits that the respondent is not carrying out any business activities through the domain name [www.duxiana.in](http://www.duxiana.in) and as mentioned in the previous paragraph has merely blocked/registered the said domain name for the purpose of reselling for a considerable amount.

6C.4 The Respondent does not dispute any of the contentions raised by the Complainant. The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name [www.duxiana.in](http://www.duxiana.in) was registered by the respondent in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.



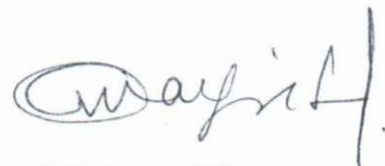


6C.5 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. **DECISION**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

- A. Transfer of the domain name www.duxiana.in to the Complainant.
- B. Respondent pay the Complainant cost of Rs.25,000/- in the above proceedings.



**AMARJIT SINGH**  
Sole Arbitrator

**Dated: 20<sup>th</sup> October, 2011**