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Jiaai

C/o EAC International Co. Ltd.

Ground Floor, 26, Lee Street.

Sydney, NSW 2000. Australia.

THE RESPONDENT /

THE REGISTRANT

IN THE MATTER OF DISPUTED DOMAIN NAME: - 'AERIE.IN'

BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

**DELIVERED ON THIS 8TH DAY OF OCTOBER TWO THOUSAND
THIRTEEN AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

**01. Names and addresses
Of the Complainant: -**

**Retail Royalty Company
101 Cnvention Center Drive, Las
Vegas, Nevada 89109. U.S.A.**

**Through its authorized
representative**

**Sujata Chaudhari
IP Gurus
A-45, Sector 63, NOIDA,
U.P. India. 201307.
Authorised Signatory.**

**02. Name and address of
The Respondent: -**

**Jiaai
C/o EAC International Co. Ltd.
Ground Floor, 26 Lee Street
Sydney, NSW 2000, Australia.**

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	04/09/2013
02	Hard copy of complaint received	12/09/2013
03	Notice of Arbitration issued (with the instructions to file say / reply latest by 28.09.2013)	17/09/2013
04	Reminder notice sent (with instruction to file say latest by 04/10/2013)	01/10/2013

05	Notice of closure of arbitration	08/10/2013
06	Award passed	08/10/2013

I] PRELIMINARY: -

- 1) Retail Royalty Company, a company incorporated under the provisions of the laws of U.S.A., having its principal office at 101, Convention Center Drive, Las Vegas, Nevada, 89109, U.S.A. (**The Complainant**) has filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name '**AERIE.IN**' (**the disputed domain name / domain name**), through its authorised representative **Ms.Sujata Chaudhari of IP Gurus**.
- 2) The Complainant has disputed registration of domain name '**AERIE.IN**' in the name of **Mr.Jiaai, C/o EAC International Co. Ltd., Ground Floor, 26 Lee Street, Sydney, NSW 2000, Australia (The Respondent / Registrant)**.
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 17th September 2013 with the instructions to file his reply / say latest by 28th September 2013.
02. Since no reply / say was filed by the Registrant within the prescribed period, this Arbitration Panel extended, *suo-motu*, the period to file say/ reply, if any, latest by 4th October, 2013. However no reply / say was filed by the Registrant / Respondent, even within the extended period.
03. In view of no reply by the Respondent no rejoinders were called for.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

The Complaint is based on the following points / issues in brief: - -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

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1. The Complainant is the owner of following registered trademarks: -

Sr. No.	Trademark Registration No. and date of Registration	Description
01	3788744 – 11/05/2010	U.S.A. Trademark i.r.o. wearing apparel, clothing and accessories, etc.
02	3486591 – 12/08/2008	---Do---
03	3610524 – 21.04.2009	U.S.A. trademark i.r.o. pouches, coin purses, umbrellas
04	4028458 – 20/09/2011	U.S.A. trademark i.r.o. body and clothing tape, adhesive tape etc.
05	EU 004904363 – 22/08/2013	EU trademark i.r.o. jewelry, belt buckles, bracelets, watch chains, pins, watches etc.
06	EU 004877701 – 22/08/2013	Personal care products and cosmetics etc.

Many trademarks are also registered in countries including India. In India the Complainant has registered its marks under No.1423548 dated 22/02/2006 and more in respect of personal care products, jewelry, athletic bags, wearing apparel, clothing and clothing accessories.

The Complainant has several websites including www.aerie.com since last many years.

(B) IDENTITY OR CONFUSING SIMILARITY OF THE DOMAIN NAME WITH THE TRADEMARKS OF THE COMPLAINANT: -

1. The Registrant's domain name www.aerie.in directly uses the trademark / trade name AERIE as one of the operative words and this name is identical to that of the registered trademark of the Complainant. The impugned domain name is also extremely similar to the Complainant's international website www.aerie.com. Therefore ordinary internet users are likely to be confused by the presence of the impugned domain name on the internet, ostensibly offering goods and services similar / identical to those of the Complainant and thus cause loss of business and reputation to the Complainant.
2. The Registrant has no affiliation, past or present, with the Complainant and hence has no rights or legitimate interests in respect of the domain name. By registering the impugned domain name the Registrant is blatantly seeking to cash in on the brand value and reputation of the Complainant's trademark AERIE for his personal gain.

13. The disputed domain name was created in July 2013 as against the Complainant being in this business since 2006. Similarly the Registrant also runs several other websites, all of which feature identical content and use the Complainant's trademark AERIE or some confusingly similar word(s) / name(s). This has been done for the Registrant's own business which causes loss of business and reputation to the Complainant. Accordingly the registration of the impugned domain name by the Registrant is in bad faith.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of domain name to it. The Complainant has also requested for heavy costs to be imposed on the Registrant / Respondent.

VI] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

As stated earlier the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period. Therefore other side of the dispute has not been brought before this panel. In view of no reply by the Respondent / Registrant, this panel has assumed that he has nothing to say and by this act he has accepted all allegations / contents of the Complainant.

VII] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VIII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No

04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	No
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Has the Registrant 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?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

VIII] BASIS OF FINDINGS: -

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant is the owner of various trademarks as stated in the table above. The Complainant also owns various domain names which include the words 'AERIE'. The said trademarks have been registered since 2006 and have been renewed from time to time.

Therefore my finding on this issue is in affirmative.

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'AERIE' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in INDRP as also WIPO cases that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its global presence, as also its strong presence on the internet, it is very hard to believe that the Registrant was not aware of the same.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'AERIE'.

Therefore my finding on the first issue is affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not filed any say or reply to the complaint and hence it is presumed that he does not have / he has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is Jiaai. As such he is not commonly been known by the domain name or any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'AERIE'. He is not commonly been known by that name or any variation or combination thereof. He has not been associated with or permitted by the Complainant to use the said trade name. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant to use the word 'AERIE' in this behalf.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The website is up for sale. There is no link, any description of the goods or services being offered by the Registrant. The landing page is blank. The Registrant is not using the website at all. It is very clear that the registration of the disputed domain name has been done by the Registrant / Respondent merely for the purpose of selling the same to the Complainant or any other interested party at a premium.

Therefore my finding on this issue is affirmative.

7. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out various aspects of

malafide registration of the disputed domain name, registration of domain name without any authority and for any bona fide business on the part of the Respondent. Therefore it is squarely established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The website is up for sale and there are no contents of any nature. As such at present it can not be said that internet users are being attracted. However upon internet search the webpage is being displayed by the search engines. The blank page of the website is more harmful to the credibility and reputation of the Complainant since no such company would create such blank page and offer the same for sale.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion this panel has reached the conclusion that: -

1. The disputed domain name is up for sale and the notice to that effect is being displayed on the landing page itself. This clearly establishes that the Registrant was never serious of doing any legitimate use of the domain name. On the contrary it was his intention to sell the same for illegal monetary gain by encashing the reputation of the Complainant.
2. Since the Registrant has not replied to complaint or Notice of Arbitration at all, it leads to only conclusion that registration has been done with criminal and deceitful intentions and for the purposes of gaining illegally and immorally.
3. The disputed domain name includes the registered marks and registered domain names of the Complainant as an integral part of it. It means the Complainant's rights, interests and reputation are at stake in the disputed domain name.
4. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'AERIE' and hence does not have any legitimate interest in the disputed domain name. He has not been authorised by the Complainant to register the said domain name at any time.
5. The Registrant has *not* been commonly known by the disputed domain name.
6. The Respondent / Registrant has completely failed to establish his nexus, rights or interests in or with the disputed domain name in any way.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. **The Complainant is entitled to the disputed domain name – 'AERIE.IN' and hence the same be transferred to the Complainant.**
02. The Registrant shall pay to the Complainant all the documented costs of these proceedings.

Dated: - 08.10.2013

Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR