



उत्तर प्रदेश UTTAR PRADESH

N 319011

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

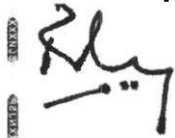
**ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: RODNEY D. RYDER**

**Pantaloon Retail [India] Limited v. Online Directory Services
Case No. INDRP/86**

1 The Parties

The Complainant is Pantaloon Retail [India] Limited represented by Shri C P Toshniwal; Chief Financial Officer; Pantaloon Retail [India] Limited, 'Knowledge House', Shyam Nagar, Off Jogeshwari - Vikhroli Link Road, Jogeshwari [East], Mumbai 400 060.

The Respondent is Online Directory Services; 6th Floor, Acropolis Business Center, Military Road - Marol Andheri [E], Mumbai 400 069.



2. The Domain Name(s) and Registrar(s)

The disputed domain name is www.all.in.

The Registrar is Directi Internet Solutions Private Limited.

3. Procedural History

This action was brought in accordance with the Indian Domain Name Dispute Resolution Policy, dated June 28, 2005 ["the Policy"], the Rules for the .IN Domain Name Dispute Resolution Policy, approved by NIXI ["the Rules"] and the Indian Arbitration and Conciliation Act, 1996 ["the Act"].

The complaint is dated February 6, 2009. On February 18, 2009, the National Internet Exchange of India [NIXI] appointed Rodney D. Ryder as Sole Arbitrator from its constituted panel as per paragraph 5 (b) of the INDRP Rules of Procedure. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence to the National Internet Exchange of India [NIXI],

The complaint was allotted to the Arbitrator on February 18, 2009. The Respondent submitted its response on March 05, 2009. Thereafter, the Complainant submitted a rejoinder on March 14, 2009.

It appears that all requirements of the Policy and the Act have been satisfied by the parties, NIXI and the Panellist.

4. Factual Background

The Complainant is a leading retailer and a public listed company promoted by Shri Kishore Biyani, popularly known as "The Future Group" and is one of India's leading business houses with multiple businesses inter-alia including telecom/IT, apparels, general provisions, electronics, general merchandise, logistics, fashion, entertainment etc.; spanning across the consumption space.

That the profile and popularity of the Complainant under the trade/service name/mark 'aLL has been continuously increasing since the date of adoption and use of the mark.

5. Parties' Contentions

A. Complainant

The Complainant contended that the disputed domain name is identical to the trademark 'aLL in which it owns rights. The Complainant further contended that the Respondent has no legitimate interest or rights in the domain name.

B. Respondent

The Respondent contended that it had not registered and used the domain name in bad faith. Further, the Respondent claimed that the domain name now was registered for the purpose of setting up a Website. It further clarified that the portal would assist Indian netizens and regular shoppers to make more informed decisions, by discovering and reviewing various aspects of products prior to purchase. The Respondent also contended that the mark "aLL" is generic word and was incapable of protection under trademark law.



6. Discussion and Findings

A. The Evidentiary Standard for Decision

The Policy directs that the complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and,
- (ii) that the respondent has no legitimate interests in respect of the domain name; and,
- (iii) that the domain name has been registered and used in bad faith.

The name/mark 'all' is distinctive, unique and has an established reputation in India and internationally. The Complainant owns all the rights including statutory and common law rights in the said name/mark and is entitled to protection under the Indian Trade Marks Act, 1999. The use of the said name either as a mark, name, domain name, or in any other form whatsoever constitutes violation of the Complainant's rights.

The Complainant has applied for trademark registration for the mark 'aLL under the Indian Trademarks Act, 1999. The generic nature of the word, 'aLL does not affect the specific secondary meaning acquired by the disputed mark through extensive use, promotional activities and advertising by the Complainant [*Eurobet UK Ltd. v. Intergate*, WIPO Case No. D2001-1270],

B. Similarity of the Disputed Domain Name and Complainant's Mark

As noted above, Respondent does not dispute that its domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

C. Lack of Rights or Legitimate Interests in Domain Name

Complainant has presented evidence to show that Respondent lacks any rights or legitimate interest in the domain name. Respondent's claim of rights or legitimate interests is not persuasive.

Rules and precedents in relation to domain name disputes set out in particular but without limitation three circumstances which if proved by respondent, shall be evidence of the respondent's rights to or legitimate interests in the domain name, namely:

- before any notice of the dispute to the respondent, the respondent's use of, or demonstrable preparation to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- the respondent [as an individual, business, or other organization] has been commonly known by the domain name, even if respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

It has been consistently and repeatedly established by WIPO panels that "once a complainant establishes a *prima facie* evidence showing that none of the three circumstances establishing legitimate interests or rights applies, the burden of proof on this factor shifts to respondent to rebut the showing" [*Ditting Maschinen AG v. I.C.T. Company*, WIPO Case No. D2003-0170; *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com*, WIPO Case No. D2001-0784],



In the case at hand, it is clear that Complainant has never authorized or licensed Respondent to use Complainant's trademark; 'aLL'.

D. Bad Faith Registration and Use

The pleadings in this case are consistent with Respondent's having adopted <all.in> for the specific purpose of trading off the name and reputation of the Complainant, and Respondent has offered no alternative explanation for his adoption of the name despite his otherwise detailed and complete submissions.

Respondent's reliance on previous ICANN/UDRP decisions is misplaced.

7. Decision

Under the Indian Domain Name Dispute Resolution Policy, I find in favour of the Complainant. The disputed domain name is identical to a trademark in which Complainant has rights; Respondent lacks rights or legitimate interests in the domain name; and the domain name has been registered in bad faith.

In light of the facts, arguments and reasoning listed above, I decide that the disputed domain name <all.in> should be transferred to the Complainant.



**Rodney D. Ryder
Sole Arbitrator**

Dated: April 2, 2009