



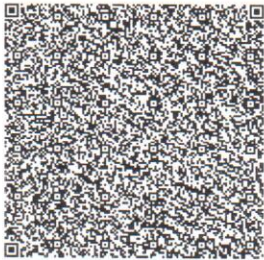
सत्यमेव जयते

INDIA NON JUDICIAL

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Certificate Issued Date	: 15-Oct-2014 02:43 PM
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Description of Document	: Article 12 Award
Property Description	: NA
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**BEFORE THE SOLE ARBITRATOR UNDER THE
In DOMAIN NAME DISPUTE RESOLUTION POLICY
IN THE MATTER OF**

Urban Outfitters, Inc
500 S Broad St,
Philadelphia, PA 19019
Philadelphia.

(Complainant)

vs.

GaoGou,
YERECT INTERNATIONAL LIMITED
175 Bloor Street, East, Suite 1100
South Tower, Toronto, M4W 38, CA

(Respondent)

Statutory Alert:

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The Parties

The Complainant in this administrative proceeding is Urban Outfitters, Inc., a company incorporated under the laws of the United States of America, with principal place of business located at 500 S Broad St, Philadelphia, PA 19019.

The Respondent in this administrative proceeding is GoaGou, YERECT INTERNATIONAL LIMITED, 175 Bloor Street, East Suite 1100 South Tower, Toronto, M4W 3B8, CA.

The Domain Name

The disputed domain name is <ANTHROPOLOGIE.CO.IN> registered on February 15, 2012.

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.anthropologie.co.in.

.IN Registry has supplied the copy of the Complaint and Annexures to me.

On 03.19.2014, I sent an email to the parties informing them about my appointment as an Arbitrator, and directed the Complainant to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 03.09.2014 with the instructions to file his say latest by 18.09.2014.

Vide email dated 03.09.2014, .IN Registry provided a proof of service of copy of complaint upon the Respondent by a Blue Dart Courier vide consignment no. 4654674183 and in the same email also assured to update me about the status of the delivery of the courier.

On 29.09.2014, .IN Registry informed me that the courier has been lying at the destination address due to incomplete, incorrect address of the respondent.

On 08.10.2014, .IN Registry sent a proof of non-service of complaint to the Respondent due to incomplete and incorrect address of the Respondent to me.



The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

I have perused the record and annexures / document.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

The Complainant is the owner of the service mark and trademark ANTHROPOLOGIE.

The Complainant sells, *inter alia*, and markets their ANTRHORPOLOGIE trademarked goods directly to the consumer through their e-commerce websites, including but not limited to, www.anthropologie.com and www.anthropologie.eu, as well as their marked goods being widely available through Ebay India. The proprietor of the ANTHROPOLOGIE trademark is the Complainant as shown by the various documents submitted by the Complainant. The Complainant has exclusive registered trade mark in numerous jurisdictions where rights subsist around the world.

The Respondent in this administrative proceeding is GoaGou, YERECT INTERNATIONAL LIMITED, 175 Bloor Street, East Suite 1100 South Tower, Toronto, M4W 38, CA.

Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical to the trademark "ANTHROPOLOGIE" of the Complainant.

2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent was registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex-parte and the hence conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "ANTHROPOLOGIE".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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.

i) The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

The Complainant has stated in his complaint that domain name of Respondent www.anthropologie.co.in is confusingly similar and identical to his name/mark ANTHROPOLOGIE. The Respondent has applied for domain name that is identical with complainant's name and mark ANTHROPOLOGIE.

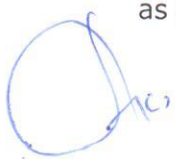
It is further stated that the complainant is the registered proprietor of the "ANTHROPOLOGIE" trademark in numerous countries in the world and has gained significant reputation over the years. The complainant is also the registrant and proprietor of various Domain name registration at International level.

The complainant has established its prior adoption of the mark /name ANTHROPOLOGIE as it has been registered for nearly 19 years i.e. since October 1993. The complainant has filed sufficient evidence to show that it has trademark rights in the mark ANTHROPOLOGIE.

The Tribunal is also of the view that as per INDRP Rules, incorporating a trademark in its entirety in the domain name and by merely adding a suffix "co.in" does not create a distinctive character to the domain name.

The Tribunal has relied upon the award of "Walmart Stores Inc. v. Ambra Berthiaume", INDRP/491 (June 11, 2013) and "Orbis Holdings Limited v. Lu A Feng and Orbis Search", Case No. D2007-0515 to prove the above contentions.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.



Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

ii) The Registrant has no rights or legitimate interests in the respect of the domain name

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) *the Registrant 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.*

The Complainant has contended that the Respondent was aware of the Complainant's trademark rights in the ANTHROPOLOGIE mark/name. It is also submitted by the Complainant that the Respondent is not and has never been known by the ANTHROPOLOGIE name or by any similar name. The Respondent did not have any active business in the name of ANTHROPOLOGIE.

The Tribunal is of the view that the registration of the disputed domain by the Respondent is thus a typical example of "cyber squatting". The fact that the Respondent's website carries nothing but sponsored links of other competitor websites and is merely a PPC parking page further proves that the Respondent is just a cyber squatter.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii)

iii) The Registrant domain name has been registered or is being used in bad faith

The Complainant alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website of the Complainant and also to deceive the consumers into believing that there is a connection or association between the Complainant and Respondents website.

The Complainant further contend that the only purpose of the Respondent for registering the disputed domain name was to sell the domain name for profit in excess of documented out of pocket costs directly related to domain name. The Tribunal analyses that when a domain name is put for sale and registration of such domain name is only for obtaining illegal monetary gain, then it amounts to registration in bad faith. Cases relied upon "Ogilvy & Mather Worldwide v. Domains Administrator, INDRP Case No. 567.

It can also be seen in the complaint that the Complainant has provided proof of Respondent being in the pattern of registering multiple domain names incorporating trademarks of other people amounting of bad faith. The Tribunal is of the view that the Respondent is cyber squatter that has engaged in a pattern of infringing on trademark holders rights which amounts to bad faith.

The Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

The Tribunal has relied upon the award of *Pfizer Inc. Vs. Deep Soni and Ashok Soni*. (Case No. D2000-0782) and *Morgan Stanley v. Keep Guessing*, INDRP/024 (June 27, 2007) to prove the above mentioned contentions.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise, the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.anthropologie.co.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 16th day of October 2014.



A.K. Singh
Sole Arbitrator
Date: 16.10.2014