



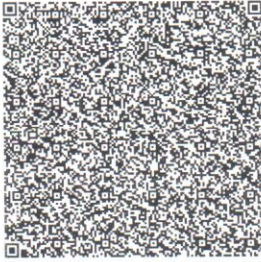
सत्यमेव जयते

INDIA NON JUDICIAL

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Certificate No.	: IN-DL62033843772397M
Certificate Issued Date	: 30-May-2014 02:27 PM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DL DL-SHCIL20950451368900M
Purchased by	: A K SINGH ADVOCATE
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: A K SINGH ADVOCATE
Second Party	: NA
Stamp Duty Paid By	: A K SINGH ADVOCATE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

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

(Complainant)

Versus

Machang
HUA AN HOLDINGS (H.K.) LIMITED
Room 14-05-301, West Block, North
Hong Kong - 999077 HK

(Respondent)

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.
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THE PARTIES:

The Complainant in this proceeding is Urban Outfitters, Inc. and is one of the leading lifestyle speciality retail companies in the world.

The Complainant is represented through their authorized representative:

Name : Safenames Ltd.
Address : Safenames House, Sunrise Parkway,
Linford Wood, Milton Keynes, MK14 6LS, UK
Telephone : +44 1908 200022
Fax : +44 1908 325192
Email : legal@safenames.net

The respondent in this proceeding is Machang, HUA AN HOLDINGS (H.K.) LIMITED, Room 14-05-301, West Block, North, Hong Kong, 999077, HK, Tel- +852.28583576, Email- domainbook@hotmail.com.

THE DOMAIN NAME AND REGISTRAR:


The domain name in dispute is www.anthropologie.in. According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name www.anthropologie.in, with whom the disputed domain name www.anthropologie.in is registered is D.B.A inregistrar.com (R123-AFIN).

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.in. .IN Registry has supplied the copy of the Complaint to me.

On 01.05.2014, I sent an email to the parties informing them about my appointment as the Arbitrator, and also directing the Complainant to supply the copy of the Complaint with annexures 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 01.05.2014 with the instructions to file his say latest by 15.05.2014.



Vide email dated 01.05.2014, the Complainant confirmed the service of the soft copy of the Complaint along with the annexures to the Respondent by email. However, since no proof of service of the hard copy of the Complaint was provided, vide mail dated 08.05.2014 I called upon the Complainant to provide me the same. On 08.05.2014 itself, I received an email from the Complainant with the proof of service of the hard copy of the Complaint along with the annexures attached. According to the courier receipt, the hard copy of the Complaint with annexures was dispatched to the Respondent on the same day i.e., 08.05.2014. Since no response was received from the Respondent within the given period of fifteen (15) days, in the interest of justice and as a last opportunity a further time of seven (7) days was granted to the Respondent to file its reply vide my mail dated 17.05.2014.

The Respondent responded vide mail dated 20.05.2014 asserting that the Complainant had a trademark on "ANTHROPOLOGIE" in the US but not in India, and thus the Complainant has no right on the domain name in India. The Respondent further asserted that he had a trademark on "ANTHROPOLOGIE" in Singapore. However, no details or proof of Respondents trademark were provided to me and the response of the Respondent was very limited and did not address the specific allegations made in the Complaint. Accordingly, vide mail dated 21.05.2014, I called upon the Respondent to provide more details of his trademark in Singapore and/or provide any other submissions/documents in support of his case, failing which the Tribunal would proceed with the matter in accordance with the pleadings/documents available on record.

The Respondent failed/neglected to file his say/ reply to the specific allegations made in the Complaint within the stipulated time despite receipt of soft copy of the Complaint and annexures. I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make it a part of the proceedings. Since the Respondent only sent an email dated 20.05.2014 and has failed to join the proceedings, or to file any specific response, the present award is passed.

I have perused the record and annexure/ documents.

FACTUAL BACKGROUND:

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



The Complainant in this administrative proceeding is Urban Outfitters, Inc., a leading lifestyle speciality retail company engaged in sale of women's casual apparel and accessories, shoes, home furnishings, gifts and decorative items. It is also the registered proprietor of the trademark ANTHROPOLOGIE and its variations in all forms.

The Complainant states that it is the prior adopter of the mark "ANTHROPOLOGIE" and the owner of the trademark/service mark "ANTHROPOLOGIE". The Complainant is well known all around the world by the name ANTHROPOLOGIE, and has made profits under the said name.

The Complainant further states that its use of the well-known trademark has been extensive, exclusive and continuous all around the world. As a result of the Complainant's marketing and promotion of its goods and services under its trademark "ANTHROPOLOGIE", the mark has gained worldwide recognition and goodwill, and has become very well-known. Moreover, the Complainant's trade mark has firmly been associated with the Complainant.

It has also been stated in the Complaint that the Complainant has spent huge sums of money towards advertisement and promotion of its brand "ANTHROPOLOGIE" globally, and has done so even on the internet, *inter alia*, through its website www.anthropologie.com accessible anywhere in the world along with region specific websites. The Complainant published and released their summer catalogue entitled "India Rising" featuring their new line of clothes, accessories and home range which was extensively promoted through fashion blogs, websites and newspaper articles.

Respondent in this proceeding is Machang, who has not filed any response and submissions to the Complaint despite being given an adequate notice and several opportunities by the Arbitrator except mail dated 20.05.2014.

PARTIES CONTENTIONS:

(a) Complainant

The Complainant contends as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;



2. The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name;
3. The Disputed Domain Name was registered and is being used in bad faith.

(b) Respondent

The Respondent has not filed any proper 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 submissions put forth by the Complainant, and the evidence filed by him. He has simply sent a mail dated 20.05.2014 but has not provided any details as sought by the Arbitrator.

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 the Respondent to file a reply but no proper response was received. Therefore, the Arbitrator has proceeded with the arbitration proceedings on the basis of material on record.

Rule 12 (a) of the INDRP Rules of Procedure provide 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's assertions and evidence and inference drawn from the Respondent's failure to file proper reply.

A perusal of the submissions and evidence placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark "ANTHROPOLOGIE" and its other variations.



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.

The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))

The Complainant's trademark "ANTHROPOLOGIE" was adopted in the year 1993 internationally. In India, the Complainant started its business in the year 2011. The Respondent registered the disputed domain name on 06.07.2012, according to the available information. The disputed domain name www.anthropologie.in is identical to the Complainant trademark and a very distinctive feature of the disputed domain name is the incorporation of the Complainant trademark except for the generic term ".in" appended to it. However, such differences can be ignored for the purpose of determining similarity between the disputed domain name and the Complainant's trademark as it is a generic and technical requirement and is non-distinctive, as has been held in *Orbis Holdings Limited vs. Lu A Feng (First Respondent) and Orbis Search (Second Respondent)*, Case No. D2007-0515 and *Morgan Stanley vs. Bharat Jain*, INDRP Case No. 156 dated 27.09.2010. It is a well-established principle that where a domain name incorporates a Complainant's well known and distinctive trademark in its entirety, it is confusingly similar to that mark despite the addition of a descriptive word or words (*Wal Mart Stores, Inc. vs. Kuchora, Kal*, WIPO Case No. D2006-0033).

Further, at the time of registration of the disputed domain name www.anthropologie.in, the Complainant had already been using the marks "ANTHROPOLOGIE" as its trademark and in its domain names with firmly established rights in the same. Also, at the time of registration of the disputed



domain name by the Respondent, the Complainant's trademark had already acquired the status of a well-known mark. The Respondent can neither show any rights superior to that of the Complainant in the trademark "ANTHROPOLOGIE" nor can the Respondent state that it was unaware of the Complainant's mark while registering the disputed domain name. The only logic behind getting an identical mark registered in such a case is in the reason that the Respondent got the disputed domain name registered with the intention to trade upon the fame of the Complainant's mark in violation of para 4 (b) of the Policy. Internet users are highly likely to believe that the disputed domain name is related to, associated with or authorized by the Complainant.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. The Arbitrator, therefore, comes to the conclusion that the disputed domain name is confusingly similar and identical to the trademark of the Complainant.

The Registrant has no rights or legitimate interests in respect of the domain name - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name 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;*

The Complainant's mark is well known and it has gained rights purely based upon prior use. Therefore, the use of the disputed domain name without any permission from the Complainant is an act done in bad faith, and confers no right or legitimate interest in favour of the Respondent. It may be noted that though the Respondent in his mail dated 20.05.2014 has alleged that he has a trademark on "ANTHROPOLOGIE" in Singapore, no further details or proof of the same has been provided to the Tribunal.

Moreover, there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the disputed domain name which is

identical to that of the Complainant. The Complainant adopted the mark "ANTHROPOLOGIE" in the year 1993 while the Respondent got the disputed domain name registered in the year 2012. Any pre-registration search would have made the Respondent aware of the Complainant's repute and it would have been extremely difficult to avoid knowledge of the Complainant's trademark brand. In the case of *mVisible Technologies, Inc. vs. Navigation Catalyst Systems, Inc.*, WIPO Case No. D2007-1141 it was held that, "although there may be no obligation that a domain name registrant conduct trademark or search engine searches to determine whether a domain name may infringe trademark rights, a sophisticated domain owner who regularly registers domain names for use as PPC landing pages cannot be wilfully blind to whether a particular domain name may violate trademark rights. In this context, a failure to conduct adequate searching may give rise to an inference of knowledge."

Additionally, the Complainant has alleged that the Respondent is using the disputed domain name as a pay-per-click [PPC] parking page diverting internet users to competing services and/or products similar to those of the Complainant, making confusion likely in the minds of the consumers, and this fact has not been rebutted by the Respondent. The use of a domain name as a PPC landing is not in itself an illegitimate practice, however "if any of the links on a PPC parking website take advantage of the Complainant's trademark, that is not a fair use" (*Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH vs. Private Whois Service*, WIPO Case No. D2011-1753).

The Complainant has thus demonstrated successfully that the registration and use of the disputed domain name by the Respondent was done in bad faith as per paragraph 6 (iii) of the policy, in the sense that its use amounted to an attempt to intentionally attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website and the services offered thereon.

The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))

The Complainant has alleged that the Respondent has registered and used the disputed domain name in bad faith. It is further submitted that the Complainant sent a cease and desist letter on 02.01.2014 to the Respondent informing him of



the Complainant's rights and requesting that the domain name be transferred to the Complainant by 13.02.2014. The Complainant also offered to acquire the disputed domain name by offering a gesture of goodwill in the form of consideration, which did not succeed, given that the Respondent on 09.01.2014 offered to sell the disputed domain name for a price of \$2890 USD and reacted by sending a threatening email on 12.02.2014.

In *Wal-Mart Stores, Inc. vs. Machang*, INDRP Case No. 539 (November 21, 2013), which incidentally involves the Respondent in the present case, it was stated: *"the Respondent offered to sell the domain name to the Complainant for an amount of \$1890 USD with an intention to make a profit out of the said domain name. Such behaviour constitutes evidence that the Respondent has no right or legitimate interest in respect of the disputed domain name"*.

Since the Respondent has not responded to the Complaint and has not filed a proper reply, it can be safely presumed that he has nothing to say except what is stated in his mail dated 20.05.2014. The activities of the Respondent to get registered the domain name in dispute rise to the level of a bad faith and usurpation of the Complainant's Mark to improperly benefit the Respondent financially, in violation of applicable trademark and unfair competition laws.

The facts make it clear that the Respondent was taking advantage of the goodwill and fame of the Complainant's well-known trademark for its own substantial commercial profit and gain, and the use of the disputed domain name is in bad faith as defined under paragraph 6 (iii) of the policy.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its 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.in to the Complainant. Parties are directed to bear their own cost. The Award is accordingly passed on this 10th day of June, 2014.



Mr. A.K. Singh
Sole Arbitrator
Date: June 10, 2014