



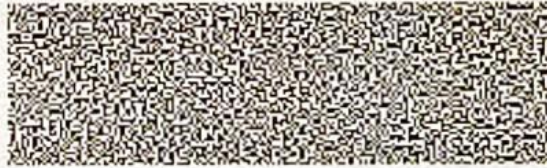
सत्यमेव जयते

INDIA NON JUDICIAL

Government of Karnataka

e-Stamp

Certificate No.	: IN-KA79652790523392U
Certificate Issued Date	: 09-Nov-2022 06:59 PM
Account Reference	: NONACC (FI)/ kagcsl08/ Vinayaka Layout/ KA-JY
Unique Doc. Reference	: SUBIN-KAKAGCSL0865323527690326U
Purchased by	: MARAM SURESH GUPTA
Description of Document	: Article 11 Award other than partition Award
Description	: ARBITRATION AWARD
Consideration Price (Rs.)	: 0 (Zero)
First Party	: MARAM SURESH GUPTA
Second Party	: MARAM SURESH GUPTA
Stamp Duty Paid By	: MARAM SURESH GUPTA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

ARBITRATION AWARD .IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI] .IN Domain Name Dispute Resolution Policy INDRP Rules of Procedure

Disputed Domain Name: <funimation.in>
INDRP Case No. 1621
Before the Sole Arbitrator: Mr. Maram Suresh Gupta

[Signature]

Page 1 of 9

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.sholestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

GOVERNMENT OF KARNATAKA GOVERNMENT OF KARNATAKA GOVERNMENT OF KARNATAKA GOVERNMENT OF KARNATAKA GOVERNMENT OF KARNATAKA

ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

.IN Domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Disputed Domain Name: <funimation.in>

INDRP Case No. 1621

Before the Sole Arbitrator: Mr. Maram Suresh Gupta

IN THE MATTER OF:

Funimation Global Group, LLC

3501 Olympus Blvd.

Coppell, TX 75019

United States of America

.....Complainant

Versus

CYNTHIA J. BALLARD

Chicago Avenue

Stark Hollow Road

New York

Phone No.: +1.5596162425

Email: sehjada@protonmail.com

.....Respondent

1. The Parties

- a) The Complainant in the present arbitration proceedings is **Funimation Global Group, LLC** (hereinafter referred as '**Complainant**'), with its office at 3501 Olympus Blvd. Coppell, TX 75019, United States of America (USA). The Complainant is represented by **Evan Stone of Stone & Vaughan, PLLC**, having address 317 S. Division St., #52, Ann Arbor, MI 48104, Telephone: 469-248-5238, Fax: 310-756-1201 E-Mail: evan@stonevaughanlaw.com.
- b) The Respondent in the present arbitration proceedings is **CYNTHIA J. BALLARD**, Chicago Avenue, Stark Hollow Road, New York, Phone No.: +1.5596162425, Email:

sehjada@protonmail.com. These contact details of the Respondent were provided by NIXI along with the copy of the complaint and the same were also mentioned in the revised copy of the complaint filed by the Complainant dated 8th November 2022.

2. The Disputed Domain Name and The Registrar

- a) The following information about the disputed domain name and the registrar is as per the information furnished by the Complainant in its complaint and supporting exhibits thereof.
- b) The disputed domain name is <**funimation.in**> and was created on 15th August 2020. It was set to expire on 15th August 2023. Based on information from WHOIS database, the registrant client ID is **CR437307202** and registrant ROID is CF405F3871A394E54B5F5CD5DC8790D97-IN.
- c) The accredited Registrar with whom the disputed domain name was registered is GoDaddy.com, LLC.

3. Procedural History

- a) The present arbitration proceeding is as per the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India [NIXI] and the INDRP Rules of Procedure (the "Rules"), under the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes according to the Policy and the Rules thereunder.
- b) NIXI vide its email dated 11th October 2022 requested the availability of Mr. Maram Suresh Gupta to act as the Sole Arbitrator in the present matter. In return, on the same day, I have indicated my availability and accordingly submitted the fully signed Statement of Acceptance and Declaration of Impartiality and Independence, which complied with the .INDRP Rules of Procedure.



c) Pursuant to the above acceptance and declaration of the Sole Arbitrator, NIXI appointed, vide in its email dated 11th October 2022, Mr. Maram Suresh Gupta as the sole Arbitrator and the same was also intimated to both the Complainant and Respondent (hereinafter '*parties*'). Thereafter, on the same day, 11th October 2022, a notice having directions to both the parties was issued by me. In the said notice, the Complainant was directed to furnish copies of the complaint along with supporting annexures to the Respondent both via email and courier. In addition, the Respondent was also directed to file his response to the complaint within 10 days from the date of the notice. The Complainant was also instructed to furnish confirmation copies of both the means of communication to the Arbitrator with a copy to NIXI. Further, the Complainant was also directed to file the missing parts – power of attorney issued by the Complainant, and amended complaint with name of the Respondent.

d) The Complainant served copies of the Complaint and its supporting annexures only via email to the Respondent. The confirmation copies of the email sent to the respondent were submitted by the Complainant to the Arbitrator with a copy to NIXI, dated 8th November 2022. Moreover, the representative of the Complainant failed to submit power of attorney issued by the Complainant. Nonetheless, a self-declaration by the attorney of the complainant was considered for the proceedings of the present case (*see Exhibit D* of the Complaint). It is evident that hard copies of the complaint and its copies were not served via courier to the Respondent due to incomplete or inaccurate address found in WHOIS record.

e) On 21st October 2022, I informed the Parties that though no Response was received by the Panel from the Respondent within the allotted time, in the interest of justice, I granted an additional time of 5 days and that if no reply is filed by 26th October 2022, the award would be passed on merits. The additional time granted to the Respondent



lapsed and no Response was received by the panel. In reality, there has been absolutely no communication from the Respondent till today.

4. Factual Background and Parties Contentions

The Complainant has made the following submissions in support of its complaint against the Respondent. The contentions are detailed as follows:

- a) The Complainant admitted that the mark FUNIMATION is used since 30th September 1995 in conjunction with the production and distribution of motion pictures and films, production of television programs, in the fields of animated and live-action entertainment, science fiction, comedy, drama, and mystery. The prominence of complainant is abundantly evident from various publications (*see Exhibit C*).
- b) Similarly, a perusal of **Exhibit A and B** indicates details pertinent to registered and renewed trademark FUNIMATION, of the Complainant. The mark registered (*see Table 1*) by the Complainant in USA is recited below:

Table 1: Registered Trademark of the Complainant

Sl. No.	TM Application No.	Name of the mark	Class
1	USA - 2010746	FUNIMATION	41


Most importantly, the Complainant has also renewed the mark in USA. Further, it appears that the Complainant also owns certain domain names under the mark FUNIMATION, but no evidence was provided by the Complainant in its complaint in support of the same.

- c) The Complainant contends that the disputed domain name (www.funimation.in) subsumes its registered trademark FUNIMATION thereby amounting to infringement. The Complainant submits here that the disputed domain name was registered by the Respondent in bad faith, as the distinctive and dominant element in the Respondents domain is the word FUNIMATION (*see Exhibit – E and F*).



- d) The Respondent did not reply to the Complainant's contentions even after providing a fair opportunity. It is pertinent to reiterate that till today, this Panel has not received any response from the Respondent's.

5. Discussion and Findings

- a) As per Paragraph 4(i) of the Policy, the Complainant is required to show that it has a right in the trademark which it intends to assert. Based on the documents furnished by the Complainant it is abundantly evident that the trademark FUNIMATION is registered in USA (see **Table 1**). In addition, the Complainant has never authorized the Respondent in any manner whatsoever to offer the goods for sale under its registered trademark FUNIMATION. Therefore, from the averments made by the Complainant, it is clear that the Respondent is neither a licensee nor has it otherwise obtained the authorization of any kind whatsoever to use the registered trademark FUNIMATION. Accordingly, the Respondent does not have any legitimate interest and it appears that the Respondent has registered the disputed domain name only to enrich itself unjustly from such unauthorized adoption and registration.
- b) Once the Complainant makes a *prima facie* case showing its legal rights and lack of any kind of rights/ authorizations to the Respondent from the Complainant, the Respondent must come with proof of legitimate interest in the disputed domain name to rebut the presumption. Nonetheless, the Respondent has failed to file any Response till today towards the Complaint. According to the Rules I have given a fair opportunity to the parties to present their case. Though sufficient time (10 days + 5 days) was offered, the Respondent failed to file any response to the Complaint. Accordingly, the proceedings are set to award *ex parte*.
- 

- c) In light of the above circumstances, my decision is based upon the assertions; evidences presented by the Complainant and inferences drawn from the Respondent's failure to file/ submit a Response despite offering sufficient opportunity and time to do so.

6. Issues in the Dispute

The Complainant invoked Paragraph 3 of the Rules to initiate arbitration proceedings by filing a Complaint with NIXI. The Respondent in registering the disputed domain name has submitted to the mandatory arbitration proceedings in terms of the Policy, which determines the essential elements for a domain name dispute, which are as follows:

- Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?
- Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?
- Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

All the above three essential elements are discussed in the following sections:

Essential Element No. 1: Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?

The test for confusing similarity involves the comparison between the registered trademark and the disputed domain name. In the present case, the disputed domain name incorporates the Complainant's registered trademark FUNIMATION in its entirety. In order to assess confusing similarity, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") ".in". In short, the disputed domain is identical to the Complainant's registered trademark FUNIMATION. In addition, the Complainant has furnished sufficient evidence (registration certificate/ renewal certificate) in support of its registered trademark FUNIMATION, arising out of its use. Therefore, given the



Complaint and its accompanying annexure documents and cited case laws, I am convinced beyond any ambiguity that the disputed domain name is absolutely same/ identical to the Complainants registered trademark FUNIMATION. Accordingly, the disputed domain name is identical to Complainant's registered trademark. The complainant has satisfied the first essential element.

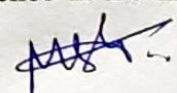
Essential Element No. 2: Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?

Firstly, from the submissions of the Complainant it is clear that they have never authorized the Respondent in any fashion or otherwise not licensed to use its registered trademark FUNIMATION for a domain name registration. Besides, it appears that the Respondent is an individual by the name Cynthia J. Ballard. There is also no evidence to suggest that the Respondent is commonly known by the disputed domain name or that the individual/ Respondent has any rights in FUNIMATION. In short, the Respondent is not affiliated or related to the Complainant in any way whatsoever.

Secondly, the burden of proof to establish legitimate interest over the disputed domain name lies with the Respondent. However, the Respondent failed to submit a reply to the Complainant within the allotted time. Thus, the Respondent fully and completely failed to establish legitimacy in registering the disputed domain name. Accordingly, in light of the Complaint with the exhibits and Respondents failure to file reply to the Complaint, I believe that the Respondent does not have a right and legitimate interest.

Essential Element No. 3: Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

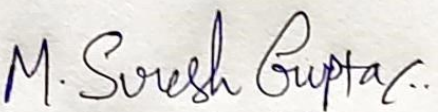
The Complainant is the registered owner of FUNIMATION as a US Trade Mark and is using since 1995. In addition, the panel accepts that the Complainant's mark FUNIMATION enjoys world-wide reputation and also has wide presence in the internet.



At present, due to rapid advancement in information technology services, reputation of marks transcends national borders. In the present case, a simple cursory internet search for the disputed domain name FUNIMATION would have disclosed its ownership and its use thereof by the Complainant. Accordingly, a strong presumption arises towards the aspect that the Respondent was very much aware of the existence of the Complainant's mark FUNIMATION at the time of registering the disputed domain name. Therefore, using the same known and registered mark of the Complainant strongly suggests opportunistic bad faith. The fact that the Respondent has not replied to the Complainant's contentions, further points to bad faith. In light of the above, it is evident beyond reasonable doubt that the Respondent has adopted the disputed domain name in bad faith.

7. Decision

The Complainant has succeeded in establishing all the three essential elements of the .INDRP Policy. In light of the above discussions and in accordance with the Policy and Rules, the Panel directs the transfer of disputed domain name <FUNIMATION.IN> to the Complainant with a request to NIXI to monitor the transfer. This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceedings.


Maram Suresh Gupta
Sole Arbitrator

Date: 10th November 2022