

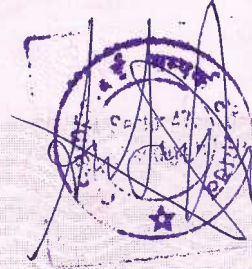
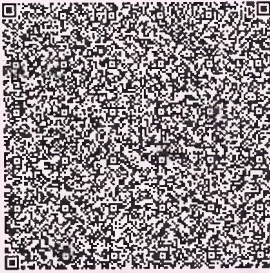


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No. : IN-CH07968732243143P
Certificate Issued Date : 06-Jun-2017 04:31 PM
Certificate Issued By : chankshai
Account Reference : IMPACC (GV)/ chimpsp07/ E-SAMPARK SEC-47/ CH-CH
Unique Doc. Reference : SUBIN-CHCHIMPSP0715874938194934P
Purchased by : SANDEEP MISHRA
Description of Document : Article 12 Award
Property Description : #187 ADVOCATE SOCIETY SEC 49 A CHD
Consideration Price (Rs.) : 0
(Zero)
First Party : DR ASHWINIE KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : DR ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



-----Please write or type below this line-----

ARBITRATION AWARD

1

Ashwinie B

UP 0000492154

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.
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.

ARBITRATION AWARD

(On Stamp Paper)

INDRP ARBITRATION

**THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]**

ARBITRAL TRIBUNAL CONSISTING OF

SOLE ARBITRATOR:

DR. ASHWINIE KUMAR BANSAL, L.L.B, Ph.D.

Advocate, Punjab & Haryana High Court,

House No: 187, Sector- 49A, Advocate Society,

Chandigarh

Email:akbansaladvocate@gmail.com

Mobile: +919915004500

In the matter of:

Maruti Suzuki India Limited,

Plot No. 1, Nelson Mandela Road, Vasant Kunj, New Delhi – 110070,
email: kiransingh.thakur@maruti.co.in.

...Complainant

VERSUS

Rocket Hotlisting, 302, Kamdhenu Complex, Near Toran
Dining Hall, Opposite Sales India Income Tax, Ahmedabad,
Gujarat – 380019, Email: info@keytorchimedia.com, Ph.
9979321623.

...Respondent

Ashwini Bansal

REGARDING: DISPUTED DOMAIN NAME: WWW.BALENO.IN

1. The Parties:

Complainant:

Complainant in the arbitration proceedings is: Maruti Suzuki India Limited, Plot No. 1, Nelson Mandela Road, Vasant Kunj, New Delhi – 110070. Complainant is represented by Mr. Thakur Kiran Singh.

Respondent:

Respondent in the arbitration proceedings is: Rocket Hotlisting, 302, Kamdhenu Complex, Near Toran Dining Hall, Opposite Sales India Income Tax, Ahmedabad, Gujarat – 380019, Email: infor@keytorchimedia.com, Ph. 9979321623

2. The Domain Name and the Registrar:

The disputed domain name <baleno.in> is registered with Crazy Domains FZ-LLC, PO Box A2191 Sydney South, New South Wales, 2000 (the "Registrar").

3. Procedural History [Arbitration Proceedings]

A Complaint has been filed with the National Internet Exchange of India (NIXI) by the complainant. At present Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by

Ashwinie B

NIXI. The parties were informed vide email dated 26.04.2017 that the Arbitrator had conducted few matters as a counsel for MARUTI Udyog Ltd., during the period 1998-2003 but thereafter there was no relationship with the said company. Parties were requested that if any party has objection against the arbitrator, same may be disclosed within 7 days but no party raised any objections hence arbitrator proceeded further in the matter.

NIXI has sent the hard copy of the complaint and annexures to Respondent which has been duly delivered to Respondent.

In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed Respondent on 19.05.2017, with copy to Complainant and NIXI, through the email, to give his response within 10 days. The respondent was also notified on whatsapp on the phone number 12 given in the complaint on 19.05.2017 which was duly responded by him through email received on 19.05.2017.

The Arbitrator has examined the pleadings and the documentary evidence produced by the complainant and response of the respondent received to email on 19.05.2017.

4. Factual Background

Complainant is a subsidiary of Suzuki Motor Corporation of Japan, which is a reputed passenger car company. Complainant is entitled to use several trademarks of its parent Japanese Company including BALENO. BALENO is a trademark registered in class 12 i.e. for vehicles.

Respondent has registered the disputed domain name <baleno.in> on 22.09.2015 which incorporates trademark of Complainant.

Ashwini B. L.

Hence, present Complaint has been filed by Complainant against Respondent for transferring the disputed domain name to him.

5. Parties Contentions

A. Complainant

The trademark BALENO of parent company of the complainant i.e. Suzuki Motor Corporation of Japan is being used in Class 12 and 35 for many years and constitutes a very valuable asset and property for the complainant. BALENO has been in use by complainant for many years (roughly from 1998, since the launch of the first BALENO in India). Complainant has the exclusive right to use the BALENO mark in India and also to protect the same from infringement. BALENO was registered by application number 474224 on 25.06.1987. Complainant has been using this as an identification mark for its vehicle and currently the same is being used for its hot seller hatchback vehicle. BALENO has become a well-known and a prominent mark in the past years. Complainant has also been running a website under the domain name BALENO.

Respondent has created the disputed domain name in 2015. Hence the present complaint has been filed.

B. Respondent

Mr. Azher Memon on behalf of respondent had sent two emails to the arbitrator with copy to NIXI and the complainant on 19.05.2017. Respondent in his first email had stated - "We have no objection for transfer of Baleno.in domain" and his second email to the Arbitrator reads as under:

Azher B

"This is regarding notice received on whatsapp on 19th May, 2017 for Transferring Baleno.in domain to complainant. I am owner of this domain have registered baleno.in domain on 2015-09-22 with below contact detail

Administrative Contact

Name: Azher Memon

Organization: Rocket Hosting

Street: 302 Kamdhenu CompleNr Toran Dining
Hall Opp Sales India Income Tax

City: Ahmedabad

State: Gujarat

Postal Code: 380019

Country: IN

Phone: +91.9979321623

Here as an owner of Baleno.in authorize to transfer baleno.in to Complainant."

Thus Respondent has shown its willingness to transfer the disputed domain name to complainant.

6. Discussion and Findings

Arbitrator has carefully considered complaint, email response of the respondent and other documents supplied by the complainant before making the award.

It remains incumbent on Complainant to make out its case in all respects under Paragraph 4 of the .IN Domain Name Dispute

Ashne B

Resolution Policy ('the Policy'), which sets out the three elements that must be present for the proceeding to be brought against Respondent, which Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which 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 Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

Complainant has claimed that it is subsidiary of Suzuki Motor Corporation of Japan and entitled to use trademark BALENO of its

Ashu B

parent company. It is further claimed that trademark is being used from 1998 since launch of first BALENO India and it has exclusive right to use mark in India and also to protect the same from infringement. BALENO was registered by application number 474224 on 25.06.1987.

Complainant has produced documents supporting trademark BALENO, screen shot of Baleno Portal of complainant and screen shot of disputed domain name along with complaint.

The complainant has failed to produce certificate of registration issued or signed by the Registrar Trademarks in its favour or in favour Suzuki Motor Corporation of Japan. The complainant had produced two incomplete documents relating to registration of trademark BALENO which neither contain name of issuing authority nor registration is in favour of the complainant or Suzuki Motor Corporation of Japan.

Search report enclosed with the complaint is an incomplete print out in which a portion of the report is missing. However it appears that the name of Proprietor of trademark BALENO is SUZUKI JIDOSHA KOGYO KABUSHIKI KAISHA. Complainant has failed to produce proper documents evidence in support of its claim having rights in trade mark BALENO.

In the interest of justice, the Arbitrator had given two opportunities to the complainant to produce relevant documents in support of his claim.

The claimant in his email dated 12.06.2017 had reproduced relevant extract of the License Agreement between Suzuki Motor Corporation and Maruti Suzuki India Limited in support of his submission.

Ashme B

Respondent in his response through two emails on 19.05.2017 has consented for transfer the disputed domain name to the complainant which amounts to his admission of the complaint.

In view of the facts stated above, the Arbitrator finds that the disputed domain name <baleno.in> is confusingly similar to the trademark of the complainant.

B. Rights or Legitimate Interests

Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name¹.

Complainant has claimed that it is subsidiary of Suzuki Motor Corporation of Japan and entitled to use trademark BALENO of its parent company. It is further claimed that trademark is being used from 1998 since launch of first BALENO India and it has exclusive right to use mark in India and also to protect the same from infringement. BALENO was registered by application number 474224 on 25.06.1987. Respondent has already agreed to transfer the disputed domain name to the complainant. Hence, the Arbitrator finds that Complainant has rights or legitimate interests in respect of the disputed domain name <baleno.in>.

¹ See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

Ashwini B. D.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has 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, provided that the Registrant has engaged in a pattern of such conduct; or

Ashume B

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

Each of the three circumstances in Paragraph 6 of the Policy, if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that Respondent is continuing to act in bad faith.

Complainant has claimed that it is subsidiary of Suzuki Motor Corporation of Japan and entitled to use trademark BALENO of its parent company. Respondent has agreed to transfer the disputed domain name to the complainant. The Arbitrator therefore finds that the disputed domain name <baleno.in> has been registered by Respondent in bad faith. Hence I am of the view that the disputed domain name <www.baleno.in> is liable to be transferred to the complainant.

7. Decision

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The Arbitrator orders in accordance with the

Ashme B

Policy and the Rules, that the domain name <www.baleno.in> be transferred to Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh
Dated: 12.06.2017



Dr. Ashwinie Kumar Bansal
Sole Arbitrator

Advocate, Punjab and Haryana High Court
#187, Advocates Society, Sector 49-A
Chandigarh, India

Email: akbansaladvocate@gmail.com

Mob: +919915004500