



தமிழ்நாடு தமில்நாடு TAMILNADU

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P. S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L. NO B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104. (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: www.brandfactory.in

M/s.Pantaloon Retail (India) Limited
Rep. by its Chief Financial Officer
Mr.Chandra Prakash Toshniwal
"Knowledge House"
Shyam Nagar,
Off: Jogeshwari - Vikhroli Link Road
Jogeshwari (East), Mumbai 400 060
Email: cp.toshniwal@pantaloon.com

Complainant

Vs.

Mr.K.Ramesh
M/s.Oriental Extractions Pvt. Ltd.,
Dnanwanthari Bhavan
MO Ward
Alappuzha, Pin: 688 011
Kerala
Email: ramesh5050@vahoo.com

Respondent





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5.3.2009

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S. SHANMUGA SUNDARAM
STAMP VENDOR,
L. No. 94 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104. (TAMIL NADU)

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1 The Parties:

The Complainant is M/s.Pantaloon Retail (India) Limited, Rep. by its Chief financial Officer, Mr.Chandra Prakash Toshniwal, "Knowledge House", Shyamgar, Off: Jogeshwari - Vikhroli Link Road, Jogeshwari (East), Mumbai 400 060.

The Respondent is Mr.K.Ramesh, M/s.Oriental Extractions Pvt. Ltd., Dnanwanthari Bhavan, MO Ward, Alappuzha, Pin: 688 011, Kerala. Neither the **Respondent** represented himself nor represented by any one.

2 The Domain Name and Registrar:

The disputed domain name: www.brandfactory.in

The domain name registered with .IN REGISTRY



3. Procedural History:

- February 06, 2009 : Date of Complaint.
- February 17, 2009 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- February 18, 2009 : The Arbitrator has submitted Statement of Acceptance and Declaration of Impartiality And Independence to the .IN REGISTRY.
- February 20, 2009 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorised representative and .IN REGISTRY.
- March 03, 2009 : Due date for filing Response by Respondent.
- March 05, 2009 : Arbitrator sent an e-mail to Respondent notifying his default, a copy of which was marked to Complainant's authorised representative and the .IN REGISTRY.

The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

M/s.Pantaloon Retail (India) Limited, Rep. by its Chief Financial Officer, Mr.Chandra Prakash Toshniwal, "Knowledge House", Shyam Nagar, Off: Jogeshwari - Vikhroli Link Road, Jogeshwari (East), Mumbai 400 060.

4.2 Complainant's Activities:

The Complainant states that they have been carrying on a well established business inter-alia operating multiple retail formats in both value and lifestyle segment of the Indian customer market and is a renowned chain of retail outlet under the name and style of BIG BAZAR, PANTALOON, FOOD BAZAR, CENTRAL, BRAND FACTORY etc., and online portal www.futurebazar.com; the complainant is a flagship company of future group running over thousand stores spread across 10 million sq feet; the claimant has won several prestigious awards such as



"most admired retail company of the year", "Retail Face of the year", "Coco-cola Golden Spoon Awards 2008", "The Reid and Taylore Awards for Retail Excellence 2008", "Images Retail Awards", "National Retail Federation Awards", "World Retail Congress Awards", "Hewitt Best Employees 2008 Award", "PC World Indian Website Awards", "Reader's Digest Trusted Brands Platinum Awards", "Retail Asia Pasific Top 500 Awards", "Asiamoney Awards", "Earnst and Young Entrepreneur of the year Award", "CNBC Indian Business Leaders Awards" and "LakshmiPat Singhanian - IIM Lucknow National Leadership Awards" which Awards per se, would establish the professional manner in which the complainant's business is being carried on by the various companies belonging to the future group.

4.3 Complainant's Trading Name:

The complainant states that in the beginning of the year 2006 they launched their brand factory retail store which brings forth a wide collection of clothing to select form in western wear, indo-western or ethnic wear in both formal and casual categories; the complainant's stores offers a wide range of products including apparel for men and women; infant wear; accessories; cosmetics; foot wear; sports wear; luggage; home linen etc.; the emphasis at brand factory is to offer the customer the widest range of brands and categories possible at absolutely great prices in an ambience that befits the brand; brand factory presents the brands in a fully air conditioned, slick environment in a larger place. The complainant further submits that they have applied for registration of their trade mark viz., brand factory vide clauses 35 to 42 on 21.07.2006 vide Trade Mark 1472128 under the category of service with the trade mark's registry, Mumbai. The complainant further states that they have retail stores in the name of brand factory in various states of India, such as Gujarat, Karnataka, Uttar Pradesh, Andhra Pradesh, Maharashtra, etc. However, the respondent registered domain name **brandfactory.in** which is identical and confusingly similar to their trade mark brand factory.

4.4 Respondent's Identity and activities:

The Respondent is Mr.K.Ramesh, M/s.Oriental Extractions Pvt. Ltd., Dnanwanthari Bhavan, MO Ward, Alappuzha, Pin: 688 011, Kerala and the registrant of the Domain Name <**www.brandfactorv.in**> which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi.



5. Parties contentions:

A. Complainant:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has rights:

According to the complainant, their trade mark brand factory has been used openly, continuously and exclusively since its inception during the course of business and due to the best quality products and varieties according to latest fashion, the said brand "brand factory" has acquired formidable reputation and good will in relation to the said goods. According to the complainant, the said trade mark BRAND FACTORY has come to be exclusively associated and identified with them. However, use of the domain name by the respondent is likely to cause confusion and/or deception amongst the members of the trade and public.

(b) Respondent has no rights or legitimate interests in the domain name:

According to the Complainant, they have honestly conceived and adopted the distinctive trade mark "brand factory" and by virtue of the original, honest adoption, continues and extensive use in respect of brand trade mark they have acquired actionable Intellectual Property Rights in trade mark brand factory and are entitled to protect trademark from being infringed, tarnished, diluted, misused and/or falsified by others.

(c) Respondent has registered and is using the domain name in bad faith:

According to the Complainant, it is apparent that Respondent has registered the domain name in bad faith as though it was registered in the year 2006 it has not been activated which indicates that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration. According to the Complainant, they are the prior user of the trade mark.

B. Respondent:

The Respondent did not submit any response.

6. Discussion and Findings:

It has to be asserted as to Whether the Constitution of Arbitral Tribunal was proper? and Whether the Respondent has received the notice of this Arbitral Tribunal?



Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on March 05, 2009.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark. The Respondent's domain name, **<brandfactory.in>**, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name **<brandfactory.in>** is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of



paragraph 4(ii) of the Policy. The Respondent had been given opportunities to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent



has failed to prove any affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name < **brandfactory.in** > be transferred to the Complainant.

Dated at Chennai (India) on this 11th March, 2009.


(D.SARAVANAN)
Sole Arbitrator