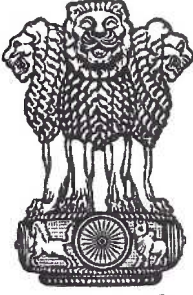


INDIA NON JUDICIAL

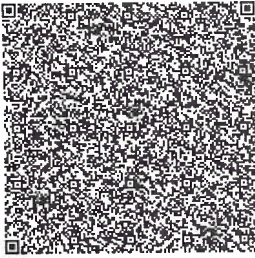
Government of National Capital Territory of Delhi



सत्यमेव जयते

e-Stamp

Certificate No. : IN-DL92405497325363Q
Certificate Issued Date : 17-Oct-2018 04:25 PM
Account Reference : IMPACC (IV)/ dl830203/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL83020389402954140146Q
Purchased by : AMARJIT SINGH
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : AMARJIT SINGH
Second Party : Not Applicable
Stamp Duty Paid By : AMARJIT SINGH
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line.

Award.

Amarjit Singh

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

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA

**.IN domain Name Dispute Resolution Policy INDRP Rules of
Procedure**

IN THE MATTER OF:

Charles & Keith International Pte Ltd

6 Tai Seng Link

Singapore 534101

.....Complainant

Wang Liqun

Jinke Road 1880

Shanghai

201203

CN

.....Respondent

1. THE PARTIES:

- 1.1. The Complainant in this administrative proceeding is Charles & Keith International Pte Ltd, 6 Tai Seng Link, Singapore 534101 and is represented through CSC Digital Brand Services Group AB, Drottninggatan 92-94, 111 36 Stockholm, Sweden.
- 1.2. The Respondent in this administrative proceeding is Wang Liqun, Jinke Road 1880, Shanghai 201203, CN

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <charleskeith.in> has been registered by the Respondent. The registrar with whom

the disputed domain is registered Dynadot, LLC, P.O. BOX 345, San Mateo CA 94401, United States.

3. PROCEDURAL HISTORY

3.1 The Complaint was filed with the “.In” Registry, National Internet Exchange of India (NIXI), against Wang Liqun, Jinke Road 1880, Shanghai 201203, CN. The NIXI verified that the Complaint together with the annexures to the Complaint satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy (“The Policy”) and the Rules of Procedure (“The Rules”).

3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with INDRP Policy and The Arbitration and Conciliation Act, 1996, and the Rules framed there under. The parties were first notified about my appointment of as Arbitrator on 24th Sept,2018.

3.3 The panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on 24th September, 2018. In accordance with the rules, paragraph 5(c), the Respondent was notified about the commencement of arbitration proceedings and was sent the complaint along with all the Annexure by NIXI electronically on the e-mail address furnished by the respondent at the time of seeking registration of the disputed Domain Name.



3.4 Copy of the Complaint and the annexures thereto were forwarded to the Respondent by e-mail dated 24th September, 2018 which were duly delivered at the e-mail address of the Respondent. Copy of the Complaint and the annexures thereto were also forwarded to the Respondent through courier at the address furnished by the Respondent at the time of obtaining registration of the disputed domain name. By e-mail dated 29th September 2018, this panel, informed the respondent the arbitration proceedings and was granted 10 days time ending on 9th October, 2018 to file his response/written statement and evidence, if any. The e-mail dated 29th September 2018 was also duly delivered at the e-mail address furnished by the Respondent at the time of obtaining registration of the disputed domain name. The Panel was informed by .In Registry by its e-mail dated 4th October 2018 that hard copy of the Complaint and Annexures sent to the respondent by Courier could not be delivered as the address as well as the telephone numbers provided by the respondent at the time of seeking registration of the disputed Domain Name. This panel by its e-mail of 8th October, 2018, copy whereof was also forwarded to the Complainant, and which was duly delivered, intimated the parties that the Respondent was duly served through e-mail and an opportunity to file his response was given to him. This panel also notified the parties that the Respondent has failed to file his response and that the matter will be decided on the basis of the material on record and in accordance with the law in due course. Despite receipt of e-mails



of 24th September 2018, 29th September 2018, 4th October 2018 and 8th October 2018, the respondent did not take any action and did not file any response to the Complaint.

3.5 The panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

3.6 The present Award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the Rules.

4 FACTUAL BACKGROUND

4.1 The complainant here is the owner of the brand called "Charles & Keith". Charles & Keith is a Singapore brand, established in 1996 by the brothers called Charles Wong and Keith Wong. This brand is known for its shoes and accessories and in a short span have acquired a worldwide reputation having more than 500 stores across the world with 23 stores being in India alone.

4.2 Charles & Keith have also registered the Charles & Keith trademark in various gTLD and ccTLD domain names worldwide and their chief domain appears to be <charleskeith.com>. Complainant website is visited by number of visitors, being 883.27k within



the duration of six months and is ranked 47,853rd among world's most popular website.

4.3 The Complainant have various national and international registrations, some of which are:

Trademark	Jurisdiction/ TM office	Reg. No.	Registered from	IC class
CHARLES & KEITH	IN/IPI	1366024	06/22/2005	18
CHARLES & KEITH	IN/IPI	1366025	06/22/2005	25
CHARLES & KEITH	CN/CTMO	3216114	10/28/2003	18
CHARLES & KEITH	WO/WIPO*	1070666	12/17/2010	9,14,18,25,35
CHARLES & KEITH	SG/IPOS	T9808599C	8/27/1998	18
CHARLES & KEITH	SG/IPOS	T9808598E	8/27/1998	25
CHARLES & KEITH	EU/EUIPO	004520672	7/1/2005	14,18, 25

4.4 The Respondent in the present dispute has registered the domain <charleskeith.in> without authority of the Complainant.

5. PARTIES CONTENTIONS

5A. COMPLAINANT

5A-1 The complainant Charles & Keith is a Singapore brand, established in the year 1996 by two brothers Charles Wong and Keith Wong. this brand is known across the world for its shoes and accessories. Within

a decade the brand started expanding in southeast Asia region and launched a e-commerce website and reached the markets where it does not have retail presence. Currently Charles & Keith have more than 500 stores across the world including India, China, Dubai, Indonesia, South Africa and Morocco and have trademark registrations in various other parts of the world as well.

5A-2 Charles & Keith have registered several gLTD and ccTLD domain names worldwide, with major among them being <charleskeith.com> as its primary domain name. As per the Alexa.com Charles & Keith is ranked 1269th most popular website in Singapore and stands 47853rd globally. Popularity can also be assessed with the fact that it has over 1.2 million likes on its official Facebook page and over 490,000 followers on Instagram.

5A-3 Charles & Keith's popularity can also be assessed from the fact that it has won a number of awards such as Singapore Retailers Association's Excellent Service Award in 2002 and Enterprise Award at the Singapore Business Award in 2008. Mr. Charles Wong has also been honoured with ASEAN Youth Award 2005 by the National Youth Council, Entrepreneur of the Year 2008 by the Rotary Club and the Association of Small and Medium Enterprises. He also got Young Achiever Award 2013 by the Business China and Entrepreneurship Award 2012 by the Spirit of Enterprise.



5A-4 So it can be broadly assessed that the brand Charles & Keith has an inherent distinctiveness and have acquired quite a substantial distinctiveness over a period of time and hence has all the rights to defend its brand name against any confusingly identical/similar marks.

5A-5 The disputed domain name identically similar to the complainant's mark Charles & Keith as their has been an omission of just the "&" symbol which really doesn't qualifies to be an important aspect of the whole brand name.

5A-6 The Charles & Keith is coined from the first names of the two brothers Charles Wong and Keith Wong and according to the Whois data the registrant identified for disputed name registration is "wang Liqun" and it does not resemble the disputed domain name in any manner nor is commonly known by this disputed domain name.

5A-7 The Respondent doesn't have any bonafide, legitimate interests in registering the impugned domain name. First of all the complainant has not licensed, authorized or permitted the respondent towards the use of the mark Charles & Keith and so no actual or contemplated interest of respondent there.



5B. RESPONDENT

5B.1 The respondent, as aforesaid, despite having been duly served with the copy of the Complaint and Annexures by e-mail dated 24th September 2018 and despite having been granted opportunity to file his reply and evidence by e-mail dated 28th September 2018 and 8th October 2018 did not file any response.

5B.2 In the circumstances, the Panel has no other option but to consider the case on its merits on the basis of the material on record and pass the Award.

6. DISCUSSIONS AND FINDINGS

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the



Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3** It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4** Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to have been admitted.
- 6.5** The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872). The material facts stated in the complaint have neither been dealt with nor specifically disputed or denied by the Respondent. Therefore, the material facts stated in the Complaint and Annexures filed therewith are deemed to have been admitted by the respondent.



6.6 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

6.7 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled. I, therefore, proceed to deal with the three elements under the policy irrespective of the deemed admissions made by the respondent to the averments made in the complaint and the documents filed on record.

A. IDENTICAL AND CONFUSINGLY SIMILAR

6A-1 The Complainant is the proprietor of the trademark Charles & Keith and holds common law as well as statutory rights therein. the complainants is also the owner of the domain name www.charleskeith.com

6A-2 The respondents' domain name incorporates in its entirety the mark "Charleskeith" of the Complainant in which the complainant has statutory as well as Common Law rights.

6A-3 The complainants has contended that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has prior rights.



- 6A-4** In Charles & Keith International Pte Ltd v. Royjm, D00019643 –“the domain name differs only from the Charles& Keith mark by the omission of the “&” and the spaces before and after it. However, the domain name comprises of the distinctive elements of the complainant’s mark, namely the combination of “Charles” and “Keith”. I do not consider the missing character s distinguish the domain name from the CHARLES & KEITH mark.
- 6A-5** Similar is the case of Sony Ericsson Mobile Communications AB v. Farhang Farnood, INDRP/015 (feb 20,2007) where the registration of the domain name ‘sonyericson.in’ was considered phonetically similar and omission of just the letter “s” didn’t make any difference.
- 6A-6** Also in the case of HomeVestors of Am, Inc v. Sean Terry,FA 1523266 (NAF Nov. 11,2013) said that the deletion of such spaces does not diminish the confusing similarity between the disputed domain name and the complainant’s trademark.
- 6A-7** The INDRP decisions titled Taco Bell v. West Masters Casino, Dart Industries V. Lokesh laid down the proposition that incorporating a Trademark in its entirety, is sufficient to establish that a domain name is identical or confusingly similar to Complainant’s registered mark.
- 6A-8** Internet users who are not aware that the complainant and the respondent have no affiliation,



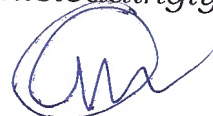
are bound to confuse or associate the respondent's activities as those either affiliated or endorsed by the Complainant.

6A-9 The Complainant is therefore successful in establishing the first element of INDRP and the panel finds that the disputed domain name is identical to the mark/domain name of the complainant. Consequently, the first requirement of paragraph 4 of the policy is satisfied.

B. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

6B-1 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interest in the disputed domain name:

- (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.

- 6B-2** The Domain Names under the Policy are available to anyone on first come first serve basis. In case, any person or organization claims right over the Domain Name as violation of its trade/service mark rights, the onus is on such person/organization to prove the right in the mark and the burden thereafter shifts to the Respondent to prove its legitimate interest and the use of the Domain Name in good faith.
- 6B-3** Since the disputed domain name www.charleskeith.in comprises of the mark Charles & Keith as a whole which is used in connection with Complainant's goods and services, it is clear that the Respondent can have no right or legitimate interest in the said domain name,
- 6B-4** The respondent's choice of the reputed Trademark as its domain name is completely unnecessary and lacks any legitimate business purpose and the sole purpose of carrying business through the impugned domain name is to create confusion as the source, sponsorship, affiliation or endorsement of activity being carried on through the website.
- 6B-5** The respondent is not using the domain name for bonafide purposes. The impugned website is being offered at a price of EUR 9,999 which directly indicates respondent's moneymaking intent. Also, there are advertisements of the third-party websites



on the impugned domain some of which are competitive businesses to the complainant. Thus, it is clear that the only sheer motive of respondent is to bag profit out of the reputation of the complainant's well known mark.

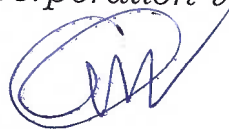
6B-6 The Respondent has no authorization over registering the mark charleskeith. He has no basis for the adoption of the impugned domain name but with a dishonest intention to trade upon the reputation and goodwill of the Complainant and wrongly misdirect consumer attention to third-party websites for his personal monetary gains.

6B-7 The respondent's domain name was registered on July 20,2012 which makes it impossible for them to be unaware of the existence of the Complainant at the time of registration as the complainant is there in the market since 1996.

6B-8 Use of confusingly similar or identical domain name to divert internet users is not use that can be termed as bona fide offering. See *WIPO Jurisdictionaloverview*.

6B-9 *Sportswear Company S.P.A v. Tang Hong, D2014-1875 (WIPO December 10,2014)*.

The Domain name has been registered with a clear money making intent as they are trying to sell it at EUR 9,999 which is far beyond the amount needed to register a domain. See *Nokia Corporation v, wang*



Shaohui, INDRP/046 (Sept 27,2007). The home page of the impugned domain advertises the links of the third party websites presumptively making money from the listed third-party websites with every click that the user makes. Few of these third-party links also include competitive business with that of the complainant's, for example "online shopping shoes" and "Shoeshopping". See WIPO Jurisdictional Overview 3.0at 2.0 – "panels have found that the use of the domain name to host a parked page comprising PPC links does not represent a bonafide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise misled internet users."

6B-10 From the above facts it can be adduced that the respondent has no right or legitimate interest in the domain name and the sole purpose of registering it is to misappropriate the reputation associated with complainant's trademark and ride upon its goodwill.

C. RESPONDENT REGISTERED THE DOMAIN NAME IN BAD FAITH

6C-1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C-2 For the purposes of establishing registration and use of Domain Name in bad faith by the Complainant, any of the following circumstances should be present:-



- i) Circumstances indicating that the Registrant has registered or acquired the Domain Name primarily for the purpose of selling, running or otherwise transferring the Domain Name registration to the Complainant, who bears the name or is the owner of the trade mark or service mark, or be 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 trade mark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged any pattern of such conduct; or
- iii) By using the Domain Name, the Registrant has intentionally admitted to attract Internet users to the Registrant's Website or other online location, by creating a likelihood of confusion that the Complaint'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 Registrant's Website or location.



6C-3 The domain name registered by the respondent www.charleskeith.in fully incorporates Complainant's trademark Charles & Keith which shows respondent's intent to misappropriate Complainant's trademark.

6C-4 There is a strong likelihood that the respondent's use of domain name will cause third party to incorrectly:

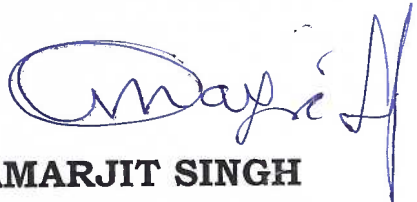
- Believe that the Complainant has licensed the trademark Charles & Keith to the respondent or has authorized the respondent to register the disputed domain name
- Believe that the respondent has some connection with the Complainant in terms of direct nexus or affiliation with the Complainant or has been authorized by the Complainant.

6C-5 In the above circumstances, the Panel concludes that the registration of impugned Domain Name was obtained in bad faith.

7. DECISION

The Complainant has succeeded in establishing all three elements of the policy.

In view of the above discussions, the Panel direct the transfer of impugned domain name <www.charleskeith.in> to the complainant with cost.


AMARJIT SINGH
Sole Arbitrator

Dated: 15th October, 2018