

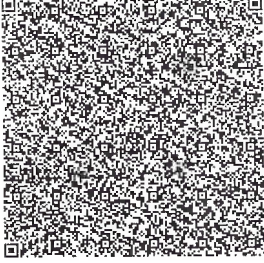
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No. : IN-DL67485698218387P  
Certificate Issued Date : 05-Apr-2017 05:06 PM  
Account Reference : IMPACC (IV)/ dl957503/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL95750335583845227237P  
Purchased by : AMARJIT SINGH ADVOCATE  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : AMARJIT SINGH ADVOCATE  
Second Party : Not Applicable  
Stamp Duty Paid By : AMARJIT SINGH ADVOCATE  
Stamp Duty Amount(Rs.) : 100  
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*Amari H*

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**ARBITRATION AWARD**

**.IN REGISTRY – NATIONAL INTERNET  
EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy  
INDRP Rules of Procedure**

**IN THE MATTER OF:**

Lekhraj Corp. Pvt. Ltd.  
Gala F. Sidhwa Estate,  
N.A. Sawant Marg,  
Colaba, Mumbai-400005.

..... Complainant

**VERSUS**

B. N. Monnappa/Suresh  
Cotton World, Amrutha Halli,  
Byatarayanapura Post,  
Bellary Road,  
Banglore-560092,  
Karnataka.

..... Respondent

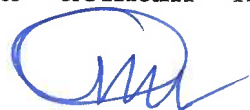
1. **THE PARTIES**

The Complainant in this administrative proceeding is Lekhraj Corp. Pvt. Ltd., Gala F. Sidhwa Estate, N.A. Sawant Marg, Colaba, Mumbai-400005.

The Respondent is B. N. Monnappa/Suresh, Cotton World, Amrutha Halli, Byatarayanapura Post, Bellary Road, Bangalore-560092, Karnataka.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name **www.cottonworld.in** has been registered by the Respondent. The Registrar with whom the disputed domain is



registered is one "Space2Let.com Services Pvt Ltd (R57-AFIN).

### **3. PROCEDURAL HISTORY**

3.1 The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against N. Monnappa/Suresh, Cotton World, Amrutha Halli, Byatarayanapura Post, Bellary Road, Bangalore-560092, Karnataka. The NIXI verified that the Complaint together with the Annexures to the Complaint had 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 The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on, February 10, 2017. The parties were notified about the appointment of an Arbitrator on February 10, 2017.

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).



- 3.4 After my appointment as an Arbitrator, I intimated the parties of my appointment and by my email of February 15, 2017, the complainant was directed to transmit soft copy of the complaint as well as the annexures to the Respondent at its registered email ID as appearing in WHOIS record of the disputed domain name. Simultaneously, I also sought proof of the delivery of the complaint as well as all the annexures to the respondent from .In Registry.
- 3.5 NIXI, by its email of February 10, 2017 informed me that hard copy of the complaint along with Annexures were sent to the respondent on February 10, 2017 by Courier.
- 3.6 The Respondent, vide its e-mail dated February 17, 2017, submitted his response to the complaint.
- 3.7 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.

4. **FACTUAL BACKGROUND**



- 4.1 The case set up by the complainant in the complaint is that the Complainant Lekhraj Corp Pvt. Ltd is a company incorporated under the Companies Act, 1956, having its registered office at Gala F, Sidhwa Estate, N.A. Sawant Marg, Colaba, Mumbai - 400 005 and is the Proprietor of the registered Trade Marks being 'COTTON WORLD'.
- 4.2 The complainant, through its predecessor in interest and title as claimed to have adopted the trademark 'COTTON WORLD' in respect of garments and hosiery goods in the year 1987. The said trademark 'COTTON WORLD' is claimed to have used in the course of trade by the complainant in its interest and tile since the year 1987.
- 4.3 The trademark 'COTTON WORLD' is registered under no. 511528 as of 08.06.1989 and under no. 641283 as of 20.12.1993 in class 25. The complainant therefore claims to be the common law as well as statutory proprietor of the trademark 'COTTON WORLD' in respect of garments and hosiery goods on account of priority in adoption, use and registration thereof.
- 4.4 The complainant claims to be the assignee of registered trademark nos. 511528 and 641283 and submit that an appropriate request for recording of its name as a subsequent



registered proprietor is pending before the Registrar of Trademarks.

4.5 The complainant has also registered the domain name www.cottonworld.net as its domain name, which is extensively used by the complainant on its own web portal i.e. www.cotton world.net.

4.6 The respondent has obtained registration of the impugned domain name cottonworld.in. The complainant is aggrieved by registration of the said domain name in the name of the respondent being in violation of its legal and vested rights in the trademark 'COTTON WORLD' and domain name www.cottonworld.net. The complainant has, therefore, filed the present complaint under .in domain name dispute resolution policy seeking the relief for the transfer of the impugned domain name.

## **5. PARTIES CONTENTIONS**

### **5A COMPLAINANT**

5A.1 The Complainant Lekhraj Corp Pvt. Ltd is a company incorporated under the Companies Act, 1956, having its registered office at Gala F, Sidhwa Estate, N.A. Sawant Marg, Colaba, Mumbai – 400 005 and is the Proprietor of the registered Trade Marks being 'COTTON WORLD'.



5A.2 In 1987, one Lekhraj family ("**Lekhraj Family**"), with an established garment manufacturing unit, set up India's first store dedicated to natural clothing in Mumbai. Thereafter, on June 8, 1989, one Mr. Bhagwan N. Lekhraj, made applications before the Trade Marks Registry for the registration of the trademark "COTTON WORLD" and the same were subsequently registered (bearing Nos. 511528 and 614283 respectively). Shortly thereafter, the Complainant's "COTTON WORLD" brand became one of the leading brands for cotton clothing in India. Since 2008, the Complainant's website 'COTTON WORLD.net' began offering online access for purchasers of COTTON WORLD clothing from any part of the world such that the brand and domain name 'COTTON WORLD.net' has come to be solely associated with the Complainant and none else. The Complainant has established its reputation through its 'COTTON WORLD' brand and has an extensive coverage of its products.

5A.3 Subsequently, sometime in 2015, the rights in the Complainant's Trademarks were transferred to Lekhraj Corp. Pvt. Ltd., the Complainant abovenamed, under a Deed of Assignment dated May 8, 2015 for valuable consideration. The said Complainant is also the owner and proprietor of the stores called 'COTTON WORLD'. The Application for entry



as the subsequent proprietor of the marks is presently pending before the Trade Marks Registry.

5A.4 In addition to the popular recognition, as per the analytical data, COTTON WORLD has served subscriber base of approximately 2,50,000 new customers per year and approximately 3,00,000 repeat customers per year, making it one of the top brands for cotton clothing in India today.

5A.5 The 'COTTON WORLD' brand has been in continuous use and the public across the country as such associates the 'COTTON WORLD' brand exclusively with the Complainant. The Complainant craves leave to refer to and / or rely upon the relevant market recall data etc. when required.

5A.6 The Complainant, in addition to being the registered proprietor of the 'cottonworld' trade /service marks, is also the absolute owner of domain in respect of its 'COTTON WORLD' brand with the **.net** extension i.e., the '*www.cottonworld.net*' domain. The '*www.cottonworld.net*' domain is accessible across the globe to any person with an internet connection. Clearly the Complainant's brand 'cottonworld.net' is more than 'well-known', and is as such exclusively associated with the Complainant's products and services.





- 5A.7 Apart from having its very own web portal i.e., “*www.cottonworld.net*”, the Complainant has also partnered with several other leading online shopping websites such as flipkart.com; jabong.com; myntra.com; snapdeal.com etc. that reach millions; which constitutes only approximately 1% of the sales of the Complainant’s products and generate an annual turnover, amounting to INR 75,00,000 approximately.
- 5A.8 In fact, besides its 30 stores nation-wide, Cottonworld also has a large subscriber base of approximately 92,000 total visits on its domain in the last six months (of which 33.26% have come to the Complainant’s domain by conducting a general search for the term ‘cottonworld’).
- 5A.9 It is also pertinent to note here that apart from the above, the Complainant’s “cotton world” brand is so popular that today the same has already featured and continues to being featured (every now and then) not only in fashion magazines but on an endless number of fashion and lifestyle blogs all over the internet.
- 5A.10 The Complainant submits that he filed diverse applications for the registration of its trade/service marks (falling within the ‘cottonworld’ brand) across Class 25 of the International Classification of Trade Marks



(Nice Classification) published by the World Intellectual Property Organization (WIPO). The Trade Marks Registry, after having scrutinized the said applications, recognizing and accepting the distinctiveness of the get-up, colour schemes and style of the complainant's trade/service marks as well as its continued and pan-indian popularity, accepted the same and granted registration of the complainant's trademark.

5A.11 The Complainant further submits that the disputed domain name is not only used by the Respondent without authority and in bad faith but also to this complainant's detriment and prejudice.

5A.12 The Complainant further submits that the respondent has attempted to use the popularity of the complainant's well-known and registered trade mark 'COTTON WORLD', for its own personal benefits.

5A.13 The Complainant thus submit that the disputed domain name www.cottonworld.in is identical and deceptively similar to the registered trademarks of the complainant as well as the domain name www.cottonworld.in. The Complainant also submits that the responding has no right or legitimate interest in respect of the impugned domain name and has secured the registration thereof in bad faith.



**B. RESPONDENT**

5B(1) The Respondent, vide e-mail dated February 17, 2017, submitted its response to the Complaint before this panel in respect of the disputed domain name www.cottonworld.in

5B(2) The Respondent did not specifically deal with or dispute and/or deny any material fact pleaded in the complaint.

5B(3) The Respondent claims to be manufacturer and exporter of readymade garments with company name M/s Cotton World registered in the year 1994 and claims to be purely in export business under the name of M/s Cotton World.

5B(4) The Respondent also claims to be using the impugned domain name cottonworld.in since the year 2005 for e-mail purpose only and states that it is not engaged in any kind of online sales through the disputed domain.

**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 be 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.
- 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:



A. **IDENTICAL OR CONFUSINGLY SIMILAR**

6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

6A.2 The complainant is registered proprietor of trademark 'COTTON WORLD' under nos. 511528 dated 08.06.1989 and 641283 dated 20.12.1993 in class 25 in respect of inter alia garments and hosiery. The copies of the certificates of registration of the said trademark have been filed as Exhibit B-1 and B-2 with the complaint. The said registrations, as per the information available on the official website of the Registrar of Trademarks are valid.

6A.3 The complainant is prior in adoption, use and registration of the trademark 'COTTON WORLD' as well as the domain name [www.cottonworld.net](http://www.cottonworld.net).

6A.4 In the matter of Ashland Licensing and Intellectual Property LLC Vs. Savita Chemicals Limited 2010 (44) PTC 220 (Del.) and SKOL Breweries Ltd. Vs. Som Distilleries and Breweries Ltd. & Anr. 2010 (42) PTC 389 (Bom.) and Astrazeneca UK ltd. and Anr. Vs Orchid Chemicals and Pharmaceuticals Ltd. 2007 (34) PTC 469 (DB) (Del). The Courts have laid down the law that so long as application



for recording the name of the assignee as subsequent registered proprietor is pending with the Registrar of Trademarks, the rights emanating from the assignment cannot be denied to the assignee, who might want to assert it. The court went on to hold that registration of such assignment by itself does not confer title but is merely evidences it.

6A.5 The respondent is subsequent in the adoption of trademark 'COTTON WORLD' even as per is own claim. In the year 1994 when the respondent claim to have adopted the company name M/s Cotton World, the trademark 'COTTON WORLD' was already registered in the name of the complainant. The complainant has thus established its prior proprietary rights in the trademark 'COTTON WORLD' under the provisions of law, as applicable.

6A.6 The disputed domain name www.cottonworld.in contains the registered trademark 'COTTON WORLD' of the complainant in its entirety.

6A.7 The primary question before this Panel under the INDRP Policy is to decide that whether the Registrant's Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has right under Rule 4(i) of the Policy.



6A.8 The Complainant is successful in establishing the first element of INDRP and the panel finds that the complainant is the proprietor of the trademark 'COTTON WORLD' and the disputed domain name is confusingly similar to the trade mark/domain name of the complainant. Consequently, the first requirement of paragraph 4 of the policy is satisfied.

**B. RIGHTS OR LEGITIMATE INTEREST**

6B.1 The Complainant submits that the Respondent has no right or legitimate interest in respect of the impugned domain name.

6B.2 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.3 The Domain Names under the Policy are available to anyone on first come first served 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.4 The contention of the respondent that the impugned domain name is being used only for e-mail purposes is found to be an incorrect statement on perusal of the document filed as Exhibit-I to the complaint. The said document demonstrates the use of the impugned domain name on the website.

6B.5 A bare perusal of the snapshots produced at paragraph 21 - 22 of the complaint will show that the Respondent has firstly infringed on the rights of the Complainant by squatting on the disputed Domain which is identical to and confusingly similar to the registered trademark of the Complainant as also the Complainant's brand and thereby causing prejudice to the Complainant. The Respondent's domain unlike



that of the Complainant's is nothing but a blank web page, leading to nothing whatsoever and the same is clearly evident from the image at paragraph 21 of the complaint. While on the other hand the Complainant's Domain "Cottonworld.net" that came into existence in the year 2008, is the popular web portal / e-store that gives the loyalists of the cottonworld brand, online access to purchase cottonworld clothing, remotely from any part of the world thereby generating revenue / income and business for this Complainant.

6B.6 It is clear from the above that the Respondent's use of the disputed domain is not in connection with a bona fide offering of goods or services. This is evident by the fact that the impugned domain is unused by the Respondent. This is a classic case of domain squatting. The Respondent's misuse of the disputed domain reveals a definite possibility that the disputed domain may be used in a manner that will tarnish the reputation and good name of the Complainant's brand and thereby adversely impact its trade / service.

6B.7 It is pertinent to note that on a call being made by the Advocates of the Complainant on May 9, 2016 to the Respondent, the complainant was informed that [a] the Respondent is carrying on a business of exporting cotton garments under the name "Cottonworld"; [b] the Respondent's 'cottonworld' brand was not



related to the well-established brand of this Complainant; and [c] specifically, the Respondent's brand had no correlation with the Complainant's store, i.e.- the "cottonworld" at "Barton Centre" (being the location for one of the many 'Cottonworld' outlets established by the Complainant in Bangalore among other cities across the country). From the above, it is clear that the disputed Domain used by the Respondent, is solely to ride on the reputation and goodwill of the Complainant, who has been providing the services bona fide since 1987. The same is indicative of the fact that the Respondent is not only well aware of the fact that the disputed Domain is identical and / or similar to the Complainant's domain, but is also taking advantage of this similarity to cause confusion in the minds of the unsuspecting public that will no doubt consider the disputed Domain as associated with the Complainant's brand and consequently free ride on its goodwill and reputation.

6B.8 Moreover, it is clear that the Respondent's use of the disputed Domain is not in connection with a bona fide offering of goods or services. This is evident by the fact as well as admission made by the respondent that the disputed Domain was and continues to be unused by the Respondent.



6B.9 The Panel rely upon the judicial and administrative decisions in support of the above findings:-

- i. Creative Technology Ltd. Vs. Cleveland Polite (Case No. D2006-1211).
- ii. Marker Volkl (International) GmbH Vs. Tucows.com Co. (Case No. D2012-1461).
- iii. The Knot, Inc. Vs. In Knot We Trust Ltd. (Case No. D2006-0340).
- iv. International Business Machines Corporation (IBM) Vs. Guanbing Meng (Case No. DCC2011-0006).

6B.10 The issue whether the Registrant is making a legitimate, non-commercial or clear use of the Domain Name does not arise as the said Domain Name has never been used for bonafide offering of goods or services by the Respondent.

6B.11 In view thereof, the Panel concludes that the Respondent has no common right or legitimate interest in respect of the Domain Name [www.cottonworld.in](http://www.cottonworld.in).

### **REGISTERED 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 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 Registrant's Website or location.

6C.3 The Respondent's bald faced use of the disputed Domain reveals a clear case of domain squatting and there exists a definite possibility that the disputed Domain could be used in a manner that will tarnish the reputation and good name of the Complainant and therefore adversely impact its trade / service brand. There can be no doubt that the Respondent has registered the disputed Domain name in bad faith.

6C.4 The disputed domain of the Respondent's would necessarily cause confusion in the minds of the unsuspecting public given that cottonworld is one of India's popular brands providing natural clothing in the country. Given the Complainant's pan-Indian popularity, it would be but natural for members of the unsuspecting public to associate the said disputed Domain with that of the Complainant, to the prejudice and detriment of the Complainant. Despite the Complainant not being connected and / or associated with the Respondent in any manner whatsoever, by registering a domain with a name identical to that of the Complainant's registered trademark, the Respondent is likely to confuse consumers as to the affiliation, sponsorship or



endorsement of the same, thereby diluting and / or adversely affecting the Complainant's established trademark. Evidently, the disputed Domain was registered in bad faith.

6C.5 The Respondent has attempted to use the popularity of the Complainant's 'cottonworld' brand for its own personal benefits and its actions clearly constitute an attempt to free-ride on the Complainant's goodwill and reputation as the Respondent has sought to squat / hoard the said domain for illegal monetary gains with a mala fide intent and to the Complainant's detriment and prejudice.

6C.6 The purpose behind the creation of the .IN domain name was to establish it as a globally "recognised symbol of India's growth in the field of Information Technology." Clearly therefore, the Respondent has attempted to use the popularity of the Complainant's 'Cottonworld' brand for his own personal benefits. This action of the Respondent clearly constitutes an attempt to free-ride on the Complainant's goodwill and reputation. The Respondent has sought to squat / hoard the said with malafide intent and to the Complainant's detriment and prejudice.

6C.7 In the said 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.cottonworld.in to the complainant.

In view of the fact that the respondent did not transfer the impugned domain name despite being put to notice necessitating the filing of the present complaint, the respondent is directed to pay cost of Rs. 20,000/- to the complainant.

  
**AMARJIT SINGH**  
Sole Arbitrator

Dated: 6<sup>th</sup> April, 2017