



தமிழ்நாடு தீர்மானம்
30 DEC 2016

D. SARAVANAN
Advocate & Arbitrator
"Orient Chambers", 4th & 5th Floor
No. 90/73, Armenian Street,
Chennai 600 001.

BG 584580
P.S. SHANMUGA SUNDARAM
STAMP VENDOR
L. No. B4/109/88
HIGH COURT CAMPUS,
CHENNAI-600104. (TAMILNADU)

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

Disputed Domain Name: <fabianafileppi.in>

Fabiana Filippi S.P.A.,
Via Bruno Buoizzi,
90-Zona IND.LE,
06030 Giano Dell' umbria(PG),
Italy

.. Complainant

Vs.

International Crystal,
Jamsil 2(i)-dong Songpa-gu,
Ricen 258-2101, Seoul
138222, KR

.. Respondent



भारतीय गैर न्यायिक

पचास
रुपये

रु.50



FIFTY
RUPEES

Rs.50

INDIA NON JUDICIAL



61983
TAMILNADU
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D. SARAVANAN
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AV 996083
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1. The Parties:

The Complainant is FABIANA FILIPPI S.P.A., Via Bruno Buozzi, 90-Zona IND.LE, 06030 Giano Dell' umbria (PG), Italy, represented by its representative Anju Agrawal of L.S. Davar & Co, 5/1, First Floor, Kalkail Extension, New Delhi-110019, India.

The Respondent is International Crystal, Jamsil 2(i)-dong Songpa-gu, Ricens 258-2101, Seoul 138222, KR. The Respondent neither represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name is <fabianafilippi.in>. The domain name has been registered with .IN REGISTRY.



3. Procedural History:

November 23, 2016	:	Date of Complaint.
December 23, 2016	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
December 23, 2016	:	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure along with the Statement of Declaration of impartiality and independence.
December 28, 2016	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator.
December 29, 2016	:	NIXI sent the soft copy of the complaint and annexure to the respondent marking a copy of the same to all the concerned.
January 02, 2017	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
January 12, 2017	:	Due date for filing response.
January 13, 2017	:	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.
January 18, 2017	:	Claimant's representative sent an email attaching a copy of the email dated January 9, 2017 from <ms.lee@hosting.kr> claiming that it is the agency for the disputed domain name and two other domain names.

4. Factual Background:



4.1 The Complainant:

The Complainant is FABIANA FILIPPI S.P.A., Via Bruno Buozzi, 90-Zona IND.LE, 06030 Giano Dell' umbria (PG), Italy.

4.2 Complainant's Activities:

The Complainant states *inter-alia* that they are one of high-end fashion company and of the leading brands in Italy and worldwide; the Complainant company was founded in 1985; the complainant company has a business history spanning more than three decades; the products of the complainant bearing the Trademark FABIANA FILIPPI are present in more than 30 countries and appear in almost every fashion capital of the world.

4.3 Complainant's Trading Name:

The Complainant states *inter-alia* that it is the prior adopter, user and registered owner of the trademark FABIANA FILIPPI; the Complainant is the registered proprietor of the Trademark "FABIANA FILIPPI" in several countries including international registration (IR) No.1048526 for the Classes 3, 18 & 25 and (IR) No. 1161316 for classes 14 & 35, list of Trademark registration and copies of registration certificates of the complainant are filed as **Annexure-3**; the trademark FABIANA FILIPPI is a well known trademark; the trademark registrations are valid and subsisting; the complainant has registered its domain name www.fabianafilippi.com and running a website www.fabianafilippi.com which is virtual showrooms for the complainant's products; the complainant's products have been promoted under the registered trademark FABIANA FILIPPI in print and also in mass media, printout of whois record along with printout websites of the complainant have been filed herewith as **Annexure-4**.

4.4 Respondent's Identity and activities:



The Complainant states that the Respondent is International Crystal. A printout of the WHOIS record associated with the disputed domain name is filed as **Annexure-4**. The Respondent is from Seoul.

5. Dispute

The dispute arose when the respondent adopted the disputed domain name on 25.10.2015. The Complainant states that the Respondent has registered the identical domain name incorporating the Complainant's well-known, prior used marks 'FABIANA FILIPPI' in totality and identity and is identical to previously registered trade mark and domain name.

6. Parties contentions:

A. Complainant:

(i) The domain name <fabianafilippi.in> is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant states that the Respondent has registered the domain name that is identical with Complainant's name and mark FABIANA FILIPPI; that the respondent's impugned domain name was created much later than the complainant's trademark registration as well as Domain name/website www.fabianafilippi.in; that the complainant adopted the Trademark FABIANA FILLIPI in 1985 in relation to its abovementioned products and has been using it since then continuously; that all material times, the trademark FABIANA FILLIPPI when used or in relation to the aforesaid products as indicated and still indicate to the purchaser as products of complainant; that the impugned domain name/website www.fabianafilippi.in is accessible to public; that the impugned domain name /website www.fabianafilippi.in is closely, deceptively and confusingly similar to the complainant's trademark, trading name as well as domain names/websites www.fabianafilippi.in. Therefore, the registration by Respondent of such domain name, which wholly contained the trademark of complainant is unauthorized and also amounts to violation of the complainant's rights.



(ii) The Respondent has no rights or legitimate interest in the domain name <fabianafilippi.in>:

The Complainant states that the domain name www.fabianafilippi.in was registered by the Respondent in 1985 in relation to the aforesaid products and has been using it since then continuously; that all the material times, the trademark FABIANA FILIPPI when used on or in relation to the aforesaid products as indicated and still indicate to the purchaser and intending purchaser as services of the complainant and none other; by virtue of long and extensive use and advertising, the complainant's trademark FABIANA FILIPPI has become well known in the relevant section; the complainant has registered the domain name www.fabianafilippi.com on 14.06.1999 whereas the impugned domain name www.fabianafilippi.in was registered by the respondent on 25.10.2015; hence such subsequent adoption and registration of that impugned name shows that the respondent has no right or legitimate interest in the domain name www.fabianafilippi.in.

(iii) The domain name was registered and is being used by the Respondent in bad faith:

The Complainant states that at the time of registration of the domain name by the Respondent i.e. on 25.10.2015; the Complainant's name/mark FABIANA FILIPPI and domain name www.fabianafilippi.com were well-known; the Complainant is the prior user of the mark/name FABIANA FILIPPI and prior owner of domain name registration www.fabianafilippi.com; by the virtue of long and extensive use and being excellent quality products more than three decades being the trademark FABIANA FILIPPI; the complainant has acquired global reputation and goodwill and intending purchaser identify and recognized products of the complainant by the trademark FABIANA FILIPPI with the products of complainant; the goodwill of the complainant business is clearly reflected from sales turnover and copy of certain invoices of company's sales figure is filed herewith as **Annexure-7**; the sole intention of the respondent in registering the domain name is to derive undue advantage of the complainant's trademark; the respondent has intentionally attempted to attract Internet users to the impugned domain name /website by creating a likelihood of confusion with complainant's name or mark as to source or



sponsorship or affiliation or endorsement of the respondent's website or services offered/available on the respondent's website; that the respondent has registered the impugned domain name intentionally for commercial gain wherein the consumers or traders of the complainant have been misleadingly diverted to the impugned domain name thereby causing irreparable loss, harm and damage to goodwill and business of the complainant; thus, it is obvious that the registration of the domain name by the Respondent is in bad faith.

B. Respondent:

The Respondent, in spite of notice dated 02.01.2017 and default notice dated 13.01.2017 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 13.01.2017.

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 are 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 "FABIANA FILIPPI" around the world, including international registration. The Tribunal finds that the business product of the complainant under the trademark "FABIANA FILIPPI" and the disputed domain are exactly identical in its entirety. Thus, this Arbitral Tribunal finds that the disputed domain name <fabianafilippi.in> is identical to the Complainant's mark.

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 the opportunity 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. It is also found that the respondent has no



connection with the mark "FABIANA FILIPPI". 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. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

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) This Arbitral Tribunal draws the legal 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 a malafide intent 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.

ii) 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 **< fabianafilippi.in>** be transferred to the Complainant.



D.SARAVANAN
Sole Arbitrator
January 31, 2017
Chennai, INDIA.