



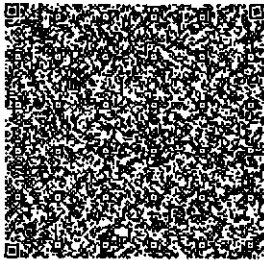
सत्यमेव जयते

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NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6 B, 6th Floor, Uppals M 6 Plaza,
6, Jasola District Centre,
NEW DELHI - 110 025

H & M Hennes & Mauritz AB v. Mr. Claudio Rosso

AWARD

Magarwal

1. The Parties

The Complainant is H & M Hennes & Mauritz AB, Master Samuelsgatan 46 A, 10638 Stockholm, Sweden.

The Respondent is Mr. Claudio Rosso, Wexford Road, Purmerend, North Holland 0299, Netherlands.

2. The Domain Name and Registrar

The disputed domain name is <www.hennesmauritz.in>.

The particulars of registration of the disputed domain name are as follows:

- | | |
|----------------------------|---------------------------|
| (a) Name of the Registrant | : Mr. Claudio Rosso |
| (b) Domain ID | : D7239846-AFIN |
| (c) Created on | : 20 April 2013 |
| (d) Expiration date | : 20 April 2014 |
| (e) Sponsoring Registrar | : Dynadot LLC (R117-AFIN) |
| (f) Registrant ID | : C-137744 |

3. Procedural History

(a) A Complaint dated August 22, 2013 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

(b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

(c) In accordance with the Rules, the Sole Arbitrator formally notified the Respondent along with a copy of the Complaint by

Complaint by post. The Respondent was required to submit his defence within a period of 15 days. The Respondent was informed that if his response was not received within that period, he would be considered in default and the matter will proceed ex-parte.

- (d) No response has been received from the Respondent. On the contrary, the postal authorities have returned the letter containing a copy of the Complaint sent to the Respondent through speed post.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

In these proceedings the Complainant is H & M Hennes & Mauritz AB. The Complainant was founded in Sweden in the year 1947. The Complainant is termed as the "Most sustainable fashion retailers" by the Dutch consumer organization Rank a Brand. The main activity of the Complainant is to operate departmental stores and it has approximately 2,300 stores in 40 markets, including franchise markets.

Respondent's Identity and Activities

Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the three elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that its name is H & M Hennes & Mauritz AB. It is a registered owner of the trademark "HENNES & MAURITX". The disputed domain name is <www.hennesmauritz.in>. In the disputed domain name the entire trademark of the Complainant has been included. Thus, the disputed domain name contains the name as well as the trademark

of the Complainant. It induces the internet users to believe that the said domain name is associated or affiliated with the Complainant. The addition of the word "in" is insignificant.

The trademark of the Complainant "HENNES & MAURITX". is registered in The Netherlands and some other countries.


The Complainant also owns a large number of domain names with the combination of words "H & M" and "Hennes & Mauritz". Only to illustrate, they are <www.h-m.ae>; <www.h-m.asia>; <www.h-m.com.ar>; <www.h-m.com.cn>; <www.h-m.com.sg>; <www.h-m.com.ve>; <www.h-m.my>; <www.h-m.rs>; <www.hhnes-mauritz.a>; etc. A detailed list of such domain name is annexed as Annexure 6 to the Complaint. Thus, at the time Respondent registered the disputed domain name, the word "HENNES & MAURITX" was well known as trademark and as part of the domain names of the Complainant.

The Complainant has stated that the Respondent/Registrant has registered the disputed domain name <www.hennesmauritz.in> with an intention to trade upon the immense goodwill and reputation enjoyed by the Complainant in the famous trademark "HENNES & MAURITX".

Therefore, the disputed domain name is identical or confusingly similar to the trademark of the Complainant.

In support of its contentions, the Complainant has relied on the decision in the case of *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 dated October 27, 2010;

In relation to element (ii), the Complainant contends that the Respondent/Registrant (as an individual, business, or other organization) has not been commonly known by the trademark or name "H & M" or "HENNES & MAURITX". Therefore, the Respondent has no right or legitimate interest in the disputed domain name. Further, the Respondent/ Registrant/ has not made or demonstrated preparations to use the domain name for bona fide offering of goods or services and that he is not making a legitimate non-commercial or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.



In support of its contentions, the Complainant has relied on the decision in the case of *Dr. Ing. h/c/F. Porsche AG v. Ron Anderson*, WIPO Case No. D2004-0312.

In relating to element (iii), The contention of the Complainant is that the main object of registering the disputed domain name <www.hennesmauritz.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

The Complainant has stated that the use of a domain name that appropriates a well known name to promote competing or infringing products or for making profit by offering to sell it cannot be considered a “*bona fide offering of goods and services*”.

The complainant has further contended that on July 8, 2013 a cease and desist letter was sent to the Respondent/Registrant of the domain name advising stoppage of unauthorized use of the Complainant’s trademark “HENNES & MAURITZ”. The Respondent asked for Euro 1890 for the domain name. Further that, the domain name is currently connected to a pay per click website with links related to third party websites not associated with the Complainant, but in fact their competitors.

In support of its contentions, the Complainant has relied on the decision in the case of *Villeray & Boch AG v. Mario Pingerna*, WIPO Case No. D2007-1912.

Thus, according to paragraph 4(a)(iii) of the Policy, the disputed domain name was registered and is being used in bad faith by the Complainant.

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name

<www.hennesmauritz.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (i) The 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 interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

The Complainant contends that he is the owner of the trademark “HENNES & MAURITZ” for a long time and that the said trademark is registered in a number of countries.

The present dispute pertains to the domain name <www.hennesmauritz.in>. The Complainant possesses other domain names, as mentioned above, with the words “H&M” and “HENNES & MAURITZ”. The Complainant is also the owner of trademark “HENNES & MAURITZ” or “hennes & mauritz”. Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. As has been stated above, the disputed domain name <www.hennesmauritz.in> was created by the Respondent/Registrant on 20 April 2013 and the said registration will expire on 20 April 2014. The disputed domain name is very much similar or identical to these domain names and the trademark of the Complainant.

Therefore, I hold that the domain name <www.hennesmauritz.in> is confusingly similar to the Complainant's name and trademarks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent'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; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent 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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Therefore, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

H & M Hennes & Mauritz AB is the name of the Complainant. The trademark "HENNES MAURITZ" has acquired unique importance and is associated with the Complainant. A mention of the said trademark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Claudio Rosso. It is evident that the Respondent can have no legitimate interest in the disputed domain name. Further, the Complainant has contended that it has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, 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 its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent/Registrant has intentionally attempted to attract, for commercial gain, internet users to the disputed website.

The Respondent's registration of the domain name <www.hennesmauritz.in> is likely to cause immense confusion

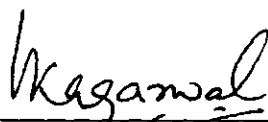
and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The Complainant has further contended that, in response to the cease and desist notice dated July 8, 2013, through an e mail, the disputed domain name <www.hennesmauritz.in> was offered by the Respondent/Registrant for sale to the Complainant for Euros 1890. Therefore, the purpose of registration of the disputed domain name is to make illegitimate or improper benefit or profit out of its sale.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith and was not registered for "*bona fide offering of goods and services*". Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In the light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.hennesmauritz.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: October 28, 2013