



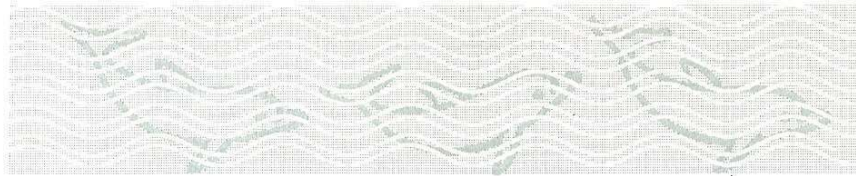
सत्यमेव जयते

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Certificate Issued Date : 11-Jan-2021 04:37 PM
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Unique Doc. Reference : SUBIN-DL72100361875198747549T
Purchased by : V P PATHAK
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V P PATHAK
Second Party : Not Applicable
Stamp Duty Paid By : V P PATHAK
Stamp Duty Amount(Rs.) : 100
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BEFORE THE ARBITRAL TRIBUNAL

V.P.PATHAK

SOLE ARBITRATOR

ARBITRAL AWARD

V.P. Pathak
V. P. PATHAK
H.J.D.

Former

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DISPUTED DOMAIN NAME: WWW.LAMBERTI.IN
IN THE MATTER OF INDRP CASE NUMBER 1303/2020
.IN REGISTRY(NATIONAL INTERNET EXCHANGE OF INDIA)

LAMBERTI S.p.A.
VIA PIAVE, 18,
21041 - ALBIZZATE (VARESE),
Italy

....COMPLAINANT

AND

Rahul Barlota
#4, 2nd main, 2nd cross,
Ranga Rao Road, Shankarpuram
Bangalore - 560018, Karnataka

....RESPONDENT

AWARD

1. The present domain name dispute relates to the registration of the domain name www.lamberti.in in favor of the Respondent.
2. The Complainant has filed the instant complaint challenging the registration of the domain name "lamberti.in" in favor of the Respondent. Pursuant to the ".in" Domain Name Dispute Resolution Policy {INDRP} and the rules framed there under, the Complainant has preferred this arbitration for raising this dispute for reprisal of its grievances.
3. The Declaration of impartiality and acceptance was sent by the Tribunal on 14/12/2020 and with that I gave my consent, to adjudicate the instant domain name dispute. I was handed over the complaint and accordingly as per **Rule 5 of the INDRP Rules**, I issued notice on the

V. H. BHAK
H.J.S.
Former Judge
Sole Arbitrator

18.12.2020 calling upon the Respondent to file its reply on the compliant within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter.

4. **Rule 2 of INDRP Rules of Procedure** provides for communication/services of complaint. In accordance with this rule, the respondent was sent a complaint on the email shown in the domain name registration data in .IN Registry's WHOIS database, which has not returned so far.
5. On the direction of the Tribunal, Complainant also sent an email and hard copy of the complaint to the Respondent. But, no reply was filed by the Respondent.
6. Since the complainant has been served through one of the modes as specified in Rule 2 (above mentioned), I am of the view that the service of the complaint upon the respondent is complied with.
7. Since, there has been no response from the Respondents to the Complaint, so according to **Rule 12 of INDRP Rules of Procedure** which states about default of parties wherein it is clearly mentioned that:

"In the event of any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided *ex-parte* by the Arbitrator and such arbitral award shall be binding in accordance to law."
8. Further, **Section 25 of the Arbitration Act, 1996** says that the Arbitrator may pass *ex-parte* in the absence of any of the parties to Arbitration. It is also the duty of the Arbitrator to inform the parties concerned about his intention to proceed with the case *ex-parte*.
9. **Order VIII Rule 10 of CPC** also authorizes the arbitrator to pronounce judgment against the Respondent or to make such an order in relation to the Complaint as it thinks fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed.
10. Following are some of the cases in which the court has allowed *ex-parte*, when either of the parties have not responded to the Tribunals notice:

V. S. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

SARASWATHI CHEMICALS v. BALMER LAWRIE & CO. LIMITED. 2011 (3) TMI 1759 MADRAS HIGH COURT: it was held that the Arbitrator has to inform the parties that he intends to proceed with the reference at a specified time and place , whether that party attends or not. If still a party does not attend, then only the Arbitrator is at the liberty to proceed *ex-parte* against him.

11. In the above situation when the Respondent has not responded even after lapse of stipulated period for filing their counter, an order was passed on 05/01/2021 that the case will now proceed *ex-parte* and an award will be passed. **Rule 6 of the INDRP Rules** also states that an Arbitrator has to be impartial and independent therefore, I accordingly proceed to pass the award on merit.

CONTENTIONS

12. Since the Respondent has been proceeded *ex-parte*, I shall deal with the contention of the Complainant. The complaint has been filed for transfer of the disputed domain name www.lamberti.in, which was registered by the Respondent. The Complainant owns the following domain names:

www.lamberti.com

www.lambertitextil.com.br

www.lamberti-hk.com

www.lamberti.co.kr

www.lamberti.ru

13. Primarily, the assertion of the Complainant in its complaint is that the disputed domain name is identical and similar to the trade mark of LAMBERTI. The Complainant in its complaint has stated that the company is duly organized and existing under the laws of Italy, established in 1911, and for over a century has been producing and marketing specialty chemicals for industrial applications. It grew from a small family business to one of the

V. Ramesh
H.J.S.
Former Judge
Sole Arbitrator

foremost chemical Groups in the national and international markets with about 1200 employees worldwide. From the initial affiliation to the textile industry, the Complainant learned the value of being part of a structured eco-system. The Complainant is the owner of the domain name www.lamberti.com since 1997 and the registration is currently valid and subsisting. The active website on the domain name, www.lamberti.com is accessible to people across the globe, including in India.

14. Complainant has further stated that it is the proprietor of mark "LAMBERTI", having valid and subsisting Trademarks registration. The Complainant has produced on record showing the details of ownership of numerous trademark registrations for LAMBERTI in various jurisdictions/ regions. The details are part of **ANNEXURE I** of this complaint.
15. The Complainant contends that they are engaged in producing and marketing specialty chemicals for industrial applications under the LAMBERTI trademark. The complainant LAMBERTI trademarks are prominently featured in all its products and are enclosed as **ANNEXURE D**. The Complaint also contends that at the time of registration of the disputed domain name, the Complainant was using the Trademark LAMBERTI and the Respondent knew it at least should have known, of the existence of the Complainants trademark LAMBERTI in its entirety. The Respondent is not a licensee of the Complainant not has been otherwise authorized by the Complainant to make any use of its LAMBERTI trademark, in a domain or otherwise. The Complainant has also stated that it operated to develop a strong presence online by being active on social media on Facebook and LinkedIn. Documents evidencing Complainant's social media presence are annexed herewith as **ANNEXURE J**.
16. In the complaint, it is also contended that the Complainant owns the Trademark LAMBERTI, which would create confusion and the Respondent has no legitimate right or interest in respect of disputed domain name, and that the disputed domain name is being used maliciously.

V. P. Patil
H.J.S.
Former Judge
Sole Arbitrator

ANALYSIS

17. As the proceedings are set ex-parte the Respondent, I shall deal with the complaint on its prayer for transfer of the disputed domain name. The disputed domain name www.lamberti.in consist the mark 'LAMBERTI', which is the registered trademark of the Complainant. "LAMBERTI" is a mark registered which has been established by the Complainant over a period of time by its use. The Complainant has used it worldwide, including India, and owns this registered trademark. In support of which, the Complainant has placed on record the details of trademark registration. All these support the Complainants right over the name 'LAMBERTI'. Therefore, the Complainants claim that it has a right over the disputed name stands proved.
18. Secondly, as the Respondent's action to register the said domain name is not bona fide, therefore, the said registration is done in bad faith. The disputed domain name wholly incorporates the Complainant well known mark 'LAMBERTI' and mentions the same multiple times creating an impression that the Respondent in some way is associated with the Complainant. The Complainant has specifically stated that it has no relation with the Respondent commercially or otherwise. So, therefore, the use of Trademark LAMBERTI by the Respondent is not lawful. Therefore, the Respondent has no legitimate right over the said domain name.

CONCLUSION:

19. Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the Complainant has proprietary right over the mark "LAMBERTI" followed by the Complainants registered Trademark "LAMBERTI" will not distinguish the Respondents disputed domain name. Under the facts and circumstances and

V. B. PATHAK
Former Judge
Sole Arbitrator

on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant and direct the Registry to transfer the said domain name i.e., www.lamberti.in in favor of the Complainant.

20. It is made clear to all concerned that the award is being passed in accordance with the INDRP Rules and Arbitration Act, 1996 has been fully followed by the Tribunal.

ORDER

21. Since the Complainant has proved its case through its documentary evidence under INDRP Rules, so it is directed that the disputed domain name www.lamberti.in be transferred to the Complainant forthwith, .IN Registry to do the needful. Parties to bear their own cost.

22. This award is passed today at New Delhi on 15/01/2021.

V.P. Pathak
16/01/21
V. V.P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

SOLE ARBITRATOR

DATE: 16/01/2021