



मध्य प्रदेश MADHYA PRADESH

BG 160985

BEFORE THE ARBITRATOR RAJESH BISARIA  
UNDER THE  
.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)  
[NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)]

**ARBITRAL AWARD**

**Date-04.08.2021**

**Disputed Domain Name: www. brioni.co.in**

**INDRP Case no -1397**

**THE PARTIES**

The Complainant is Brioni S.p.A., Piazza San Bernardo, 101, 00187 Roma,  
Italy. E-mail: info@studiobarbero.com

The Respondent is Zhang yiming Shanghai, CN



## **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name: www.brioni.co.in is registered with Endurance Domains Technology LLP

### **Registrar address-**

Endurance Domains Technology LLP

Unit No. 501, 5th Floor

IT Building 3, Nesco IT Park

Nesco Complex, Western Express Highway

Goregaon (E), Mumbai – 400 063

Maharashtra, India

Telephone Number: +1 2013775952

Email Address: compliance@edtpl.in; tldadmin@logicboxes.com

## **PROCEDURAL HISTORY**

1 The NIXI appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure	02.07.2021
Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorized representative and NIXI .	02.07.2021
Due date of submission of Statement of Claim by Complainant (instructed by mail dated 02.07.2021)	12.07.2021
Complainant's response by submitting their Statement of Claim.	
Soft copy	12.07.2021
Hard copy	12.07.2021
Due date of submission of Statement of Defence by Respondent (instructed by mail dated 02.07.2021)	17.07.2021
Extended due date of submission of Statement of Defence by Respondent (instructed by mail dated 19.07.2021)	26.07.2021





Respondent's response by submitting their Statement of Defence against the due date of submission as 17.07.2021 & 26.07.2021	Not submitted
Complainant's response by submitting their Rejoinder. (Statement of Defence not submitted by Respondent)	Not required
Complainant's response by submitting proof of delivery of complaint along with all annexures to Respondent Soft copy	06.07.2021
Intimation that the Respondent failed to submit the documents in said time limit ie by 26.07.2021, therefore they lost their right to entertain it and the proceeding of this case was kept closed for Award.	31.07.2021
The language of the proceedings.	English

### **FACTUAL BACKGROUND**

- 2 **The Complainant :** is Brioni S.p.A., with address- Piazza San Bernardo, 101, 00187 Roma, Italy. E mail –info@studiobarbero.com

**Authorized Representative of the Complainant-**

Name: Mr. Luca Barbero, c/o Studio Barbero S.p.A.

Address: Corso Massimo d'Azeglio 57, 10126 Torino, Italy

Telephone: +39 011 381 0600 , Fax: +39 011 381 0601

E-mail: info@studiobarbero.com

- 3 **The Respondent:**

The **Respondent** is Zhang yiming , Address: Shanghai, CN

The contact details listed in the Whois database, based on the search conducted on July 15, 2015 (Annex 1) were the following (as submitted in complaint) :

Name: Zhang yiming

Address: Sichuan Road N 257, Shanghai 200106, CN

Telephone: +86.2158896262 , Email: domainpros@163.com



#### 4 Complainant's Activities:

- (a) Complainant is a fashion company founded in Rome, Italy, in 1945 by the tailor Nazareno Fonticoli and the entrepreneur Gaetano Savini, who opened the first shop in Via Barberini 79, Rome. Complainant has its head office in Piazza Di San Bernardo, 101, 00187 Rome, Italy and is owner of the trademark BRIONI.
- (b) In 1952, Brioni staged the first men's fashion show in history, inside the Sala Bianca at Palazzo Pitti in Florence. The clothes introduced new silhouettes, bold colors and innovative fabrics, marking an important chapter for the company. A couple of years later, Brioni invented the trunk show, during which the collections were presented directly in stores, allowing customers to personalize the garments with the Su Misura (tailor-made) service.
- (c) In 1959, the Brioni ateliers opened in Penne, Italy, hometown of Nazareno Fonticoli. Called "Brioni Roman Style", the state-of-the-art factory introduced the concept of Prêt Couture, or ready-to-wear Haute Couture that sealed the international rise of the brand.
- (d) Brioni continued its expansion abroad with stores opening in Beverly Hills, New York, Paris and Moscow. During the 1970s and following years, Brioni continued its global expansion targeting the Far East, opening stores in Tokyo and Hong Kong.
- (e) In 1985, the company opened a tailoring school in Penne with the aim of transmitting to younger generations the specific Brioni sartorial method.
- (f) The BRIONI brand rapidly achieved great success internationally and has since the 1960s been the choice of Hollywood's elegant stars, heads of states and high-profile movie business personalities such as Gary Cooper, Clark Gable, Henry Fonda, John Wayne, Ava Gardner, Nicole Kidman and others (see Annexes 7.1.1 and 7.1.2). The BRIONI suits, ties and shirts have been also extensively described as the best ones by Donald Trump in his "Think Like a Millionaire" book published in 2004 as per Annex 7.2.
- (g) In 2007 and 2011 The Luxury Institute of New York ranked Brioni as the most prestigious men's fashion luxury goods brand in the United States of America as per Annex 7.3.
- (h) In 2012, Brioni S.p.A. became part of the PPR Group ("Pinault-Printemps-Redoute", now trading as Kering), a leading global group in the apparel and





accessories market. Kering owns well-known luxury, sport and lifestyle brands such as GUCCI, BOTTEGA VENETA, SAINT LAURENT, ALEXANDER MCQUEEN and BALENCIAGA.

- (i) In 2016, Brioni opened its new Paris Flagship Store developed by David Chipperfield Architects. Depicting the contemporary essence of Rome where Brioni heritage, its roots and its tailoring tradition merges with the present and the future, the store emphasizes the brand's distinctive identity. Today, Complainant's BRIONI products are sold through 70 official stores in Europe, United States, Asia and the Middle-east (full list at <https://www.brioni.com/experience/us/store-locator/#continent/> ), as well as via the online store at "www.brioni.com". The categories of goods offered include men's suits, leisure wear, leather goods, shoes, eyewear and fragrances.
- (j) The trademark BRIONI was and presently is supported by intensive advertising campaigns worldwide, with campaigns appearing in important international magazines with broad circulation such as, inter alia, Vogue (see Annex 7.4). Important international Hollywood stars, such as Anthony Hopkins, Samuel Lee Jackson, Milo Ventimiglia and Harvey Keitel, and the Rock band group Metallica have been testimonials for BRIONI (see Annex 7.5). Moreover, Complainant is also present on popular social media like Twitter, Facebook and Instagram as per screenshots in Annex 7.6.
- (k) In order to further protect its trademark BRIONI on the Internet, Complainant has registered more than 70 Domain Names worldwide consisting of, or comprising, "brioni" (see the full list in Annex 4.3), including <brioni.com>, registered on March 2, 1997 as per the Whois records in Annex 4.1.
- (l) Complainant operates its official website at "www.brioni.com" - to which most of Complainant's domain names are redirected - as its primary presence on the Internet for global promotion of its products and activities (see screenshots, infra). In particular, Complainant's website provides information regarding the BRIONI collections, stores and history, as well as an online store where Internet users can directly purchase BRIONI products.





## 5 Complainant's Trade Marks And Domain Names :

Complainant Brioni S.p.A. is the owner of the trademark BRIONI in several countries and has been using it in connection with its on-going business. The details of some of Complainant's registrations are the following:

### Registrations In India-

- (1) Under Trade mark no. 1544769, Application /registration no. 28 Jan 2011 with class 3,14,18 & 24 , various goods are mentioned
- (2) Under Trade mark no. 2338882, Application /registration no. 28 May 2012 with class 9 , various goods are mentioned
- (3) Under Trade mark no. 571718, Application /registration no. 23 April 1992 with class 25 , various goods are mentioned
- (4) Under Trade mark no. 3892895, Application /registration no. 20 July 2018 with class 25,26,35,40 , various goods are mentioned

The copies of the above referenced Indian registrations published on the official Indian Trademarks database was submitted.

### Registrations In Other Countries:

Complainant is also the owner of several trademark registrations for "BRIONI" in other countries, including the following International and European Union Trademark Registrations:

- International Trademark Registration No. 1009840 for BRIONI (word mark), registered on June 04, 2009, in classes 3, 8, 9, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 35 and 40 (Annex 3.1);
- International Trademark Registration No. 211621 for BRIONI (figurative mark), registered on July 25, 1958 and duly renewed, in classes 24, 25 and 26 (Annex 3.2);
- International Registration No. 497945 for BRIONI (word mark), registered on October 31, 1985 and duly renewed, in class 3 (Annex 3.3);



- International Registration No. 502724 for BRIONI (word mark), registered on May 12, 1986, in class 18 (Annex 3.4);
- European Union Trademark Registration No. 965111 for BRIONI (figurative mark), filed on April 1, 1996 and duly renewed, in classes 18, 24 and 25 (Annex 3.5).

Submitted Annexes from 3.1 to 3.5 as the official trademark excerpts in respect of the aforesaid mentioned jurisdictions.

#### **Domain Name Registrations:**

Domain name -brioni.com , Date of Registration-02.03.1997

Submitted Annex 4.1 and 4.2 as the printout of Complainant's website at "www.brioni.com" and the Whois Records of <brioni.com>, along with the list of some domain names registered by Complainant as Annex 4.3 and entirely incorporating the trademark BRIONI.

#### **6 Respondent's Identity and activities :**

- (a) The Respondent <sup>Ri</sup> is Zhang yiming , Address: Shanghai, CN

The contact details listed in the Whois database, based on the search conducted on July 15, 2015 (Annex 1) were the following (as submitted in complaint) :

Name: Zhang yiming

Address: Sichuan Road N 257, Shanghai 200106, CN

Telephone: +86.2158896262 , Fax: None , Email: domainpros@163.com

- (b) The identity and other activities of the Respondent are not known as, they failed to submit Statement of Defence or any of the documents, within the given time schedule.





## SUBMISSIONS BY COMPLAINANT

- 7 Complainant submitted Domain name complaint with ~~pages~~ 1 to 20 and annexure from pages from 01 to 122. As per the INDRP Rules of Procedure, Clause 4(a) – *The (maximum) word limit shall be 5000 words for all pleadings individually (excluding annexure). Annexure shall not be more than 100 pages in total. Parties shall observe this rule strictly subject to Arbitrator's discretion.*

The Complainant submitted annexures with 122 pages. The complainant failed to follow this clause, by submitting about 122 pages of annexures and other documents, otherwise the application is submitted as per INDRP Rules of Procedure. The extra documents submitted as mentioned above has been allowed, in the interest of justice at large, with a caution to Complainant for submitting application as per INDRP Rules of Procedure in future.

- 8 Complainant was directed to submit hard copy of proof of delivery of complaint along with all annexure (to Respondent) to the AT. Complainant vide their mails dated 06.07.2021, submitted that the address of the Respondent is incomplete, so hard copy could not be delivered, whereas soft copy was delivered to them at registered mail address. Complainant vide their mails dated 06.07.2021, also submitted the comments given by courier service provider regarding delivery of complaint to Respondent at his old address as per Whois records-

*"We hereby note that - notwithstanding our dedicated efforts and due to cause independent from our direct will – it was not possible to deliver the shipment to the recipient since the addressee does not respond to our attempts to get in touch via email and telephone ..."*

## THE CONTENTIONS OF THE COMPLAINANT

- 9 **The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights:**
- (a) The Domain Name <brioni.co.in> entirely reproduces Complainant's trademark BRIONI, which has been registered by Complainant in India and several other countries, as highlighted above and in Annexes 2 and 3.

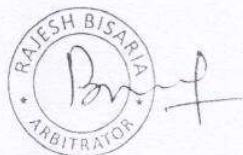




- (b) The Domain Name is visually and phonetically identical to Complainant's trademark, since, as stated in a number of prior cases, the mere addition of the ccTLD .in is not a distinguishing feature. See, amongst others, PUMA SE v. Christian Schmidt [INDRP/956], involving the domain name <puma.in>: "the disputed domain name incorporates the mark PUMA in entirety. Save for the .IN generic country code top level domain, it is identical to the Complainant's PUMA mark.
- (c) The ccTLD is not to be considered for purposes of determining similarity between domain name and trademark". See also FMTM Distribution Ltd. v. Bel Arbor [INDRP/681], involving the domain name <franckmuller.in>. Moreover, as found in Perfetti Van Melle Benelux BV v. Jing Zi Xin [INDRP/665], numerous courts and UDRP panels have recognized that "if a well-known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark. (...) Further, it has been held in the matter of *Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol* [WIPO Case No. D2001-0489] that "domain names that incorporate well-known trademarks can be readily confused with those marks".
- (d) In light of the above, it is clear that the Domain Name is identical to the prior registered trademark in which Complainant has rights pursuant to Paragraph 4(a) of the INDRP

**9. The Respondent has no rights or legitimate interests in respect of the domain name:**

- (a) Complainant has legitimate interest in the trademark BRIONI as it registered said trademark since 1992 in Italy and abroad, including India, and has been openly, continuously and extensively using it world-wide for several years. Moreover, by virtue of its long and extensive use and advertising, including online via Complainant's website "www.brioni.com" since 1997, the trademark BRIONI has become well-known worldwide.
- (b) Respondent is not a licensee, an authorized agent of Complainant, or in any





other way authorized to use Complainant's trademark BRIONI. As stated in, *inter alia*, *Pharmacia & Upjohn Company v. Moreonline*, WIPO Case No. D2000-0134, "the mere registration, or earlier registration, does not establish rights or legitimate interests in the Domain Name." See also along these lines *Perfetti Van Melle Benelux BV v. Jing Zi Xin* [INDRP/665] (*supra*): "merely registering the domain name is not sufficient to establish right or legitimate interests. [*Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci*, WIPO Case No. D2000-1244]."

- (c) Further, Respondent is neither commonly / popularly known in the public by the Domain Name nor has applied for any registration of the trademark BRIONI. On the contrary, Respondent's name, according to the Whois database, is "Zhang yiming".
- (d) Respondent has not provided Complainant with any evidence of its use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services before any notice of the dispute and Respondent's use of the Domain Name does not amount to a legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant's trademark.
- (e) The Domain Name was, in fact, intentionally registered and used by Respondent to misleadingly divert users looking for Complainant and its BRIONI products, for commercial gain, to the website at the Domain Name, featuring several sponsored links to other commercial web sites. As stated in the Panel decision *Paris Hilton v. Deepak Kumar*, WIPO Case No. D2010-1364, if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill." See, along these lines, *Fiskars Corporation v. Lina / Doublefist Limited* [INDRP/1067]: "The respondent's use of the disputed domain name is merely intended to divert costumers to respondent's website, which provides multiple pay-per-click links. Hence, it cannot be considered a bona





fide offering of goods and services nor a legitimate non-commercial or fair use.” Amongst the decisions addressing similar situations where respondent used a domain name corresponding to a trademark to attract users to its website for its own commercial gain, and, at the same time, advertised also the sales of products of competitors, see, *inter alia*, *Luigi Lavazza S.p.A. v. Flying Stingrays Ltd*, WIPO Case No. D2012-1391 and also *Lancôme Parfums et Beaute & Compagnie v. D Nigam, Privacy Protection Services / Pluto Domains Services Private Limited*, WIPO Case No. D2009-0728.

- (f) Furthermore, even after having been formally notified of the infringement of Complainant's rights in the trademark BRIONI, Respondent repeatedly requested a consideration well in excess of the out-of-pocket costs for transferring the Domain Name to Complainant (as per Annexes from 6.2 to 6.9), further demonstrating that it has not been making a legitimate non-commercial or fair use of the Domain Name.
- (g) As a final remark on the issue of rights or legitimate interest, it is a consolidated principle that the burden of proof lies on Complainant. However, satisfying the burden of proving a lack of Respondent's rights or legitimate interests in respect of the domain name according to Paragraph 4 of the INDRP is quite onerous, since proving a negative circumstance is always more difficult than establishing a positive one. Accordingly, it is sufficient that Complainant shows a *prima facie* evidence in order to shift the burden of production on Respondent (see *i.a.*, *Bulgari S.p.A. v. DomainBook* [INDRP/1002], *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO Case No. D2003-0455, *Belupo d.d. v. WACHEM d.o.o.* WIPO Case No. D2004-0110, *Sampo plc v. Tom Staver* WIPO Case No. D2006-1135, *Audi AG v. Dr. Alireza Fahimipour* WIPO Case No. DIR2006-0003).
- (h) Complainant, therefore, concludes that Respondent has no rights or legitimate interests in respect of the Domain Name according to Paragraph 4(b) of the INDRP.





**10. The domain name was registered and is being used in bad faith:**

- (a) Complainant submits that Respondent was well aware of Complainant's trademark rights at the time of registration and that it has been using the Domain Name in bad faith, even after being notified of the infringement of Complainant's rights via Complainant's Cease and Desist letter, sent on February 8, 2016, and the subsequent correspondence addressed to its attention.
- (b) Indeed, as highlighted *supra*, the trademark BRIONI has been extensively used since as early as 1945 in connection with Complainant's advertising and sales of BRIONI products in Italy and abroad and has been widely publicized globally also on the Internet, in particular via Complainant's website "www.brioni.com". The well-known character of the trademark BRIONI has been also recognized, *inter alia*, in the previous UDRP cases *Brioni S.p.A. v. Steve Timani, Tutti Creative Design*, WIPO Case No. D2018-0154 and *Brioni S.p.A. v. Jack Black, Jack Black*, WIPO D2015-0983 (*supra*). Therefore, Respondent could not have possibly ignored the existence of Complainant's well-known trademark when it registered the identical Domain Name <brioni.co.in>. Several INDRP and UDRP decisions confirmed that the well-known character of a trademark incorporated in a disputed domainname is a relevant circumstance in the assessment of bad faith registration. See *i.a. Accor v. Jiangdeyun*, WIPO Case No. D2011-2277. See also, along the same lines *Perfetti Van Melle Benelux BV v. Jing Zi Xin* [INDRP/665] ; *Bulgari S.p.A. v. DomainBook* [INDRP/1002] (*supra*) and *Amazon Technologies Inc. v. Surya Pratap* [INDRP/835].
- (c) Complainant submits that, by using the Domain Name, Respondent has intentionally attempted to attract Internet users to its website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website or the products or services promoted through the Respondent's website, according to Rule 7 (c) of INDRP Policy. Indeed, as highlighted above, the Domain Name has been redirected to a web page featuring several sponsored links to other commercial web sites, which cannot be considered, by any means, a *bona fide* use, since





Respondent has clearly attempted to gain revenues ~~throu~~gh the pay-per-click system, free riding the well-known character of the trademark BRIONI. See, along these lines, Calvin Klein Inc. v. M/s Hangzhou Gougou Internet Co. Ltd.: "The domain name is registered without any authority, agreement or arrangement between the Complainant and the Registrant. The webpage included several links to the third parties in respect of various products including those of the Complainant. Thus, the Registrant has been making money illegally by using the name and fame, of the Complainant."). See also, along the same lines, Perfetti Van Melle Benelux BV v. Jing Zi Xin (*supra*), L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, [WIPO Case No. D2005-0623] and Deloitte Touche Tohmatsu v. Henry Chan, WIPO Case No. D2003-0584."

(d) The circumstances of the case clearly suggest that Respondent's purpose in registering the Domain Name, which encompasses Complainant's mark BRIONI in its entirety, was to capitalize on the reputation of Complainant's trademark by diverting Internet users seeking products under the BRIONI mark to its own website and to the websites linked thereto, for commercial gain. See, along these lines, Sparkol Limited v. Mr. Shripal [INDRP/1069] where it was held that "In light of the respondent's presumed knowledge of the complainant's rights, it is reasonable to infer that the respondent registered the disputed domain name without any intention of using it for genuine business or commercial activities. Along these lines see also Bulgari S.p.A. v Domain Book [INDRP/1002] (*supra*), where the Panel held that, "On perusal of the disputed domain name the panel found that the Respondent has used the disputed domain name to intentionally attract internet website users to its website or the on-line location by creating a likelihood of confusion with the complainants BULGARI/BVLGARI Trade Marks as to source, sponsorship or affiliation or endorsement of the website 'www.bulgari.co.in'".

(e) Complainant further submits that Respondent registered the Domain Name primarily for the purpose of selling it to Complainant, who bears the name and is the owner of the BRIONI trademark, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the Domain Name, according to Paragraph 7 (a) of the INDRP Policy. Indeed, as better





detailed in the factual section, Respondent, even after having been formally notified by Complainant's representatives of the infringement of Complainant's trademark rights through its registration and use of the Domain Name, has reiterated its request to receive amounts well in excess of the out-of-pocket costs - for transferring the Domain Name to the legitimate trademark owner (see Annexes from 6.2 to 6.9). See *i.a.* the decision rendered in the prior case INDRP/115 related to <armaniexchange.in>, finding that "The Respondent's bad faith is further exemplified by them asking for compensation to transfer the domain name". Along these lines, see also *Fiskars Corporation v. Lina / Doublelist Limited* [INDRP/1067] (*supra*) where a request of 2.500 Euro for the transfer of the disputed domain name was considered in excess of the expenses incurred by the respondent and thus proving without any reasonable doubt its bad faith. Similarly, in *Piaggio & C. S.p.A. v. Xu Xiantao* [INDRP /1134], it was held: "The Respondent's intention to sell the domain name is evident from the email conversation produced by Complainant is abundantly clear that the Respondent has purposely demanded an amount far from than its out-of-pocket costs for registration. Registering a domain name for the purpose of selling or transferring the domain name for excessive consideration is evidence of bad faith and use". See also *FMTM Distribution Ltd. v. Bel Arbor* [INDRP/681] (*supra*).

- (f) In view of the above, it is clear that the Domain Name was registered and is being used by Respondent in bad faith according to Paragraph 4(c) of the INDRP.

#### 11. Remedy Sought:

In accordance with Paragraph 10 of the INDRP Policy and Paragraph 4(b) (vii) of the Rules the Complainant requests the Honorable Arbitrator to:

Transfer the disputed Domain Name <brioni.co.in> to the Complainant Brioni S.p.A.;

#### 12. Other Legal Proceedings:

No other legal proceedings have been commenced or terminated in connection with or relating to the disputed domain name that is the subject of the present Complaint.





### RESPONSE BY THE RESPONDENT

13. As per my mail dated 02.07.2021 & 19.07.2021, Respondent was directed to submit their Statement of Defence by 17.07.2021 & 26.07.2021 respectively. Respondent was given sufficient time to submit required documents but Respondent failed to submit their 'Statement of Defence along with all annexure' within mentioned time limit.
14. Respondent was once again directed to submit their Statement of Defense by 26.07.2021, vide my mail dated 19.07.2021.  
Received from Respondent mail dated 19.07.2021 (which was auto generated mail) wherein it was mentioned that-  
*Thank you for reaching out to us. Our Team is working on your request and will get back to you within 48 hours.*  
*Subject: Re: INDRP Case No: 1397: Information on Handing over the INDRP Domain Dispute Complaint relating to the domain name - BRIONI.CO.IN to the Id. Arbitrator, Case Number : 33768999*
15. It was intimated to all concerning by my mail dated 31.07.2021 that 'Respondent failed to submit the documents in said time limit ie by 26.07.2021 therefore they lose their right to entertain it and the Award will be published on merit.'

### REJOINDER BY THE COMPLAINANT

16. Since Respondent failed to file the Statement of Defence, so there is no question of submitting the Rejoinder by the Complainant.

### DISCUSSION AND FINDINGS

17. After going through the correspondence, this AT comes to the conclusion that the Arbitral Tribunal was properly constituted and appointed as per Clause 5 of the INDRP Rules of Procedure and Respondent has been notified of the complaint of the Complainant. In fact, no parties raised any objection over constitution Tribunal.
18. Under Clause 4, of the .IN Domain Name Dispute Resolutions policy (INDRP), the Complainant must prove each of the following three elements of its case:
- (a) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;





- (b) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (c) The Respondent's domain name has been registered or is being used in bad faith.

**19. The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:**

**Facts & Findings**

- (i) On the basis of the submitted facts and referred Awards of various INDRP & WIPO cases by Complainant and due to non submission of Statement of Defence or any other document by Respondent, the Arbitral Tribunal concludes that the Complainant has established 4(a) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

**20. The Respondent has no rights or legitimate interest in respect of the domain name:**

**Facts & Findings**

- (i) On the basis of submitted facts and referred Awards of various INDRP & WIPO cases by Complainant and due to non submission of Statement of Defence or any other document by Respondent, the Arbitral Tribunal concludes that the Complainant has established Clause 4(b) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

**21. The Respondent's domain name has been registered or is being used in bad faith:**

**Facts & Findings**

- (i) On the basis of submitted facts and referred Awards of various INDRP & WIPO cases by Complainant and due to non submission of Statement of Defence or any other document by Respondent, the Arbitral Tribunal concludes that the Complainant has established Clause 4(c) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.





## ARBITRAL AWARD

22. Now I, Rajesh Bisaria , Arbitrator, after examining and considering the statements of both the parties and documentary evidence produced before and having applied mind and considering the facts, documents and other evidence with care, do hereby publish award in accordance with Clause 12 & 13 of the INDRP Rules of Procedure and Clause 10 of .IN Domain Name Dispute Resolution Policy (INDRP) , as follows:

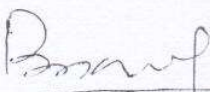
*Arbitral Tribunal orders that the Respondent disputed domain name www.brioni.co.in be transferred to the Complainant.*

*Further AT takes an adverse view on the bad faith registration of impugned domain by the Respondent and to restrict the act for future misuse, fine of Rs 10000/- (Rs Ten thousand only) is being imposed on the Respondent, as per the provision in clause 10 of .IN Domain Name Dispute Resolution Policy (INDRP) to be paid to .IN Registry for putting the administration unnecessary work.*

AT has made and signed this Award at Bhopal (India) on 04.08.2021 (Forth Day of August, Two Thousand Twenty One).

Place: Bhopal (India)

Date: 04.08.2021

  
04/08/2021  
(RAJESH BISARIA)  
Arbitrator

