

DEEPALI GUPTA
SOLE ARBITRATOR
Appointed by the .IN Registry - National Internet Exchange of India
INDRP Case No: 1819

In the matter of:

Guess? IP Holder L.P. and Guess?, Inc.
1444 South Alameda Street
Los Angeles, CA 90021
E-Mail: udrp5@lewisroca.com
Through its Authorised Representative
Gary J. Nelson
Lewis Roca Rothgerber Christie LLP
655 N. Central Avenue, Suite 2300
Glendale, California 91203, USA
Telephone: (626) 795-9900
E-Mail: udrp5@lewisroca.com

.....Complainant

Versus

Powell Amber
Dorfstr. 19
Wrangelsburg OT Gladrow
MecklenHEADED Rburg-Vorpommern 17495 DE
Telephone: (+49)01775902865
E-Mail: inkedryckah@outlook.com
(Registrant)

.....Respondent

Disputed Domain Name : < guessindiaonline.in >

ARBITRATION AWARD

DATED APRIL 20, 2024.

1) The Parties:

The Complainant in the present arbitration proceedings is Guess? IP Holder L.P. and Guess?, Inc., 1444 South Alameda Street, Los Angeles, CA 90021.



The Complainant is represented by its Authorized Representative Gary J. Nelson, Lewis Roca Rothgerber Christie LLP, 655 N. Central Avenue, Suite 2300, Glendale, California 91203, USA.

The Respondent in the present case is Powell Amber, Dorfstr. 19, Wrangelsburg OT Gladrow, Mecklenburg-Vorpommern 17495 DE, Telephone: (+49)01775902865 E-Mail: inkedrryckah@outlook.com as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar and Registrant:

The disputed domain name is <GUESSINDIAONLINE.IN >

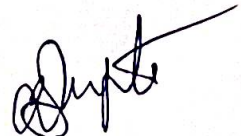
The Registrar is **1API GmbH**

The Registrant is - Powell Amber, Dorfstr. 19, Wrangelsburg OT Gladrow, Mecklenburg-Vorpommern 17495 DE, Telephone: (+49)01775902865 E-Mail: inkedrryckah@outlook.com

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole



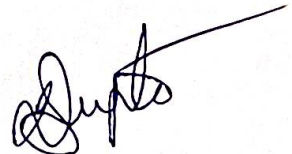
Arbitrator to arbitrate the dispute between parties in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

That the amended Complaint with annexures was filed by the complainant. Thereafter notice was issued to the Respondent on 27th February 2024, at his e.mail address 'inkedrryckah@outlook.com' thereby communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <GUESSINDIAONLINE.IN > in its favour. The Respondent was called upon to submit their response within ten (10) days of the receipt of the Arbitrators email.

- The Arbitrator received no response from the respondent within the said timeline or even thereafter. Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) **FACTUAL BACKGROUND:**

The Complainant herein is Guess? IP Holder L.P. and Guess?, Inc. "Complainants" or "Guess?", own the world-famous GUESS brand which they have used for over 40 years in connection with their highly successful lines of men's and women's apparel and related goods (including women's handbags and shoes), and retail offering of the same. Guess? IP Holder L.P. is a Delaware



limited partnership that is effectively wholly owned by Guess?, Inc. That 'Guess? IP Holder L.P. and Guess?, Inc.' is a company that is a Global lifestyle brand with a full range of denim, apparel and accessories offered in about eighty countries in the world. That the Complainant has the registered and common law trademark rights in the mark 'GUESS'. Complainant owns and uses a multitude of 'GUESS' trademarks and service marks used in connection with clothing, apparel, and accessories and associated retail services, in the US, India, and in numerous other countries across the globe (collectively, the "GUESS Marks"). As a result of more than 40 years of use, Complainants have created in their GUESS Mark one of the most famous and distinctive marks in retailing. The GUESS Mark has acquired a valuable goodwill and reputation, and is widely recognized by the consuming public as a designation of source of the goods and services of Guess?, not only in the United States but throughout the world.

5) **Summary of Complainant's contentions:**

The Complainant's contentions are divided into three parts as follows:

A. Firstly:

- a) The Complainant submits that the present dispute has arisen on account of registration of the disputed domain name <guessindiaonline.in> by the Respondent which fully incorporates the well-known trademark 'GUESS' of the Complainant. The disputed domain name < GUESSINDIAONLINE.IN> is virtually identical or at least confusingly similar to Complainant's prior trademarks as the Disputed Domain Name <GUESSINDIAONLINE.IN > reproduces Complainant's trademark 'GUESS' in its entirety. That the incorporation of a trademark in its entirety is sufficient to establish that a



- domain name is identical or confusingly similar to Complainant's registered trademark.
- b) It is submitted that the Complainants Guess? IP Holder L.P. and Guess?, Inc. (collectively "Complainants" or "Guess?"), own the world-famous GUESS brand which they have used for over 40 years in connection with their highly successful lines of men's and women's apparel and related goods (including women's handbags and shoes), and retail offering of the same. Guess? IP Holder L.P. is a Delaware limited partnership that is effectively wholly owned by Guess?, Inc. The Complainant relies on **Exhibit-5**.
- c) It is submitted by the Complainant that Guess? started in 1981 as a small California jeans company and has over the time developed into a global lifestyle brand. While jeans remain the foundation of the company's history and success, Guess? designs, markets, and distributes its full collections of women's and men's apparel throughout the United States and worldwide including in India. The company has successfully granted licenses for the manufacture and distribution of many of its product categories, including kids & baby apparel, watches, footwear, belts, fragrance, jewellery, swimwear, handbags, small leather goods, eyewear, and leather apparel.
- d) In the mid-1990's, Guess? became a public company and launched its first website at the domain name guess.com. Guess? now operates websites at the domain names **guess.com, gbyguess.com, and marciano.com**. In 1995, Complainants expanded their retailing business by launching an e-commerce website at guess.com. The e-commerce website displays photographs of Guess?'s famous models and operates as a virtual storefront that sells both Guess?'s products and promotes Complainants' brands.
- e) As a result of more than 40 years of use, Complainants have created in their GUESS Mark one of the most famous and distinctive marks in retailing. The



GUESS Mark has acquired a valuable goodwill and reputation, and is widely recognized by the consuming public as source of the goods and services of Guess?, not only in the United States but throughout the world.

- f) The Complainant has submitted that in addition to their exceptionally strong common law trademark rights, Guess? owns numerous Trademark Registrations for their GUESS Mark throughout the world. The Complainant relies on Exhibit-4 that is a table listing some of the relevant registrations in India, and corresponding Certificates of Registration:

Trademark	Country	Registration No.	Registration Date
GUESS?	India	460982	9/30/1986
GUESS? And design	India	2655895	1/7/2014
GUESS	India	2656546	1/8/2014

GUESS



- g) It is submitted that Guess? IP Holder L.P. licenses certain Guess trademarks and corresponding registrations. Guess?, Inc. is a licensee of Guess

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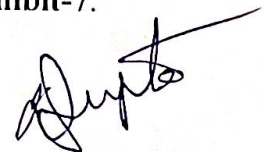
trademarks, and has the right to use such marks. Accordingly, both Complainants have a sufficient trademark rights and interest in the disputed Domain Name.

- h) It is further submitted by the Complainant that the Disputed Domain Name incorporates Complainants 'GUESS' mark in its entirety. That the addition of the top-level suffix in the disputed Domain Name should be disregarded because it is a necessary requirement to register and can not be considered a distinctive element of the Domain Name. That the Domain Name features an additional geographic term, "India". The combination of a geographic term with the mark does not prevent a domain name from being confusingly similar. The Domain Name also features an additional descriptive word, "online," which is merely descriptive of Complainants' business models (e.g., Complainants' clothing products and accessories are sold at retail stores, online, among other types of retail establishments), and furthers the likelihood of confusion.
- i) The Complainant submits that the Respondent's use of the GUESS Mark in its entirety within the Disputed Domain Name, along with the use of GUESS Marks on the website itself in connection with the retail sale of counterfeit and competitive apparel and accessories, seeks to capitalize on the goodwill Guess? has built in that brand and trademark by misdirecting consumers seeking Guess? and its genuine GUESS goods and services instead. Respondent's use of the GUESS Mark within the Domain Name and on the website at the Domain Name falsely suggests a connection between Respondent and Guess?, when none exists. The Complainant submits that hence the Disputed Domain Name is confusingly similar to the Complainants GUESS Mark.

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B. Secondly:

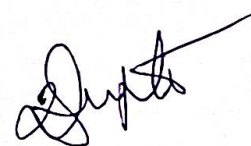
- a) The Complainant further submits that the Respondent has no rights or legitimate interests in the Disputed Domain Name. It is submitted that the Respondent is neither an authorized vendor nor a licensee of Complainants and does not have authorization to use the GUESS Mark or to register any domain name containing the GUESS Marks or any confusingly similar variation thereof.
- b) That the Respondent is not commonly known as “guess,” or “guessindiaonline” nor can it be since Guess? has not authorized the respondent to use of its GUESS Marks. That given Complainants’ longstanding use and trademark registrations for the GUESS Mark as well as the high reputation of Guess? and its brand, there is no plausible circumstance in which Respondent could legitimately use the mark GUESS in its Domain Name. It is thus submitted that the Respondent is not using the Disputed Domain Name in connection with a legitimate non commercial use or fair use.
- c) That the Respondent’s use of the GUESS Mark within the Domain Name is not a legitimate use, but a deliberate infringement of Complainants’ rights to misdirect traffic from Complainants to Respondent for the Respondent’s own financial gain. The Domain Name resolves to a website named “GUESS,” designed to mimic Complainants’ own website, that features counterfeit clothing, apparel, and accessories for sale designed to look like Complainants’ goods, with multiple imitation products featuring the GUESS Marks. Moreover, the website features obvious claims and implications which further associate it with the GUESS Marks and illegally reproduces multiple images owned by Complainants. The Complainant relies on the screen shots of the website of Disputed Domain Name annexed as **Exhibit-7**.

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- d) It is submitted that based on these elements, Internet users are likely to believe that these Domain Name points to an official website of the Complainants. No conceivable *bona fide* use of the Domain Name exists when the intended use is a deliberate infringement of another's rights. It is submitted that selling unauthorized and illegitimate goods featuring Complainants' Mark is compelling evidence that Respondent has no rights or legitimate interests in respect of the Domain Name, because there can be no legitimate interest in the sale of counterfeit goods.
- e) Hence, the Complainant asserts that Respondent has no rights or legitimate interests in respect to the domain name in dispute.

C. Thirdly

- a) It is further submitted by the Complainant that the Disputed Domain Name has been registered and is being used in Bad Faith.
- b) The Complainant submits that the Respondent plainly had constructive knowledge of Complainants' rights in its GUESS Mark due to Complainants' prior registration of the GUESS Mark, further evincing bad faith intent. That the Complainants have used the GUESS Mark for more than 40 years before the Disputed Domain Name was registered by the Respondent on August 27, 2023. Further, where a domain name is so obviously connected with a well-known trademark, its very use by someone with no connection to the trademark suggests opportunistic bad faith. Given the reputation and fame of the GUESS trademark, registration in bad faith can be inferred.
- c) That the Disputed Domain Name is currently used to direct Internet users to a website entitled "GUESS" which impermissibly features Complainants' own copyright protected images. Respondent's website at the subject Domain Name also offers for sale numerous counterfeit GUESS items that feature the



GUESS Marks. When a domain name is used to sell counterfeit goods in competition those offered under Complainants' Marks and diverts Internet users seeking Complainants' website to a website for Respondent, such use clearly demonstrates bad faith. That Respondent uses the Domain Name to attract, for commercial gain, users to its own website, which is clear evidence of bad faith registration and use. Hence Respondent's intentional diversion of customers from Guess? to its website demonstrates Respondent's bad faith registration and use of the Domain Name.

- c) It is submitted by Complainant that the Respondent intentionally uses the Domain Name to confuse consumers as to the source or affiliation of Respondent's online activities, diverting consumers from Complainants, disrupting Complainants' business, and tarnishing Complainants' reputation through unwanted and unauthorized association with Respondent's website and the sale of unauthorized goods.
- d) Hence, the Complainant asserts that the disputed domain name has been registered and being used by the respondent in bad faith.

6. RESPONDENT:

The Respondent did not respond in these proceedings although notice was sent to the Respondent under the INDRP Rules.

7. DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

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- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or confusingly Similar:

It is found that the Complainant has the right in the 'GUESS' trademark. The disputed domain name includes the Complainant's 'GUESS' trademark. Such inclusion is by itself enough to consider the disputed domain name confusingly similar to the Complainant's GUESS trademark. The suffix / addition of the term "INDIAONLINE" in the disputed domain name does not prevent a finding of confusing similarity. The suffix 'indiaonline' has been probably used to mislead internet consumers through the disputed domain name depicting geographical association of the Guess Mark owned by the Complainant with India. Merely adding of a generic term to a trademark in a domain name does not mitigate the confusing similarity between the mark and the domain name.

It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity. It is a well established principal that when a domain name wholly incorporates a complainant's registered mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy.



The Complainant has submitted evidence of its trademark registrations for the "GUESS" mark in India and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use.

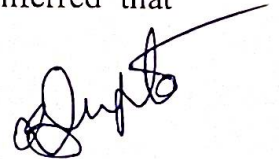
It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark.

The disputed domain name is accordingly found to be confusingly similar to the trade mark. in which Complainant has rights. The requirement provided for in paragraph 4(a) of the Policy is accordingly satisfied.

Rights and Legitimate Interests:

There is no evidence that shows the Respondent is commonly known by the name "GUESS" or "GUESSINDIAONLINE," or that the Respondent is affiliated with the Complainant or authorized or licensed to use the Complainant's trademark.

It is seen that the disputed domain name resolves to a website displaying the mark "GUESS," designed to mimic Complainants' own website, that features counterfeit clothing, apparel, and accessories for sale designed to look like Complainants' goods, with multiple imitation products featuring the GUESS Marks and illegally reproduces multiple images owned by Complainants. Consequently, Respondent fails to show that the non-commercial intention or the fair use of the disputed domain name. It is plausible that Respondent has no legitimate interest or rights in the disputed domain name. Hence, as a matter of fact, it cannot be inferred that

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Respondent is making a legitimate non-commercial or fair use of disputed domain name. Hence apparently the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services or for any legitimate noncommercial or fair use.

Since the Respondent did not reply to the Complaint in this proceeding, it is found as per the available record that the Complainant has established an unrebutted prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The above requirement provided for in paragraph 4(b) of the Policy is accordingly satisfied.

Bad faith

The complainant's rights in the Trademark predate the registration of the disputed domain name by almost 40 years. Moreover it is noted that the Complainants global renown dates back many decades before the registration of the disputed Domain Name. Complainant is a large company producing numerous products and its 'GUESS' trademark is well known worldwide. Therefore, it is highly unlikely that the Respondent would not have known of the Complainant's right in the trademark at the time of registration of the disputed domain name.

It is implausible that Respondent was unaware of Complainant's Mark when he registered the disputed domain name. Bad faith can be found where respondent "*knew or should have known*" of Complainant's trademark rights and, nevertheless registered a domain name in which he had no rights or legitimate interests

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The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the 'GUESS' mark. The disputed domain name has been registered much later. These facts establish the Complainant's prior adoption of the 'GUESS' mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark in commerce for a number of years continuously and the mark is recognized internationally including India and is well known, which has substantial value.

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts, circumstances and the evidence indicate that the Respondent has used the GUESS Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Similarly in the present case it is found that the use of the 'GUESS' mark by the Respondent is likely to attract customers based on the Complainant's mark and Internet users are likely to be misled by the use of the trademark in the disputed domain name.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

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In the light of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4(c) of the Policy.

DECISION

In view of the above findings it is ordered that the disputed domain name <GUESSINDIAONLINE.IN> be transferred to the Complainant.



Deepali Gupta
Sole Arbitrator
Date: 20th APRIL, 2024