

INDRP ARBITRATION CASE NO.1823
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

GUANGDONG SKMEI WATCH MANUFACTURE CO. LTD.

Vs.

ANAM ECOMMERCE

DISPUTED DOMAIN NAME : "SKMEI.IN"

Ajay

INDRP ARBITRATION CASE NO.1823
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

GUANGDONG SKMEI WATCH MANUFACTURE Co. Ltd.
Floor 3, Block C6 Wanyang Zhongchuang Industrial Park
41, Dawang Road, High-tech Zone,
Sihui City, Zhaoqing City, Guangdong
Province China [CHINA].
Email: hkintelmark@hkindia.com

...Complainant

VERSUS

ANAM ECOMMERCE
5-5-214/1, Darussalam Road
Nampally, Hyderabad-500001
[Telangana]
Email: anamecommerce@gmail.com

...Respondent

Disputed Domain Name: "SKMEI.IN"



1. THE PARTIES

- 1.1 The **Complainant** in this arbitration proceedings is GUANGDONG SKMEI WATCH MANUFACTURE CO. LTD. who is manufacturer of various type of Multifunctional Digital watches, Heart Rate watches, smart watches, smart bracelets, classic Gent watches, classic lady watches under brand SKMEI, and its contact address is GUANGDONG SKMEI WATCH MANUFACTURE CO. LTD. Floor 3, Block C6 Wanyang Zhongchuang Industrial Park, 41, Dawang Road, High-tech Zone, Sihui City, Zhaoqing City, Guangdong, Province China, China.
- 1.2 The Complainant in this administrative proceeding is represented by its **authorized representative**, Dr. Rajeshkumar H. Acharya Advocate, Patent and Trade Marks Attorney and/or Ms. Harsha R. Acharya, Advocate and Trade Marks Attorney and/or Mr. Ketan G. Bhatt Advocate and Trade Marks Attorney, and/or Mr. Omkar R. Acharya Advocate and Trade Marks Attorney, and/or Ms. Pooja O. Acharya, Advocate and Trade Marks Attorney, and/or Ms. Sejal D. Shah, Trade Marks Agent and/or Ms. Dimple M. Dave, Trade Marks Agent of Law office of H K ACHARYA & COMPANY, Advocate, Patent and Trade Marks Attorney, HK Avenue, 19, Swastik Society, Navrangpura, Ahmedabad 380009 INDIA, Phone: 9586875302 Fax: +917926425263, E-mail: hkintelmark@hkindia.com
- 1.3 The **Respondent**, in this arbitration proceeding, is Anam Ecommerce, address at 5-5-214/1, Darussalam Road, Nampally, Hyderabad-500001 [TELANGANA] - India (anamecommerce@gmail.com) as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).



2. THE DOMAIN NAME AND REGISTRAR

2.1 The disputed domain name is "skmei.in". The Registrar with which the disputed domain name is registered is GoDaddy.com.

3. PROCEDURAL HISTORY [ARBITRATION PROCEEDINGS]

3.1 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 there under.

3.2 The history of this proceeding is as follows :

3.2.1 In accordance with the Rules 2(a) and 4(a), NIXI on 07.03.2024 formally notified the Respondent of the complaint, and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Resolution Policy and the Rules framed there under . I submitted the Statement of Acceptance and Declaration of Impartiality and Independence Dated 07.03.2024 vide mail dated 07.03.2024 as required by NIXI.

3.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 07.03.2024 was sent to the Respondent by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file reply of the complaint if any within 10 days. The copy of complaint



was also mailed to Respondent by Complainant on the directions of this panel on 07.03.2024. The Complainant also sent the hard copy of complaint to the Respondent through speed post on address as mentioned in WHOIS details, which was duly received by the Respondent on 12.03.2024, and tracking report of the speed post was also submitted to this panel by Complainant via their mail dated 14.03.2024.

3.2.3 The Respondent as directed by this panel was supposed to file the reply of the complaint if any, by 16.03.2024, but he neither replied to the arbitration notice nor to the complaint. However, this panel in the interest of justice granted one last opportunity to the Respondent on 18.03.2024 to file the reply of the Complaint if any, by 22.03.2024.

3.2.4 The Respondent despite the receipt of the Arbitration Notice dated 07.03.2024 and further reminder dated 18.03.2024 has neither replied to the arbitration notice nor filed the reply of the Complaint. The Respondent has repeatedly not followed the instructions of this panel hence, the Respondent was proceeded ex-parte on 23.03.2024 in accordance with INDRP Rules and the present complaint is being decided on its merits.

4. THE RESPONDENT'S DEFAULT

4.1 The Respondent failed to file the reply of the complaint despite repeated opportunities. It is a well-established principal that once a Complainant makes a prima-facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with the proof that it has some legitimate interest in the domain name to



rebut this presumption. The disputed domain name in question is "skmei.in".

- 4.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows:

"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."

- 4.3 The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonable available means calculated to achieve actual notice to the Respondent of the complaint.

- 4.4 The 'Rules' paragraph 12 provides that "In event 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." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidences, inferences and merits only as the Respondent has not replied and is proceeded ex parte.

5. BACKGROUND OF THE COMPLAINANT AND ITS STATUTORY AND COMMON LAW RIGHTS ADOPTION:

- 5.1 The Complainant, in the present arbitration proceedings to support its case, has relied and placed on records documents as Exhibits and made the following submissions:
- 5.2 The Complainant submits that, "Guangzhou SKMEI watch co., Ltd" (predecessors) was established in 2010 in mainland China and it's Headquarters located in Guangzhou, covering



an area of 16000 square meters, including production Department, sales Team Branch in Shenzhen with R & D Department, Market operator Team having more than 300 employees. The Complainant submits that proprietors famous brand "SKMEI" has been registered in more than 60 countries and Registered proprietor specialize in manufacturing various type of Multifunctional Digital watches, Heart Rate watches, smart watches, smart bracelets, classic Gent watches, classic lady watches. It is submitted that to ensure that all the SKMEI watches are with high quality and water resistant, they are 100% QC inspected and 100% waterproof-tested by the most advance waterproof testing equipment and precision testing apparatus. It is further submitted that every month "SKMEI" produce more than 1 Million pieces watches distributed by the wholesale's to over 150 countries. "SKMEI" brand having more than 4000 SKU for distributors /wholesalers to choose, full with all kinds of series, such as sport style, classic gents & lady style, kids watch, smart band, and now exploring many automatic watches with good quality and High cost performance, everyone can choose a suitable and reliable watch from SKMEI. The Complainant submits that with excellent quality and popular designs, reasonable price and quality assurance, SKMEI watch is enjoyed by customer in many countries. The Complainant submits that the Registered proprietor focus on "precision, quality, innovation, customer and services, aim to be a leading watch manufacturer and global famous brand with best products, best qualities, and best service. The said trademark of the applicant is which has been coined and adopted is always associated with the applicant only and none another. It is submitted that the Applicant invented a trademark SKMEI and using from last many



years worldwide and from December 2013 in India openly, extensively and uninterruptedly in the market.

5.3 Information about the company name change of complainant - The Complainant submits that the “Guangzhou SKMEI Watch Co. Ltd.” was the predecessors of the complainant, and the complainant has changed the name of company from “Guangzhou SKMEI Watch Co., Ltd” to “GUANGDONG SKMEI WATCH MANUFACTURE CO. LTD.” on 11th October 2022. It is submitted that the complainant has already filed amendment application to change the name in the applications.

5.4 Adoption and Use of the marks of Complainant - The Complainant states that the Complainant engaged in the business of well-established and reputable company involved in the manufacturing and trading of products under the mark SKMEI including, but not limited to wristwatches; clocks and watches, electric watches; clocks; movements for clocks and watches; presentation boxes for watches; chronometers; Ornaments (jewelry); works of art of precious metal; watch bands; watch straps; watch chains; watch bag (set); stopwatches; chronometric instruments. It is submitted that the coined and distinctive mark and its variants (hereinafter referred to as the “said SKMEI marks”) have been bona fide adopted and have been used internationally since at least 2010. Further, since December Complainant has been using the mark 13, 2013 in India. It is submitted that the Complainant’s goods under the mark are exported to all over The Globe including but not limited to 152 countries. It is submitted that Complainant’s products under the said SKMEI marks are available in several jurisdictions. The Complainant submits that it has distributors in several countries around the world for its products under the said SKMEI marks. The Complainant



states that due to long and extensive use and excellent quality of products, the said marks/labels have a very good reputation and goodwill in the Indian as well as in the International market. It is submitted that the Complainant's said trademark/label is identified and recognized by the traders, consumers and the general public the SKMEI and it has become solely associated with the Complainant's products.

5.5 The Complainant states that the Complainant has spent considerable amount of time, money and efforts towards the marketing and promotional activities and that due to the said efforts, the Complainant's products/services under the said trademarks/labels have very good demand and sales of the Complainant's products/services are increasing time to time. The said marks/labels have acquired goodwill and reputation to the extent that any reference of the said trademark or any similar mark if referred in the market, it will lead people to believe that the said reference is in respect of the Complainant and its products/services and none else. Thus, the said trademarks/labels have become well reputed in the market and therefore, the turnover of the Complainant's company has increased from time to time. It is submitted that the Complainant company has sales Approx 57,00,000 no. of unit in varieties of wristwatch in world wide.

5.6 **Details About the Brand of Complainant** - The Complainant submits that to ensure that all the products under the brand SKMEI are with high quality and water resistant, they are 100% QC inspected and 100% waterproof-tested by the most advanced waterproof testing equipment and precision testing apparatus. It is further submitted by the complainant that the products under the said SKMEI marks have also received various certifications



and conform to several standards, and owing to the excellent quality, popular designs, reasonable price and quality assurance, the products under the said SKMEI marks are enjoyed by customers in numerous countries around the world. It is submitted that over the years, the Complainant has been selling numerous goods under the mark "SKMEI" and its variants in India.

6. Applications of India and other countries of Complainant

- 6.1 The Complainant submits that, it has sought for/ secured registration of the said SKMEI marks in India and has submitted details and evidence in support of this, and in addition to this, the complainant has also submitted documentary evidence relating to Foreign Registration of the said SKMEI marks. The Complainant submits that the said registrations are renewed from time to time and are valid and subsisting till today. The Complainant submits that thus the Complainant is the registered proprietor of the said trademarks/labels and has exclusive rights to use the said marks/labels and to restrain others from using any identical or deceptively similar mark in the market. The Complainant further submits that it has acquired the common law right to use its trademark/ label as well as to getting registration for any identical or deceptively similar trademark/label in the market. The Complainant submits that it has nominate Digjay Pravinbhai Mangukiya B/3, Saurashtra township, Sudama Chowk, Mota Varachha, Surat as one and only Exclusive Registered User in INDIA for the entire territory of India and has also submitted details about the agreement in this regard.
- 6.2 The Complainant submits that each brand is created keeping in mind the varied parameters of consumers style and with superior quality, distinct aroma and rich look, each watch



variant of the Complainant is surging ahead in becoming the final choice of Wristwatches lovers. The complainant submits that, it strives at introducing new products or Wristwatches into the store frequently and keeping them in the loop of mature growth stage of market. It is submitted that the Complainants are amongst the largest traders in India and proud of serving millions of Wristwatches lovers across the globe. The complainant states that the products of the Complainant's Company enjoy high reputation and immense goodwill in the market. The complainant submits that the details of its products, achievements and other information regarding complainant's company can be obtained from the website: <http://www.skmei.com>.

7. OFFICIAL WEBSITES

7.1 The Complainant submits that the official website of complainants, i.e. <https://skmei.com/> showcases the said SKMEI marks extensively. Further, complainant also has a website catering to Indians specifically i.e. <http://www.skmeindia.com/> It is submitted that these websites are accessible to people across the globe, including India and provide a platform for consumers to receive information about complainant; its products sold under the said SKMEI marks and as a result the said SKMEI marks enjoy tremendous reputation worldwide, including in India. Further, the domain name has been registered since April 22, 2010 and the domain name has been registered since April 1, 2023 which comprises complainant's mark SKMEI in its entirety.

8. SOCIAL MEDIA PRESENCE

8.1 The Complainant submits that it also has strong presence over social media websites such as Facebook, Twitter, etc. wherein complainant's said SKMEI marks have been



extensively showcased. The Complainant submits that it is pertinent to note that as of January 10, 2024 complainant's Facebook page has garnered over 1,28,000 likes and 1,33,000 followers. This popularity on social media sites evidences that the general public has come to be familiar with the said SKMEI marks and associate the same with complainant exclusively.

9. ADVERTISEMENT AND PROMOTION

9.1 The Complainant submits that SKMEI marks have been advertised and promoted around the world and the same has led to the public at large being familiarized with the said SKMEI marks of Complainant and consequently, the said goods provided by Complainant are being identified, distinguished, demanded, provided, and rendered under Complainant's said SKMEI marks.

10. SALE THROUGH ONLINE RETAIL STORES

10.1 The Complainant submits that the complainant's goods bearing the said mark "SKMEI" and its variants are available for sale through major online retail stores like Paytm, Alibaba, SnapDeal, Amazon, Bonzeal etc. Thus, the goods under the mark "SKMEI " and its variants are easily available for the relevant public in India to purchase and view. Hence, the relevant public in India has come to associate the said mark and its variants with the complainant exclusively. The Complainant further submits that the extensive sale of products bearing the said SKMEI marks has further strengthened the formidable reputation of the said SKMEI marks of Complainant in India.

11. COMPLAINANT'S MARKS BEING WELL-KNOWN MARKS

11.1 The Complainant submits that owing to the long use, advertisement, popularity, and recognition amongst the



relevant public, the said SKMEI marks have acquired the status of well-known marks within the meaning of S. 2 (1) (zg) of the Trade Marks Act, 1999 and have acquired immense reputation. The said SKMEI marks have become so popular worldwide, with respect to the said goods that the very mention of them recalls Complainants and its goods. It is submitted that the said SKMEI marks have created an exclusive place for themselves in the market as well as in the minds of the consumers, who associate the said SKMEI marks with Complainant's and its superior quality goods. It is submitted that Section 11(6) and 11(7) of the Act provide for the relevant factors that ought to be taken into account in order to determine a mark as being well-known. It is submitted that the said SKMEI marks have been used over a wide geographical area and the products thereunder have been sold in numerous jurisdictions (including in India) via online sale platforms as well as through direct sellers. The Complainant further submits that with a production capacity of over 2,50,000 digital watches in a month, Complainant has achieved tremendous sale of its goods worldwide. Thus, the said SKMEI marks are well-known marks within the meaning of Sections 11(6) and 11(7) and deserve to be protected under Section 11(10) of the Act.

12. MARK FORMING PART OF THE TRADE NAME OF COMPLAINANT

- 12.1 It is submitted that the mark "SKMEI" also forms part of the trade name of Complainant i.e. "Guangdong Skmei Watch Manufacture Co., Ltd." and is therefore, entitled to even further protection under Article 8 of the Paris Convention for the Protection of Industrial Property, to which India is a signatory. [Article 8 reads, "A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a



trademark.”] It is submitted that the complainant’s domain name “skmei.com/skmeindia.com” is the part of Complainant’s company name. That the uses trade mark/trade name/trading style as well as domain name “skmei” has been expending across the globe gradually. Along with the expansion of worldwide use of the domain name; the said domain name “skmei.com/skmeindia.com” attained extensive Trans border reputation and huge goodwill. The Complainant submits that it has recently come across that the respondent is selling products under the brand "SKMEI" and that respondent have a website <http://www.skmei.in>. It has also come to know that respondent do not have any registered trademark by the name of "skmei" in respect of the products for which complainant is registered proprietor as well as prior user. That the application no.3893826 in class 14 of the respondent is abandoned and other application no. 5391607 in class 25 is opposed. Thus, the complainant submits that the application of the respondent is insubstantial position and on the contrary complainant is using the trademark/domain name SKMEI since the year 2013 in India and therefore complainant is the prior user of the trademark SKMEI as well as domain www.skmei.com. The Complainant submits that the respondents are mischievously using Complainant’s trademark/domain "skmei" as brand-name which amounts to a colourable imitation/substantial reproduction of complainant’s trademark/domain. The Complainant submits that it is evident that Respondent have systematically copied complainants marks/domain in a way to mislead the public and have sought to imitate complainant’s products dishonestly and fraudulently with a view to pass off the products as those of complainant and to cause confusion. The Complainant submits that it is evident that such unauthorized use is deliberate, systematic and with a view

to ride upon the reputation and goodwill of complainant in the said marks to make unlawful gains. That the respondents have registered the website <http://www.skmei.in> (the "Domain Name") with a malafide intention and to cause a commercial loss to complainant. That the Complainant's website is www.skmei.com and www.skmeindia.com. The Complainant submits that the Web Pages of the website is evidence of the fact that this domain name has been taken only to mislead the public.

12.2 The complainant submits that before registration of domain i.e. www.skmei.in of respondent; the complainant has authorized to respondent to sale the product of the complainant in India but the complainant has never given any rights to use and registered the domain skmei in India or any other country. The complainant in this regard has is produced the authorization letter along with sales invoices in the name of respondent since the year 2016. The Complainant submits that it proves that respondents have registered the domain name in bad faith only to infringe the registered trademark/domain of the complainant. It is submitted by the Complainant that the respondent is currently operating a website at that location and, as of the date of this letter and respondent is using the trademark "skmei" in connection with the domain name and website without complainant approval or permission. The use of this domain name in question leads to dilution of the brand value of complainants and it has been done only to induce the customers of complainants, and this amounts to infringement of the registered trademark under section 29 (2) of the trademark act as it causes confusion on the part of the public.



13. THE ISSUES INVOLVED IN THE DISPUTE

- 13.1 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

“Types of Disputes

Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises :-

The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory/common law rights.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The disputed domain name has been registered or is/are being used in bad faith”.

- 13.2 The above mentioned 3 essential elements of a domain name dispute are being discussed hereunder in the light of the facts and circumstances of this case.

14. PARTIES CONTENTIONS

- 14.1 **The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**

COMPLAINANT

- 14.2 The Complainant submits that the word SKMEI is the forming part of the trade name of the complainant's company i.e. GUANGDONG SKMEI WATCH MANUFACTURE CO. LTD., which was established in the year 2010 in Mainland China and the complainant has started to use the trademark SKMEI since the year 2013 in INDIA and since then complainant is using the said trademark as well as domain www.skmei.com/www.skmeindia.com continuously and openly in the trade segment.

- 14.3 The Complainant submits that the respondent has adopted the identical and/or ditto to ditto domain www.skmei.in in the year 2017. The Respondent has knowingly obtained registration of identical and/or ditto to ditto same/similar domain www.skmei.in to create confusion and deception in the trade segment as well as in e commerce websites like Amazon, Flipkart, Paytm Mall, etc. The Complainant submits that due to such identical and/or ditto to ditto domain name; by searching the product of the complainant on google; respondent's website namely www.skmei.in first. The Complainant further submits that moreover, respondent is selling the product under the name of "skmei" in inferior quality in very cheap price and therefore complainant has suffered a lot of loss as the complainant has always maintained quality standards of the said goods under the domain "www.skmei.com/www.skmeindia.com " in the respective market. That the complainant has also raised the complaint to FLIPKART through their portal for this act committed by the respondent and FLIPKART has also given answer of the same. But, till today there is no action taken by FLIPKART. Thus, complainant is facing monetary loss.
- 14.4 The Complainant submits that the respondent has slavishly copied and used the domain www.skmei.in since the year 2017 with the prior knowledge of the complainant's first existence in the market. It is submitted that the registration of any domain www.skmei.in which is identical and/or ditto to ditto similar for the identical goods and in the same trade course can lead the complainant to monetary loss as the domain of the complainant is prior and the respondent is subsequent in user.
- 14.5 The Complainant further submits that as the impugned domain www.skmei.in is identically and/or ditto to ditto



similar and/or confusingly similar, it is contrary to public interest and likely to have terrible and harmful consequences. It is submitted that there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the domain www.skmei.com/ www.skmeindia.com of the complainant. The goods of the respondent and the complainant are also same and/or similar for the products/goods covered under the respective trademarks/domain. The Complainant submits that therefore, there is a clear chance of confusion and/or deception.

- 14.6 The Complainant submits that the impugned domain would take unfair advantage of or be detrimental to the distinctive character and repute of the earlier domain. It is submitted that the complainant is using the trademark/trade name as well as domain "skmei" since the year 2013 in India and therefore complainant is the prior user, prior adopter, proprietor/registered proprietor of the trademark/domain "SKMEI" in India.
- 14.7 The Complainant submits that the respondent has copied the trademark and domain name identically/artistically as well as with identical color combination. Thus, It is submitted by the complainant, that the disputed domain name contains i.e. "skmei" of the respondent is identical and confusingly similar to a name, trademark "skmei" in which the complainant has rights. The domain name 'skmei.in' wholly incorporates the Complainant's registered brand 'skmei' which clearly refers to a key element of the complainant's business i.e. watches. Therefore, this domain is identical / confusingly similar to the Complainant's 'skmei' brand. The Complainant submits that in the similar scenario it was observed by the Hon'ble High Court of Delhi in the matter of Thoughtworks Inc. vs. Super Software Pvt. Ltd. & Ors (MANU/DE/0064/2017) "with the domain name



taking up the entire name of the petitioner, there could be no doubt that the use of such domain name by the Respondent would be deceptively confusing and erroneously indicate a connection of Respondent No 1 with the Petitioner where there is none. The registration and use of a identical/ confusingly similar domain name as that of trademark of the Complainant is a direct infringement.

15. The Complainant has in support of his contentions has relied on the following cases :

- 15.1 The Complainant submits that it was also observed in the matter of F Hoffman-La Roche AG vs Relish Enterprises (WIPO) D2007-1629. "If the Complainant owns a registered trademark, then it satisfies the threshold requirement of having the trademark rights and the domain name is confusingly similar to Complainant's trademark because the disputed domain name looks and reads like Complainant's trademark". In case of trademarks with well-built goodwill, reputation & wide spread presence on internet, any re-arrangement with substantial similarity was to encash the goodwill of the reputed trademarks by creating closer imitation.
- 15.2 The Complainant submits that it was observed in the matter of Forest Laboratories Inc Vs Natural Products Solutions LLC Case No. D2011-1032.; Forest Laboratories Inc. Vs Clark Grace Case No. D2011-1006 (WIPO): "Typo squatting involves the intentional rearrangement or change of a few letters in the mark to make a nonsensical but close imitation deliberately intended to catch a tired or careless typist's search for the mark wonder's website. Usually, the added or substituted letter or addition involves a character immediately adjacent to the replaced one Amazon.com Vs Steven Newman Aka Jill Waserstein AKA Pluto Newman (WIPO)J,"



RESPONDENT

- 15.3 The Respondent has not replied to the Complainant's contentions despite repeated opportunities given to him.

PANEL OBSERVATIONS

- 15.4 This Panel on pursuing the documents and records submitted by Complainant observe that the Complainant's famous brand "SKMEI" has been registered in more than 60 countries and is the Registered proprietor, which is specialize in manufacturing various type of Multifunctional Digital watches, Heart Rate watches, smart watches, smart bracelets, classic Gent watches, classic lady watches. It is observed by this panel that word SKMEI is the forming part of the trade name of the complainant's company i.e. GUANGDONG SKMEI WATCH MANUFACTURE CO. LTD. and the mark SKMEI, is popularly known exclusively in relation to the Complainant. It is also observed by this panel that the Complainant has successfully secured registrations for the SKMEI marks in many countries including India.
- 15.5 This panel observe the fact that Disputed domain "www.skmei.in" comprises the Complaint's trademarks "SKMEI" in their entirety and has the potential to cause consumer confusion and will cause the user into mistakenly believe that it originates from, is associated with or is sponsored by the Complainant and further suffix "in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.
- 15.6 Therefore, the panel is of opinion that disputed domain name "SKMEI.IN" being identical/confusingly similar to the trade mark of Complainant will mislead the public and will cause unfair advantage to Respondent. The Panel is of the



view that there is likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "SKMEI" of the Complainant.

15.7 It has to be noted that the paragraph No.4 of the INDRP policy starts with following words :

"Any person who considers that a registered domain name conflicts with his legitimate rights or interest may file complaint to the registry on the following premises." This is a positive assertion and sentence. Further paragraph 4(i) also constitutes a positive assertion and sentence. The above clearly indicates that the onus of proving the contents of para 4(i) is upon Complainant. To succeed he must prove them."

15.8 It has been proved by the Complainant that it has trademark rights and other rights in the mark "SKMEI" by submitting substantial documents in support of it. This panel while following the rule of law is of the opinion that while considering the trademark "SKMEI" in its entirety, the disputed domain name "skmei.in" is confusingly similar to the trade mark of Complainant.

15.9 Paragraph 3 of the INDRP states that, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

15.10 This Panel therefore, in light of the contentions raised by the Complainant comes to the conclusion that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(i) of the INDR Policy.

16. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME.

COMPLAINANT

16.1 The Complainant submits that, the respondent has well within knowledge of the complainant's trademark as well as domain as complainant is using the said trademark/domain "skmei" since the year 2010 globally and since the year 2013 in India. That the uses of trade mark / trade name / trading style as well as domain name "skmei" has been expanding across the globe gradually. Thus, it is submitted by the complainant that the respondent does not have rights or legitimate interest in respect of domain name and also the respondent has no registered trade mark rights of the said domain name. It is submitted that the respondent is seeking advantage of the well-known trademark/domain of the complainant and is thereby tarnishing the reputation and trademark at issue. The Complainant further submits that , the trademark of the Complainant is well known, enjoys international reputation and trade name is known across the globe and the Respondent creates a deceptive domain name, the Respondent cannot be said to have a right or legitimate interest.

17. THE COMPLAINANT HAS IN SUPPORT OF HIS CONTENTIONS HAS RELIED ON THE FOLLOWING CASE :

17.1 The Complainant submits that ,it was also observed in the matter of Wockhardt Ltd vs Kishore Tarachandani: (INDRP Dispute Case no: INDRP/382) "The Respondent cannot have a right or legitimate interest in the disputed domain name when it incorporates the entire mark of the Complainant Clear case of abusive registration of a well-known mark.

- 17.2 The Complainant in view of the above submits that the Respondent has no rights or legitimate interest in the disputed domain name as per INDRP Policy, para 6 (ii); INDRP Rules, para 4 (b) (vi) (2).

RESPONDENT

- 17.3 The Respondent has not replied to the Complainant's contentions despite repeated opportunities given to him.

PANEL OBSERVATIONS

- 17.4 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 17.5 This panel observes that the Complainant by placing documents/records along with complaint has been able to prove, that Complainant is using the said trademark/domain "skmei" since the year 2010 globally and since the year 2013 in India, and the trade mark / trade name / trading style as well as domain name "skmei" is used globally.
- 17.6 The Respondent has failed to rebut the allegations of the Complainant, that the respondent does not have rights or legitimate interest in respect of domain name and also the respondent has no registered trade mark rights of the said domain name.
- 17.7 Once the Complainant makes a prime facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain



name. The Respondent has failed to give any evidence, showing its rights or interests in the domain name.

17.8 For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name.

18. THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED OR IS BEING USED IN BAD FAITH.

COMPLAINANT

18.1 The Complainant submits that the domain name is registered by the respondent and is used in bad faith. The complainant submits that before registration of domain i.e. www.skmei.in of respondent; the respondent was purchaser of the complainant. In this regard the complainant has produced/submitted the sales invoices in the name of respondent since the year 2016. The complainant further submits that, it has stopped doing business together after the year 2023. This proves that respondents have registered the domain name in bad faith only to infringe the registered trademark/domain of the complainant after 2016.

18.2 The Complainant submits that due to the high reputation of the trademark "skmei", the public will automatically recognize the contested domain name and will associate this domain name with the Complainant. The internet users will have the false impression that the corresponding addresses www.skmei.in is an official internet address of the Complainant. It is submitted by the complainant that the respondent is misleading potential customers to their website. That the intention of the respondent could create a likelihood of confusion with the complainant's company name and trademark and therefore the respondent has registered the disputed domain name in bad faith.



18.3 The Complainant submits that the respondents' intention is not to act in good faith but has got registered the disputed domain name in bad faith. That as the trademarks/ trade names of the Complainant is so famous & also distinctive that the Respondent must have had actual knowledge of the trademark prior to registering the disputed domain name. The Complainant submits that by registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the intellectual property rights of another entity.

19. THE COMPLAINANT HAS IN SUPPORT OF HIS CONTENTIONS HAS RELIED ON THE FOLLOWING CASES :

19.1 The Complainant submits that, it was held in the matter of Viacom International Inc & MTV Networks Europe vs Web Master (Case No. D2005-0321-WIPO) "Given long and widespread reputation of the Complainant's mark, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive mark but identical thereto, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for bearings, or the site of the official authorized partners of the Complainant, while, in fact, it is neither of these ". The Complainant submits that the Hon'ble High Court in the matter of ITC Ltd vs Travel India (Case No.L-2/5/R4 OF 2008-NIXI): "Registration of domain name which is identical to trademark, with actual

knowledge of the trademark holder's rights is strong evidence that the domain name was registered in bad faith"

- 19.2 That in view of the above arguments the Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT

- 19.3 The Respondent has not replied to the Complainant's contentions despite repeated opportunities given to him.

PANEL OBSERVATION

- 19.4 Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrar's documented out of pocket costs directly related to the domain name; or

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 the Respondent has engaged in a pattern of such conduct; or

by using the domain name, the Respondent has intentionally attempted to attract internet user 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 its Website or location or of a product or services on its website or location."

- 19.5 The panel is of the view that from the documents/records and evidence put before it by Complainant has establish that Respondent has no previous connection with the disputed domain name and has made no *bona fide* use of the Disputed domain name .
- 19.6 The complainant by submitting the sales invoices in the name of the respondent has established, that the respondent was the purchaser of the Complainant since 2016, and that is before the registration of disputed domain name www.skmei.in” by the Respondent in year 2017.
- 19.7 It is thus, very clear that Respondent before registering the domain name skmei.in had full knowledge of Complainant’s rights in the trade mark SKMEI, which evidences bad faith. The registration of disputed domain name “skmei.in” by the Respondent incorporating a well-known mark of the Complainant in its entirety, is also evidence of bad faith.
- 19.8 This panel observes that the Complainant has successfully secured trademark registrations for the SKMEI mark in many other countries including India, and by using the disputed domain name, the Respondent has intentionally attempted to attract, internet users to the disputed domain’s website by creating a likelihood of confusion with the Complainant’s SKMEI mark.
- 19.9 By registering the disputed domain name with actual knowledge of the Complainant’s trademark “SKMEI”, the Respondent acted in bad faith by breaching its service agreement with the registrar, because the Respondent registered a domain name that infringes upon the intellectual Property rights of another entity, which in the present case is the Complainant Guangdong Skmei Watch Manufacture Co. Ltd.



19.10 The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Therefore the panel comes to the conclusion that the registration by Respondent is in bad faith. Consequently it is established that the disputed domain name was registered in bad faith or used in bad faith.

20. REMEDIES REQUESTED

20.1 The Complainant has prayed to this Administrative Panel that the disputed domain <www.skmei.in> be transferred to the Complainant and grant of cost.

21. DECISION

21.1 The following circumstances are material to the issue in the present case :

The Complainant through its contentions based on documents/ records and evidence has been able to establish that the Complainant is the manufacturer of different variety of the watches, which are famous by its brand name SKEMEI all over the world including in India. The mark SKMEI, which is the Complainant's very trade name, is popularly known exclusively in relation to the Complainant. It is observed by this panel that the Complainant owns and operates the domain names www.skmei.com and www.skmeindia.com of the complainant, which incorporates the registered SKMEI mark and prominently feature the same and the website hosted on the domain is accessible all over the world, including India.

21.2 The Complainant has also been able to establish that, the Complainant has statutory rights in the Mark SKMEI through registration in many countries including India. The



Respondent however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name and Respondent is related in any way with the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name.

- 21.3 Taking into account the nature of the disputed domain name and in particular the “.in” extension alongside the Complainant’s mark and name SKMEI in its entirety which is confusingly similar, which would inevitably associate the disputed domain name closely with the Complainant’s group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.
- 21.4 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else’s rights. The Respondent in this case was well aware of the Complainant’s SKMEI mark, as he himself was the purchaser of the complainant’s watches as evident from the invoices submitted by the Complainant.
- 21.5 The Complainant has given sufficient evidence to prove extensive trademark rights on the disputed domain name. Whereas, the Respondent’s adoption and registration of the disputed domain name is dishonest and done in bad faith.
- 21.6 This panel is of the view that it is for the Complainant to make out a prime facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating



rights or legitimate interests in the domain name but the Respondent has miserably failed to do that despite repeated opportunities given to him. Thus it is clear that the Respondent's registration and use of the domain name [skmei.in] is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

RELIEF

In accordance with Policy and Rules, the Panel directs that the disputed domain name [skmei.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India
Dated: March 26, 2024


AJAY GUPTA
Sole Arbitrator