

தமிழ்நாடு தமில்நாடு TAMILNADU

D. SARAVANAN

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AL 222329

P.S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L No B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: louboutin.in

Christian Louboutin
C/o Christian Louboutin S.A
19, rue Jean-Jacques Rousseau
Paris 75001, France,
juridique@christianlouboutin.fr

.. Complainant

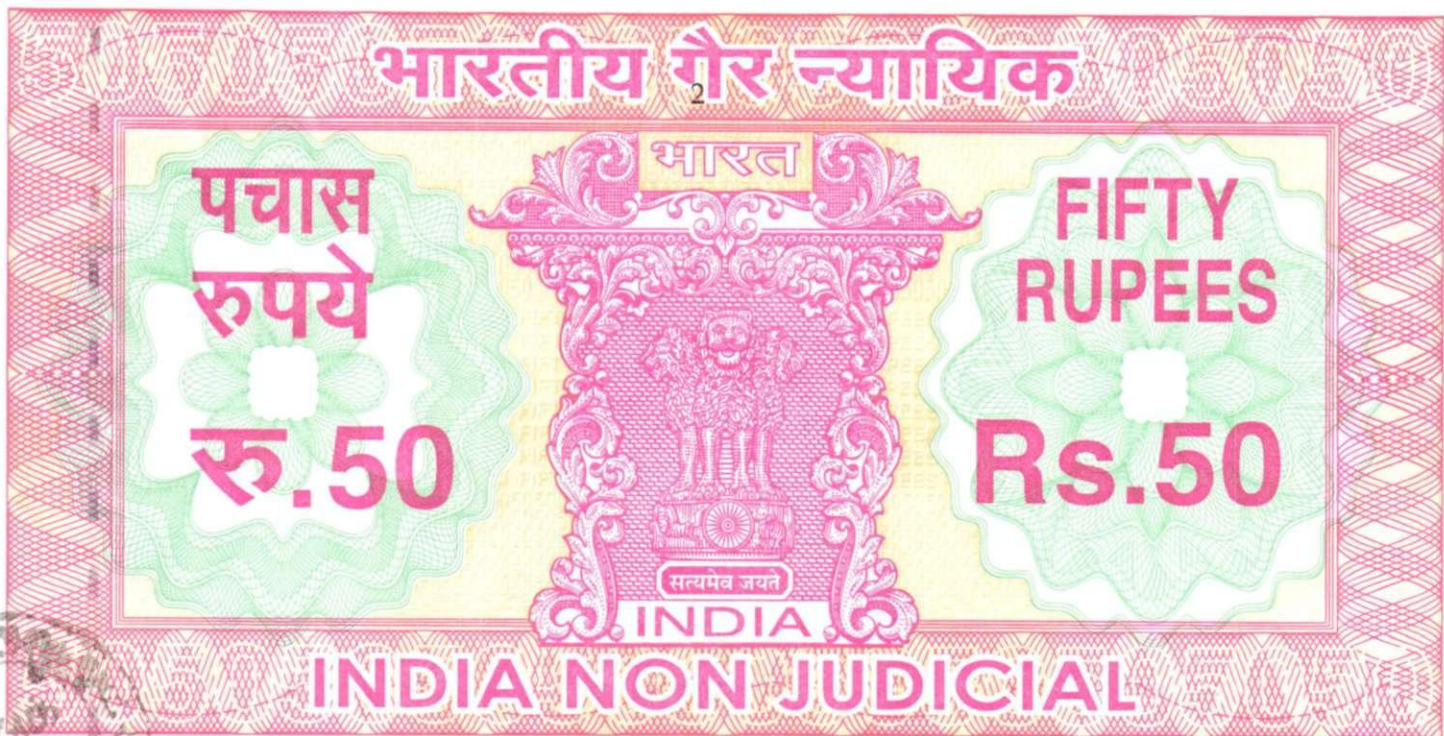
Vs.

Duan Zuochun
XinXiangZhou Chang Ye Road 70
Anjuyan 33 Dong 1-7-4 SHOP
Zhuhai
Guangdong - 519000
China
domainlaw@foxmail.com

.. Respondent

..2.





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27 DEC 2012

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1. The Parties:

The Complainant is Christian Louboutin, having his address at C/o Christian Louboutin S.A, 19, rue Jean-Jacques Rousseau, Paris 75001, France., rep. by its authorized representative M/s IP Gurus.

The Respondent is Duan Zuochun, XinXiangZhou Chang Ye Road 70, Anjuyan 33 Dong 1-7-4 SHOP, Zhuhai, Guangdong - 519000, China. Neither the Respondent represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name is louboutin.in. The domain name has been registered with .IN REGISTRY

..3.



3. Procedural History:

- November 14, 2012 : Date of Complaint.
- November 22, 2012 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- November 22, 2012 : The Arbitrator has submitted Statement of Acceptance and Declaration of Impartiality And Independence, to the .IN REGISTRY.
- December 01, 2012 : The .IN REGISTRY has forwarded the hard copy of the complaint and annexures to Mr.D.Saravanan, Sole Arbitrator.
- December 03, 2012: 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, Complainant's authorised representative and .IN REGISTRY.
- December 13, 2012 : Due date for filing Response by Respondent.
- December 22, 2012 : Arbitrator sent an e-mail to Respondent notifying his default, a copy of which was marked to Complainant, Complainant's authorised representative and the .IN REGISTRY.
- : The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The Complainant is Christian Louboutin, having his address at C/o Christian Louboutin S.A, 19, rue Jean-Jacques Rousseau, Paris 75001, France, rep. by his authorized representative M/s IP Gurus, through Sujatha Chaudhri and Sahil Yadav.



4.2 Complainant's Activities:

The Complainant states *inter-alia* that Christian Louboutin is one of the world's best-known fashion designers, Christian Louboutin is commonly referred to by his surname, Louboutin. Since the year 1992, the Complainant has been best known for marking virtually all of his high fashion women's shoes with a bright red-lacquered outsole. The Complainant sells these shoes under the names LOUBOUTIN and CHRISTIAN LOUBOUTIN. The LOUBOUTIN Marks appear on every shoe and bag sold by the Complainant, the marks are depicted so that the name LOUBOUTIN appears prominently on the Complainant's products. The Complainant is one of the world's most exclusive designers of ladies shoes. From the creation of the CHRISTIAN LOUBOUTIN brand in 1991 and the opening of the first boutique shop in Paris in 1992, CHRISTIAN LOUBOUTIN shoes and bags (hereinafter referred to as "LOUBOUTIN Products") are today available in 58 countries worldwide, through its boutique stores (including one in Delhi), as well as several exclusive department stores around the globe, select small retailers and, as described later, through the worldwide web. A list of the 58 countries in which LOUBOUTIN Products can be found (as of 3 October, 2012) is marked as **Annexure 1**. Since their introduction, sales of LOUBOUTIN Products have shown a dramatic increase which is evidenced by escalating revenue figures over the last few years; in the year 2009, the Complainant's revenue was EUR 89.2 million, in 2010, it was EUR 110.2 million, and from 1 January, 2011 to 31 August, 2011, it was EUR 91.8 million. Over the years, LOUBOUTIN Products have been worn by many celebrities all around the world, including Princess Caroline of Monaco, Cameron Diaz, Nicole Kidman, Diane von Furstenberg, Oprah Winfrey, Kate Moss, Angelina Jolie, Sarah Jessica Parker and Jennifer Lopez. Many fashion designers worldwide, including Diane von Fursterberg, Marchesa, Rodarte and Phillip Lim have featured LOUBOUTIN Products at runway shows in New York, Paris and London, among other places. Pictures of some celebrities wearing LOUBOUTIN Products are marked as **Annexure 2**. The renown of LOUBOUTIN Products is so widespread that in 2009, the Complainant and Mattel Inc., the maker of the BARBIE doll, embarked on a collaboration to commemorate the fiftieth anniversary of the doll. The Complainant



designed a peep-toe pump in BARBIE pink that was worn at the MERCEDES BENZ fashion week in New York City at BARBIE's first ever runway show and offered for sale in limited release, three BARBIE dolls in LOUBOUTIN footwear and a 2010 diary. Pictures featuring (1) snippets from this collaboration, (2) other special events like an exhibition dedicated to CHRISTIAN LOUBOUTIN at the London Design Museum, and (3) similar partnerships including one with Piper-Heidsieck and another with the Walt Disney Company as CHRISTIAN LOUBOUTIN recently unveiled his slipper for a modern-day Cinderella, are marked as **Annexure 3**. Since 1992, the Complainant has engaged successfully in extensive marketing and promotional activities relating to the LOUBOUTIN Marks. The year 2012 has seen India feature extensively in the Complainant's business plans. Earlier this year, the Complainant set up a free-standing CHRISTIAN LOUBOUTIN store at the Emporio Mall in Delhi. A representative sampling of articles and photographs relating to this store are marked as **Annexure 4**. In addition, the Complainant has marketed his Spring/Summer 2012 collection as partially inspired by Bollywood. The collection called "Bollywood" was launched in May this year to a flurry of excitement. A representative sampling of articles and photographs referring to the collection and its Bollywood inspiration, as well as results of a search on the GOOGLE search engine are marked as **Annexure 5**. Further, in 2011, an Indian company named Christian Louboutin Private Limited was set up, enhancing the Complainant's Indian ties. An extract from the register of the Registrar of Companies detailing the incorporation details of the company is marked as **Annexure 6**. Although the Complainant's Indian free-standing store opened a few months back, the Complainant's ties to India go back much longer. Over the years, the Complainant's LOUBOUTIN Products have been worn by well-known Bollywood celebrities such as Bipasha Basu, Amy Jackson and Angela Johnson. Pictures of these celebrities and articles featuring these pictures are marked as **Annexure 7**. Moreover, Indian consumers have been able to purchase LOUBOUTIN Products through the worldwide web for many years.

4.3 Complainant's Trading Name:

- (i) The Complainant further states that the Complainant is the owner of the LOUBOUTIN Marks which represent some of the most famous marks in the fashion



world. The Complainant owns registrations of the LOUBOUTIN Marks in countries and jurisdictions around the world, including France, the United States, the United Kingdom, the European Union and Canada. The Complainant also owns International Registrations that extends to numerous countries. Copies of certificates of a representative sample of the Complainant's registrations and/or extracts from the databases of the relevant Trade Mark Offices are marked as **Annexure 8**. In India, the Complainant owns registrations for the LOUBOUTIN Marks since 2008. The Complainant's Indian registrations, including Registration Nos. 1644051, 1839047 and 191553, all of which predate the registration of the disputed domain name. Copies of certificates of the Complainant's Indian registrations are annexed as **Annexure 9**. By virtue of these registrations, the Complainant has the exclusive rights to use the LOUBOUTIN Marks in India. The Complainant has used the LOUBOUTIN Marks since at least as early as 1992, and the marks remain in use worldwide, including in India. As stated above, the LOUBOUTIN Marks are among the most famous trade marks in the fashion industry. In fact, the LOUBOUTIN Marks are even recognizable to a substantial section of the public not associated with the fashion industry. The LOUBOUTIN Marks can indisputably be categorized as 'well-known trade marks', as envisaged by Section 2(1)(zg) and Section 11(6) of the Trade Marks Act, 1999.

(ii) The Complainant further states that the Complainant is the owner of the generic top level domain name CHRISTIANLOUBOUTIN.COM, which is accessible to users all over the world, including India. A copy of the WHOIS record relating to the domain name CHRISTIANLOUBOUTIN.COM is marked as **Annexure 10**. A printout of the home page of www.christianlouboutin.com is marked as **Annexure 11**. As can be seen from Annexure 11, the LOUBOUTIN mark appears prominently on the top left hand corner of the home page. The Complainant's LOUBOUTIN products can be purchased by consumers in the United States, Canada and Europe, through the Complainant's website located at www.christianlouboutin.com. In addition, other websites including www.net-a-porter.com, www.saksfifthavenue.com and www.neimanmarcus.com, ship LOUBOUTIN Products to India. The Complainant is also the owner of numerous country-code top



level domain names, including the domain name CHRISTIAN LOUBOUTIN.IN. A copy of the WHOIS record relating to this domain name is marked as **Annexure 12**. This domain name resolves to the Complainant's website located at CHRISTIANLOUBOUTIN.COM. Thus, Indian consumers who look for the Complainant's Indian website are automatically directed to the Complainant's website at www.christianlouboutin.com. The Complainant has actively policed domain names registered by third parties that incorporate the LOUBOUTIN Marks. For instance, the Complainant brought, and prevailed in, the following proceedings against cyber squatters, namely, Christian Louboutin v. Zhangyong, D2009-0270 (WIPO 2009) and Christian Louboutin S.A. v. Christian Louboutin, Liu Fang, Liujie, Lockhart, Lv Xiuli and Wangfang, D 2010-0383 (WIPO 2010). English translation of these decisions are annexed as **Annexure 13**.

4.4 Respondent's Identity and activities:

The Complainant states that the Respondent is Mr.Duan Zuochun. A printout of the WHOIS record associated with the disputed domain name is marked as **Annexure 14**. As per the WHOIS record, the Respondent is based in Guangdong, China. The record also shows that the disputed domain name was registered on 27 April, 2012. The Respondent, Mr.Duan Zuochun, appears to be a habitual cyber-squatter and has been the respondent in numerous domain name complaints, including complaints before the National Internet Exchange of India. Copies of a representative sampling of decisions rendered against the Respondent are collectively marked as **Annexure 15**. Currently the domain name does not resolve to an active website. In fact, when an attempt is made to access the website associated with the domain name, an error message is displayed by the internet browser. A screenshot of the relevant error message is marked as **Annexure 16**.

5. Parties contentions:

A. Complainant:

- (a) The Domain Name is identical or confusingly similar to a Trademark or service mark in which the Complainant has rights:



The Complainant states that, it is well-settled that a domain name has all the characteristics of a trademark, as held in *M/s Satyam Infoway Ltd. v. M/s Siffynet Solution (P) Ltd.* JT 2004 (5) SC 541. Thus, a trade mark and a domain name, although used in a different manner and in different fields, can be identical or confusingly similar. The Complainant has demonstrated statutory and common law rights in the LOUBOUTIN Marks. It owns registrations for the LOUBOUTIN Marks in countries and jurisdictions around the world, including in India. Furthermore, the Complainant has used the LOUBOUTIN Marks extensively and continuously since 1992, and continues to do so. *Consorzio del Prosciutto di Parma v. Jim Muller*, INDRP/218 (June 16, 2011). A copy of the decision is marked as **Annexure 17**. In this decision, the Panel ordered transfer of a domain name that had been used to exploit the reputation and goodwill associated with the Complainant's mark to attract Internet traffic and to mislead the customers. The Respondent has registered the domain name LOUBOUTIN.IN. The domain name incorporates the Complainant's LOUBOUTIN marks. Accordingly, the disputed domain name, LOUBOUTIN.IN, is identical or confusingly similar to the Complainant's Marks under INDRP Policy Paragraph 4(i).

(b) Respondent has no rights or legitimate interests in the domain name:

The Respondent cannot have any right or legitimate interest in the disputed domain name because the disputed domain name incorporates the LOUBOUTIN mark, a mark in which the Complainant has sole and exclusive rights and that has become well-known owing the Complainant's efforts. Upon information and belief, LOUBOUTIN is not part of the Respondent's personal name. A copy of the WHOIS record associated with the disputed domain name shows that the Respondent's name is Duan Zuochun. The Respondent is not commonly known by domain name, nor does the Respondent actually engage in any business or commerce under the name LOUBOUTIN. Furthermore, the Respondent is not known to the public under the name LOUBOUTIN. *Morgan Stanley v. M/s Keep Guessing*, INDRP/024 (June 27, 2007). A copy of the decision is marked as **Annexure 18**. The Respondent is not a licensee of the Complainant, nor has the Respondent ever been authorized by the



Complainant to use the LOUBOUTIN Marks or register the disputed domain name. Indeed, the Complainant has no relationship whatsoever with the Respondent. Charles Jourdan Holding AG v. AAIM, D2000-0403 (WIPO, June 27, 2000). A copy of the decision is marked as **Annexure 19**. The Respondent is not making any legitimate, non-commercial or fair use of the disputed domain name because there is no website associated with the disputed domain name. This is also evidence of the Respondent's lack of rights or legitimate interest in the domain name. GA Modelfine S.A. v. Naveen Tiwari trading as MKHOJ, INDRP/82 (February 20, 2009). A copy of the decision is marked as **Annexure 20**. Thus the Respondent has no right or legitimate interest in the disputed domain name under INDRP Policy Paragraph 4(ii).

(c) Respondent has registered and is using the domain name in bad faith:

The Complainant states that, it is well-settled that registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is evidence of bad faith. The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc., INDRP/250 (December 30, 2011). A copy of the decision is marked as **Annexure 21**. Thus, the Respondent, who has no relationship whatsoever to the Complainant or the LOUBOUTIN Marks, registered the disputed domain name in bad faith. It is clearly more than a coincidence that the Respondent chose and registered a domain name that is confusingly similar to the LOUBOUTIN Marks. The Complainant has a long and well establish reputation in the LOUBOUTIN Marks through its exclusive use in the fashion industry throughout the world, including in India and China. There can be no doubt that the Respondent was aware of the LOUBOUTIN Marks when he chose and registered the disputed domain name, and in fact chose the domain name because it was confusingly similar to the Complainant's well-known marks and intended to capitalize on that confusion. This constitutes evidence of bad faith. Kenneth Cole Productions Inc. v. Viswas Infomedia, INDRP/93 (April 10, 2009). A copy of the decision is marked as **Annexure 22**. Furthermore, the past conduct of the Respondent speaks to the Respondent's bad faith. As discussed above, the Respondent has been the respondent in numerous prior domain name



complaints. The Complainant notes that in all of these complaints, the Registrant has failed to file a formal response and all of these complaints have been decided against the Respondent. Thus, there is no question that the Respondent is a cyber-squatter. It is well-settled that cyber-squatting is evidence of bad faith under the INDRP Policy. *GA Modeline S.A. v. Naveen Tiwari trading as MKHOJ*, INDRP/82 (February 20, 2009). A copy of the decision had been marked as **Annexure 20**. The Respondent's domain name does not resolve to any website. It is well settled that registration of a domain name that incorporates a third party mark without any legitimate commercial interest is evidence of bad faith. *GA Modeline S.A. v. Naveen Tiwari trading as MKHOJ*, INDRP/82 (February 20, 2009). A copy of the decision is marked as **Annexure 20**. Therefore, the Respondent's domain name has been registered, and is being used, in bad faith under INDRP Policy Paragraph 4(iii).

B. Respondent:

The Respondent did not submit any response.

6. Discussion and Findings:

It has to be asserted as to Whether the Constitution of Arbitral Tribunal was proper? and Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on December 22, 2012.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:



- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or are being used in bad faith.

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark LOUBOUTIN in various countries including in India. The Respondent's domain name, <louboutin.in>, consists of entirely Complainant's trademark except cc TLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <louboutin.in> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name.



Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The



Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <louboutin.in> be transferred to the Complainant.

Dated at Chennai (India) on this 2nd January, 2013.


(D.SARAVANAN)
Sole Arbitrator