



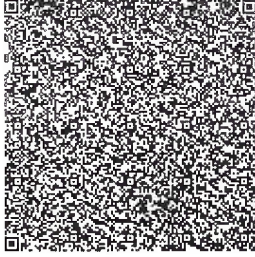
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL38328378407292P
Certificate Issued Date : 04-Oct-2017 02:22 PM
Account Reference : IMPACC (IV)/ dl883903/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL88390378653546375134P
Purchased by : JAYANT KUMAR
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : JAYANT KUMAR
Second Party : Not Applicable
Stamp Duty Paid By : JAYANT KUMAR
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



.....Please write or type below this line.....

BEFORE THE SOLE ARBITRATOR

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN THE MATTER BETWEEN

Williams-Sonoma, Inc.

Complainant

v.

Jack Sun

Respondent

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

ARBITRATION AWARD

1. The Complainant is Williams-Sonoma, Inc., a company incorporated under the law of Delaware, USA having its registered office at 3250 Van Ness Avenue, San Francisco, California 94109, USA.
2. The Respondent is Jack Sun, Domain Jet Inc., of Shuyangxian, Suqian, Jiangsu 223611, China.
3. The Arbitration pertains to the disputed domain name <markandgraham.in>, registered on February 10, 2014 by the Respondent. The Registrar for the disputed domain name is Endurance Domains Technology Pvt. Ltd.
4. The Sole Arbitrator appointed in this complaint by NIXI is Jayant Kumar. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI on August 2, 2017.
5. The Complaint was served upon the Respondent by NIXI by way of email dated August 3, 2017. The Arbitrator vide email dated August 11, 2017 directed the Respondent to file its Reply by August 31, 2017. The Respondent did not file any Reply by then. In the interest of justice, the Arbitrator gave a final opportunity to the Respondent to file its response by September 15, 2017. The Respondent, however, did not file any Reply and it was then proceeded *ex-parte*.

Complainant's Submissions

6. The Complainant submits that it coined and adopted the mark MARK AND GRAHAM in 2011 and has been continuously using the same since 2012 in numerous countries around the world. The Complainant has filed the details of the worldwide trademark registrations for the mark MARK AND GRAHAM and their corresponding registration certificates. In India, it had filed the trademark application for the mark MARK AND GRAHAM vide trademark

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Application No. 2425883 on November 9, 2012 in class 35 and 40. This trademark application is currently pending before the TM Office. In addition, it has also filed the details of various country level domain name owned by it featuring the mark MARK AND GRAHAM.

7. The Complainant further submits that the mark MARK AND GRAHAM is a unique combination of two words which was created by the Complainant for its own exclusive use. The products and services of the Complainant under the mark MARK AND GRAHAM are sold in numerous countries around the world including in India. The aforesaid products are also available for sale at various online platforms and Complainant's website.
8. The Complainant submits that it has exclusive rights in the mark MARK AND GRAHAM and that the disputed domain name is confusingly similar to its mark.
9. The Complainant further submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent registered the disputed domain name after the Complainant had acquired and established rights in the trademark MARK AND GRAHAM. The Respondent is further alleged to have not used the domain name in connection with bonafide sale, trading of goods or services. Further, Respondent is not commonly known by the disputed domain name without intent for commercial gain.
10. The Complainant submitted that the disputed domain name was registered by the Respondent for selling it. Further, the Complainant submitted that the Respondent is a habitual cyber-squatter and has been a party to various domain name dispute proceedings and in all of them, Award has been passed against it.

Discussion and Finding



11. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:
- a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
 - b. The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c. The Respondent's domain name has been registered and is being used in bad faith.
12. The Complainant has filed sufficient evidence of its rights in the mark MARK AND GRAHAM. It has trademark registration for the same in USA vide trademark Registration No. 4328979; in EU vide trademark Registration No. 11333929 and in other countries, including China, Mexico, Singapore, Thailand etc. Furthermore, the Complainant has been using the mark since 2012 and has incurred significant marketing and advertising expense in respect thereof. The Respondent, however, registered the domain name only in 20014 viz. much after the Complainant had acquired rights in the mark. The Arbitrator is convinced with the distinctive nature of the mark MARK AND GRAHAM and Complainant's ownership in the same. The disputed domain name <markandgraham.in> incorporates the Complainant's mark in entirety and hence, the disputed domain name is held to be confusingly similar with the Complainant's mark.
13. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or

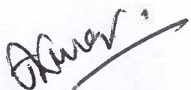
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fair use of the domain name without intent for commercial gain. The Respondent has not filed any evidence on record to show that the Respondent has made preparations to use the disputed domain name for a bona fide offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes legitimate non-commercial fair use of the website linked to the disputed domain name. Moreover, the Respondent does not appear to have any connection with the mark MARK AND GRAHAM. The Respondent is offering the disputed domain name for sale and thus, it is evident, as is asserted by the Complainant, that the primary purpose of registration of the disputed domain name by the Respondent is for wrongful and illegal profit by intending to sell the domain name back to the Complainant or to a third party which is dishonest, willful and in bad faith. Based on the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

14. The Respondent has made no use of the domain name or website that connects with the domain name, and has listed it for sale. The Complainant has also filed copy of several Arbitration Awards passed in various domain name dispute proceedings against the current Respondent, which shows that the Respondent is a habitual and wilful cyber-squatter, and the same is also an evidence of implicit bad faith registration and use by the Respondent. The Respondent's action of offering the dispute domain name for sale is sufficient evidence to hold the disputed domain name was registered and is being used in bad faith by the Respondent.

Decision

15. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <markandgraham.in> be transferred to the Complainant.


Jayant Kumar
(Sole Arbitrator)

Dated: October 4, 2017

