



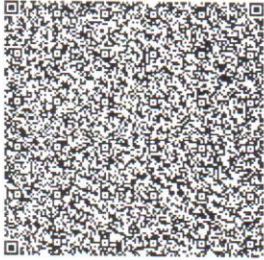
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL15240472199420N
Certificate Issued Date	: 12-Jun-2015 11:04 AM
Account Reference	: IMPACC (IV)/ dl775503/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL77550327543416951648N
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)



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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

IN THE MATTER BETWEEN

Montblanc-Simpolo G.m.b.H.

Complainant

v.

Yito trading as Apex Laboratories Limited

Respondent

Handwritten signature

Statutory Alert:

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ARBITRATION AWARD

1. The Complainant is Montblanc-Simpolo G.m.b.H., a corporation organized and existing under the laws of Germany. The Respondent is Yito trading as Apex Laboratories Limited having its address in Hong Kong.
2. The Arbitration pertains to the disputed domain name <montblanc.in>, registered on July 1, 2011 by the Respondent. The registrar for the disputed domain name is Webiq Domains Solutions Pvt. Ltd.
3. 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 April 9, 2015.
4. The Complaint was handed over to the Arbitrator by NIXI on April 13, 2015. The Respondent, vide email dated April 14, 2015, was granted fifteen days time to file its Reply to the Complaint.
5. On April 17, 2015, the Arbitrator was informed by NIXI that the complaint could not be served upon the Respondent since courier could not be delivered on the address of the Respondent as it was reported incorrect/incomplete address by the courier service provider.
6. The Arbitrator therefore directed the Complainant to serve a copy of the complaint along with annexures upon the Respondent by email. The Complainant accordingly served upon the Respondent by email dated April 27, 2015.
7. The Respondent did not file its Reply to the Complaint. It was granted a final opportunity vide email dated May 10, 2015 to file its Reply by May 15, 2015.
8. The Respondent did not file its Reply by May 15, 2015 and is therefore proceeded *ex-parte*.

Complainant's Submissions

9. The Complainant states that it has designed, manufactured and sold sophisticated and luxury writing instruments under the mark MONTBLANC since 1906. The Complainant owns several registrations for the trademark MONTBLANC and MONTBLANC formative marks in India vide Registration Nos. 228166, 168115, 605696, 174027, 1321103, 617843, 729597, 1068377, 729598, 1068378, 617848, 1068379, 845731 and 1068380. The Complainant also owns

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trademark registration for mark MONTBLANC in several counties across the world.

10. The Complainant submitted that the mark MONTBLANC has gained worldwide recognition and goodwill has become exclusively associated to the Complainant and no one else.
11. The Complainant submitted that the domain name <montblanc.in> is confusingly similar to its mark MONTBLANC.
12. The Complainant submitted 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 MONTBLANC. It was also submitted that there exists no relationship between Complainant and the Respondent and the Respondent is not commonly known by the disputed domain name and is not making legitimate non-commercial or fair use of the disputed domain name.
13. The Complainant submitted that the disputed domain name was registered by the Respondent for selling it and the offer for sale is indisputable evidence that Respondent is registered and is using it in bad faith.

Discussion and Finding


14. 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.
15. The Arbitrator finds that the Complainant has submitted trademark registration certificates for various trademark registrations for the mark MONTBLANC, which is sufficient documentary evidence to establish its rights in the mark MONTBLANC. The Arbitrator is convinced with the distinctive nature of and the Complainant's ownership in the mark MONTBLANC. The disputed domain name incorporates the mark MONTBLANC in entirety and hence, the disputed domain name is held to be confusingly similar with the Complainant's mark MONTBLANC.

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16. 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 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 MONTBLANC. Based on the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.
17. 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 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

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


Jayant Kumar
(Sole Arbitrator)

Dated: June 12, 2015