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Government of National Capital Territory of Delhi

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 : 06-Aug-2020 03:33 PM
 : IMPACC (IV)/ dl717303/ DELHI/ DL-DLH
 : SUBIN-DL71730338516572480992S
 : NIKILESH RAMACHANDRAN
 : Article 12 Award
 : Not Applicable
 : 0
 : (Zero)
 : NIKILESH RAMACHANDRAN
 : Not Applicable
 : NIKILESH RAMACHANDRAN
 : 100
 : (One Hundred only)



Please write or type below this line.

INDRP CASE NO. 1242

IN THE MATTER OF:-

"Dr. Martens" International

COMPLAINANT

Versus

Maria Elma

RESPONDENT

DISPUTED DOMAIN NAME:

drmartensshoes.in

Statutory Alert:

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AWARD:

The present domain name dispute relates to the registration of the domain name **drmartensshoes.in** in favour of the Respondent.

The Complainant has filed the instant complaint challenging the registration of the domain name **<drmartensshoes.in>** in favour of the Respondent. Pursuant to the “.in” Domain Name Dispute Resolution Policy (INDRP) and the rules framed there-under, the Complainant has preferred this arbitration for raising this dispute for reprisal of its grievances.

I gave my consent on the 15.07.2020, to adjudicate the instant domain name dispute. I was handed over the complaint and accordingly, I issued notice on 22.07.2020 calling upon the Respondent to file its reply on the complainant within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter. As per the INDRP Rules of Procedure, Rule 2 provides for communication/services of complaint. In accordance with this rule, the respondent was sent a complaint on the email shown in the domain name registration data in .IN Registry's WHOIS database, which has returned due to wrong address. As the address given by the Respondent is only address available in the WHOIS database, I deem it the Respondent has been served. And since the complainant has been served through one of the modes as specified in Rule 2, I am of the view that the service of the complaint upon the respondent is complied with. And since there has been no response from the Respondents to the Complaint, I accordingly proceed ex-parte the Respondents in adjudicating the instant complaint.

Signature valid

Digitally Signed by : Nikilesh
Ramachandran
Organisation : Person
State : Delhi
Postal Code : 110070 Country : IN
Serial Number :
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CONTENTIONS:

Since, the respondent has been proceeded ex-parte, I shall deal with the contention of complainant. The Complaint has been filed for transfer of the disputed domain name **drmartensshoes.in**, which was registered by Respondent. Primarily, the assertion of the complainant in its complaint is that the disputed domain name is identical and similar to the trade mark of "Dr. Martens" International Trading GmbH.

The Complainant has stated in its complaint that Dr. Martens were originally a modest work-wear boot. They were at the very heart of the English shoe industry and for six decades Griggs' footwear earned a solid reputation as sturdy, durable work boots. The Complainant has been advertising their revolutionary footwear invention in overseas magazines since 1959. Complainant has further stated that it is the proprietor of mark "Dr Martens", having valid and subsisting Trademarks registration. The Complainant has produced on record showing the details of ownership of numerous trademark registration for Dr Martens in various jurisdictions/ regions. The details are part of **Annexure 4 and 5** of this complaint.

The Complainant contends that they through GFM GmbH Trademarks own numerous domain names incorporating the trademark 'dr, marten', such as <drmartens.com> registered as early as in 1999, <dr-martens.com> registered in 1996. The complainants also own the India-specific domain names <drmartens.in> registered on May 5, 2007 <drmartens.co.in> registered on November 14, 2007, and <dr-martens.in> registered on December 10, 2013, as provided in **Annexure 6**. The Complaint also contends that at the time of registration of the

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disputed domain name, the Complainant was using the trademark "Dr. Martens" and the Respondent knew, or at least should have known, of the existence of the Complainant's trademark "Dr. Martens" in its entirety. The Respondent is not a licensee of the complainant, nor has been otherwise authorized by the Complainant to make any use of its Dr Martens trademark, in a domain name or otherwise. The Complainant has also stated that it operates to develop a strong presence online by being active on various social media platforms, including Facebook, Twitter and Youtube and are enclosed as **Annexure 7**.

In the complaint, it is also contended that the Complainant owns the trademark '**Dr Martens**', which would create confusion and that the Respondent has no legitimate right or interest in respect of disputed domain name, and that the disputed domain name is being used in bad faith.

ANALYSIS

As the proceedings are set ex-parte the Respondent, I shall deal with the complaint on its prayer for transfer of the disputed domain name. The disputed domain name <**drmartensshoes.in**> consists the mark '**Dr. Martens**', which is the registered trademark of the Complainant. '**Dr. Martens**' is a mark registered which has been established by the Complainant over a period of time by its use. The Complainant has used it world over, including India, and owns registered trademark. In support of which, the Complainant has placed on record the details of trademark registration. All these support the Complainant's right over the name '**Dr. Martens**'. Therefore, the complainant's claim that it has a right over the disputed name stands proved. Secondly, as the Respondent's action to register the said

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domain name is not bonafide, therefore, the said registration is done in bad faith. The disputed domain name wholly incorporates the Complainant trademark '**Dr. Martens**' and mentions the complainants logo multiple times creating an impression that the respondent in some way is associated with the complainant. The Complainant has specifically stated that it has no relation with Respondent commercially or otherwise and the combination with the word "shoes" strengthens the impression of a legitimate connection between the website to which the Domain Name resolves and the Complainants. So therefore, the use of trademark Respondent '**Dr. Martens**' is not lawful. Therefore, the Respondent has no legitimate right over the said domain name.

CONCLUSION:

Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the complainant has proprietary right over the mark '**Dr Martens**' and the mere presence of the descriptive suffix "shoes" will not distinguish the respondent's disputed domain name only reinforces the confusion as it relates to the subject matter of the Complainants trademark which covers shoes, clothing, bags etc. The combination of Complainants 'trademark with the carefully selected term "shoes" indicates that the Respondent was fully cognizant of Complainants 'trademark and its commercial standing at the time of registration and subsequent use of the Domain Name. Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant in its favour

Signature valid

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and direct the Registry to transfer the said domain name
i.e. <drmartensshoes.in> in favour of the complainant.

(NIKILESH RAMACHANDRAN)

ARBITRATOR

Dated: 6th August, 2020.

Signature valid

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