



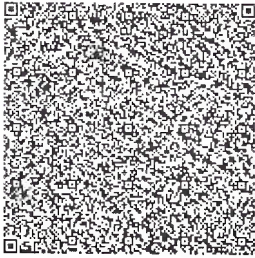
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Certificate Issued Date	: 24-Aug-2017 01:22 PM
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Purchased by	: DIVYA BALASUNDRAM
Description of Document	: Article 12 Award
Property Description	: Not Applicable
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First Party	: DIVYA BALASUNDRAM
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Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE THE SOLE ARBITRATOR, DIVYA BALASUNDARAM
C/O NATIONAL INTERNET EXCHANGE OF INDIA**

In the matter of :

Williams-Sonoma, Inc. Vs. Jack Sun

Divya Balasundaram

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ARBITRAL AWARD

**.IN REGISTRY
C/O NATIONAL INTERNET EXCHANGE OF INDIA**

**DISPUTED DOMAIN NAME:<pbteen.in>
BEFORE THE SOLE ARBITRATOR, DIVYA BALASUNDARAM**

Williams-Sonoma, Inc.
3250 Van Ness Avenue
San Francisco, California 94109
USA

...Complainant

Versus

Jack Sun
Domain Jet, Inc.
Of Shuyangxian, Suqian
Jiangsu 223611
CHINA

...Respondent

1. The Parties

- 1.1 The Complainant is Williams-Sonoma, Inc., a company incorporated under the Laws of Delaware, United States of America, of the address 3250 Van Ness Avenue, San Francisco, California 94109, USA. The Complainant is represented by its attorney and authorized representative P.S. Davar & Co., N-220, Greater Kailash-1, New Delhi-110048.
- 1.2 The Respondent is Jack Sun, DomainJet, Inc., of the address Shuyangxian, Suqian, Jiangsu 223611, China.

2. The Domain Names and Registrar

- 2.1 The disputed domain name is <pbteen.in> registered with Endurance Domains Technology Pvt. Ltd. (R173-AFIN).

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3. **Procedural History**

- 3.1 Arbitrator received an email on July 27, 2017 inquiring if NIXI can avail its services as an arbitrator for the dispute pertaining to the domain name <pbteen.in>. Arbitrator confirmed availability by email of July 28, 2017 and also sent the signed Statement of Acceptance and Declaration of Impartiality and Independence as required by the Rules.
- 3.2 The .IN Registry appointed Divya Balasundaram as the Sole Arbitrator on July 31, 2017 and Arbitrator received soft copy of the Complaint along with Annexures. Hard copy was also received by courier.
- 3.3 Arbitral proceedings were commenced by Arbitrator on August 01, 2017 by issuance of a notice by email to the Respondent directing him to file his reply to the Complaint within 15 days.
- 3.4 The Respondent has not entered appearance nor filed any reply.
- 3.5 Arbitrator sent email on August 24, 2017 to Respondent notifying it of its default.
- 3.6 The language of these proceedings in English.

4. **Background of the Complainant and its rights in the trademark PBTEEN as stated in the Complaint**

- 4.1 The Complainant is a large, reputed manufacturer and seller inter alia of a wide range and array of goods including furniture (both indoor and outdoor), upholstery, bedding, rugs, windows, bath and beach, lighting, décor, storage, luggage, toys etc. and all accessories of the aforementioned goods and retail services relating thereto under the mark PB TEEN. The Complainant has over 28000 employees worldwide and numerous subsidiaries around the world including a company registered in India.
- 4.2 The trademark PB TEEN was invented by the Complainant in 2003 and has been in continuous use ever since. The trademark PB TEEN is a unique and arbitrary combination of two words created by the Complainant for its own exclusive use. Products of the Complainant under the trademark PB TEEN are sold in over 90 countries around the world and including India. The complainant has 629 retail stores around the world including in North America, Australia, Middle East, Asia and UK. The Complainant also operates through numerous corresponding websites and ships its goods to numerous countries around the world, including India through its e-commerce channels.

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- 4.3 Due to continuous, extensive use of the trademark PB TEEN on a worldwide basis by the Complainant, excellence in quality of products and services rendered, extensive advertisement & promotion, the trademark PB TEEN has acquired tremendous goodwill and reputation and is a mark of substantial repute in favour of the Complainant.
- 4.4 The Complainant is the registered proprietor of the trademark PB TEEN in numerous countries of the world. A detailed list has been provided by the Complainant in the Complaint. Copies of select Registration Certificates have also been provided. Particularly, the Complainant is the registered proprietor of the mark PB TEEN in India, under no. 1472092 dated July 21, 2006 in classes 16, 20 and 35. A copy of the Indian Trademark Registration Certificate is provided.
- 4.5 The complainant has several domain names registered in its favor comprising of PB TEEN.
- 4.6 The Annual Report for the fiscal year ended January 29, 2017, filed by the Complainant with the United States Security Exchange Commission has been enclosed which reflects the large scale of activities of the Complainant.
- 4.7 The Complainant's net annual revenue for the period 2012-2016 is given herein below :-

Financial Year	Gross Annual Revenue (in thousands US\$)
2012	4,042,870
2013	4,387,889
2014	4,698,719
2015	4,976,090
2016	5,083,812

- 4.8 The Complainant's annual revenue for the period 2012-2016 in respect of PB TEEN is given herein below :-

Financial Year	Gross Annual Revenue (in thousands US\$)
2012	4,042,870
2013	4,387,889
2014	4,698,719
2015	4,976,090
2016	5,083,812

- 4.9 The Complainant has over the past fifty years diversified and produced and sells a vast array of products transcending various fields. Due to the large and extensive array of goods and services of the Complainant, the goods and services of the Complainant

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touch almost all walks of life. Extract of Complainant's website as well as the website of the Complainant exclusively in respect of PBTEEN are provided. Such websites clearly substantiate and reflect the vast array of products and large scale of activities of the Complainant.

5. **Respondent and its registration of the impugned domain name**

- 5.1 The impugned domain name was registered by the Respondent on 10th February 2014. A copy of the print out of the WHOIS database search conducted for the domain name www.pbteen.in is provided.

6. **Contentions of the Complainant in establishing the 3 elements required under the INDRP**

- 6.1 The Domain Name <www.pbteen.in> is identical and/or confusingly similar to the trademark "PB TEEN" in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with Para 3 of INDRP.]
- 6.2 The Complainant submits that the disputed domain name <www.pbteen.in> contains the Complainant's complete trademark, registered and used in numerous countries by the Complainant. Further the disputed domain name is identical to numerous domain names registered by the Complainant. Thus, the disputed domain name is conceptually, visually, structurally and phonetically identical to the trademark and further numerous domain names of the Complainant comprising PB TEEN. The Registrant is the substantially subsequent adopter of PB TEEN as compared to the Complainant. Such a registration by the Respondent amounts to violation of Para 3 and simultaneously attracts the provisions of Para 4 and 6 of the INDRP.
- 6.3 The Complainant coined and adopted the trademark PB TEEN as early as 2003 and the same has been in continuous use ever since. The trademark was first adopted in India in 2006. The said trademark is used in over 90 countries. The Complainant has registered the trademark PB TEEN in numerous countries of the world. Products of the Complainant and services thereto are sold and offered extensively through their e-commerce websites and direct mail catalogues and in stores as well. The e-commerce channel compliments the retail channel by building brand awareness and acting as an effective advertising vehicle in addition to being an efficient and prominent sales medium. A substantially significant portion of the Complainant's customer orders are place through e-commerce websites. In fact the e-commerce channel has been the Complainant's fastest growing business and represents more than half of the Complainant's sales and profits.

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- 6.4 The Complainant submits that it has painstaking built up a substantial reputation worldwide and has invested a substantial amount of resources in promotion including by way of advertising its products under the trademark PB TEEN in various international magazines, brochures, catalogues, internet and various other audio, visual, social media and also through fairs, exhibitions and events.
- 6.5 Upon perusal of the Respondent's website (www.pbteen.in) the Respondent is offering to sell the domain name. A snapshot of the said offer for sale has been provided. It is thus established that the Respondent is a cyber squatter/cyber pirate and has registered the disputed domain name merely due to the fact that the Complainant's trademark and domain names are well known and reputed and the Respondent wishes to illegally sell the same. The adoption of the identical domain name by the Respondent is merely to trade upon the goodwill and reputation accruing to the Complainant in their reputed trademark and domain names.
- 6.6 The Complainant refers to and relies upon certain case decisions in support of its contentions.
- 6.7 The Respondent has no rights or legitimate interest in respect of the disputed domain name. [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of INDRP].
- 6.8 The Complainant submits that it has legitimate interest in the PB TEEN trademark in India as it has registered the said mark on 21st July, 2006 under the Registration No.1472092 and the Complainant has been openly, continuously and extensively using and has registered the trademark PB TEEN since 2003 in numerous countries of the world. By virtue of long and extensive use, worldwide registrations, excellence in the quality of their products and services, extensive advertising, the PB TEEN trademark has become well known mark around the world and such reputation and notoriety of the Complainant has extended to India as well. Further the Complainant has registered domains in its favour comprising PB TEEN, details of which have already been provided. Thus it is evident that the Complainant is the substantially prior adopter of PB TEEN as a trademark and domain name.
- 6.9 The Respondent has not used the domain name in connection with any bonafide sale, trading of goods or services. Further Respondent is not commonly known by the disputed domain name and has not made any legitimate nor commercial or fair use of the disputed domain name. The Complainant has not assigned, granted, licensed or authorized the Respondent to register/use the disputed domain name. Thus the Respondent does not have any legitimate rights or interest in the disputed domain name.

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- 6.10 The Respondent's website reflects that he is offering to sell the disputed domain name. Thus, the primary purpose of registration 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 and such an act is dishonest, willful and in bad faith. The Complainant submits that the disputed domain name was intentionally registered by the Respondent for commercial gain to misleadingly divert the consumers or traders of the Complainant to the disputed domain and with an intention to sell the disputed domain name thereby causing irreparable loss, harm and damage to goodwill and business of the Complainant. The trademark of the Complainant has been invented and coined exclusively by the Complainant a considerable period of time ago. Respondent has no justification whatsoever to adopt the identical domain name www.pbteen.in.
- 6.11 There are many decisions wherein it has been established and decided that the present Respondent is a cyber squatter. In all such proceedings, the awards have transferred the domain names from the present registrant to the rightful owners. Select decisions in this regard have been provided. The Respondent has registered in bad faith yet another domain name of the Complainant i.e. markandgraham.in. Such registration by the Respondent clearly establishes his fraudulent and dishonest intentions.
- 6.12 The Respondent has registered the disputed domain name in bad faith. [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with Para 6 of INDRP.
- 6.13 The Complainant is the substantially prior adopter of the trademark PB TEEN and corresponding domain names comprising PB TEEN. Due to extensive and continuous use, worldwide registrations, excellence in the quality of its products and substantial advertisement & promotion throughout the world by the Complainant, the trademark PB TEEN has acquired tremendous goodwill and reputation in favour of the Complainant and is in fact a trademark of repute associated with the Complainant and none other.
- 6.14 The Respondent has no justification to adopt PB TEEN as such a trademark was exclusively invented and coined by the Complainant a considerable period of time ago. By registering the disputed domain name, the Respondent has intentionally attempted to attract internet users to its website by creating a likelihood of confusion with the Complainant's well known mark and also as to the source or sponsorship or affiliation or endorsement of the Respondent's website by the Complainant. Since the trademark PB TEEN is a famous trademark that is closely and only associated with Complainant, the public at large and purchasing public will almost certainly be confused into believing that there is a connection of source, sponsorship, affiliation or endorsement between Respondent and Complainant by the adoption of the Domain name under question. The Respondent's adoption of the disputed domain name is tarnishing and

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diluting the PB TEEN trademark. As the Respondent intends to sell the disputed domain name it is apparent that he has neither registered it in a bonafide manner and nor for bonafide purposes. Thus the domain name was registered by the Respondent merely to sell the same back to the Complainant, who is the rightful owner of the same, or to a competitor of the Complainant, for a price. Under such circumstances, there exists an imminent and clear danger that the domain name under dispute may be sold to a competitor of the Complainant or to any third party and thus there exist a very high possibility of goods being offered to unwary customers over which there is no control nor any connection subsisting with the Complainant whatsoever. Further the Respondent has a history of wrongfully registering domain names belonging to reputed and known entities. There are many awards/decisions from relevant authorities transferring such domain names from the Respondent back to the rightful owner. Thus it is clearly established that the registration of the subject domain name is under bad faith and as per the section 6(i) and 6(ii) of the INDRP.

- 6.15 From the above circumstances, it is apparently clear that the Respondent has failed to comply with Paras 3 and 7 of INDRP and further the disputed domain name attracts the provisions of paras 4 and 6 of INDRP.

7. **Discussions**

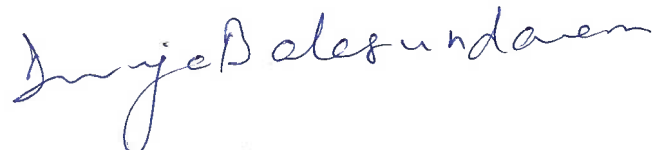
- 7.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant. The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 7.2 The Arbitrator finds that the Complainant has been able to establish its prior rights and interests in the trademark PB TEEN based upon the contentions in the Complaint and the annexures thereto.
- 7.3 The Arbitrator also finds that the Complainant has established all the 3 elements essential to maintain its complaint, being that the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith. The factors that support this conclusion are:
- 7.4 Not even a single letter differs between the disputed domain name and the trademark of the Complainant.
- 7.5 The Respondent is not named PB TEEN is commonly known by this name.

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- 7.6 The word PB TEEN is not a dictionary word, it is coined by the Complainant; Respondent has registered the impugned domain name much subsequent to Complainant's adoption of the mark and the Respondent could not have adopted it except with reference to the Complainant's mark.
- 7.7 The Respondent has no statutory or common law rights in the disputed domain name.
- 7.8 The Respondent is not authorized or licensed by the Complainant to use the mark or domain name PB TEEN.
- 7.9 The Respondent is not making a legitimate noncommercial or fair use of the disputed domain without intent for commercial gain.
- 7.10 The impugned domain is being offered for sale.
- 7.11 There are many decisions wherein it has been established and decided that the present Respondent is a cyber squatter and the Respondent has registered another domain name of the Complainant i.e. markandgraham.in. This shows a conduct of bad faith on part of Respondent.
- 7.12 The Respondent was given sufficient time to reply to the Complaint, however, Respondent has chosen not to submit any response.

8. **Decision**

- 8.1 For all the foregoing reasons, the Complaint is allowed.
- 8.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <pbteen.in > be transferred to the Complainant.
- 8.3 The Parties shall bear their own costs.



DIVYA BALASUNDARAM
ARBITRATOR

Date: August 28, 2017

Place: New Delhi, India