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Description of Document	: Article 12 Award
Property Description	: Not Applicable
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Second Party	: Not Applicable
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IN-DL89250988071594V

NATIONAL INTERNET EXCHANGE OF INDIA
B Wing, 9th Floor, Statesman House Building
148, Barakhamba Road,
New Delhi-110001

Group Atallah Inc.

V/s

Ding RiGuo

Revised Adv.

Statutory Alert:

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AWARD

1. THE PARTIES

The Complainant is **Groupe Atallah Inc.**, having their respective offices at 333, Chabanel Street W., Suite 900, Montreal (Quebec), H3B 1S6 Canada., E-mail: legal@ssense.com, by its authorized representative Mr. Rahul Chaudhry, having his office at RCY House, C-235, Defence Colony, New Delhi-110024, India, Telephone No. +91 11 43500000, Email: domainname@rahulchaudhry.com.

The Respondent is Ding RiGuo, 8F No.199 Shifu Road, Taizhou, Zhejiang 218000, China, Telephone No. +86.13819669399, E-mail juc@qq.com.

2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name <www.ssense.in>

The disputed Domain name is <www.ssense.in>

The abovesaid domain registered particulars in detail is provided along with the complaint.

Registrar Name: Endurance Digital Domain Technology LLP

IANA ID : 801217

Date of creation: 21.05.2016

Date of Expiry : 21.05.2023

Registrant Client ID : EDTRP-12646167

Registrant ROID: C4E6E385626E1419CBBC26COF220E389F-IN

Email: juc@qq.com

Phone: 86.13819669

3. PROCEDURAL HISTORY

(a) The Complainant has filed a complaint on 07.03.2023 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure-1 to 7 and Annexure-K**. The exchange verified the complaint, satisfied the

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formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the 'Policy') and the Rules framed thereunder.

- (b) The NIXI has appointed Sh. R.K.Kashyap, Advocate as the Sole Arbitrator vide Email dated 13.03.2023. The Arbitrator has duly submitted his Statement of acceptance and Declaration of Impartiality and Independence on 15.03.2023, as required by the Exchange.
- (c) The Arbitrator, as per the INDRP Policy and the Rules, has duly issued the notice on 16.03.2023 and directed the complainant to serve the Respondent with a copy of the Complaint alongwith annexures on the given e-mail as well as on physical address. In the Notice, it has also been mentioned that the respondent has to file reply/response within 10 days from the receipt of notice. The direction of the arbitrator to serve the respondent has duly been complied with vide Email dated 21.03.2023 at 2:55 PM and 07:00 PM, also refer mails dated 27.03.2023 and 06.04.2023 in this regard, the complainant has duly taken the steps to serve the respondent and send the service report and send the service proof through mail. The respondent till date has not filed any reply/response within the stipulated time, hence, the respondent proceeded Ex-parte and Ex-parte Award is being passed.

4. Factual Background:

The following information has been derived from the Complaint and the various supporting annexure to it, the Arbitrator has found the following facts:

Complainant's Activities

- A. The Complainant is the owner of the world-renowned online e-commerce platform SSENSE, a multi-brand retailer specializing in the sale of authentic designer fashion and high-end streetwear. Since its inception in 2003, and through continuous efforts. The Complainant has continuously used its unique SSENSE trademark as a source identifier in order to promote fashion designers and brands as well as offer a wide array of clothing and related products to discerning clients across the world. With more than 700 brands listed. The Complainant, through its SSENSE trademark is able to offer more

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than 70,000 different products from well renowned fashion designers such as Gucci, Prada, Burberry or Undercover.

- B. This constant collaboration with renowned designers has allowed SSENSE to establish privileged bonds with international brands, have collaborated to set up a dedicated space in New York. The entire information in detail has been provided in Annexure-3.
- C. The Complainant has been able to position itself as a trusted key player in the field of fashion and streetwear online retail and is now present in over 210 countries and regions throughout the world. The Complainant was expected to have revenues of more than 750 million US dollars in 2021, with more than 23,600 publications in the US, Europe, Canada and Japan presenting the Complainant, since July 30, 2006, such publications having more than 3.3 billion impressions.
- D. The various successful social media accounts used by the Complainant, including (i) an Instagram account (@ssense) with more than one million subscribers, (ii) a Facebook page (@SSENSEofficial) with more than 827 000 individuals subscribed; (iii) an Apple and Android app (named SSENSE: Shop Designer Fashion) which allows users to shop over 60 000 styles from more than 700 designers; (iv) a Twitter account (@ssense); (v) a YouTube channel (@SSENSE), and (iv) a recently created Tik Tok account (@ssense) with more than 2300 subscribers despite having posted no content. With a workforce of more than 1,800 full-time employees across North America, combined with the high number of sales made at worldwide scale as shown in Annexure-4.
- H. The Complainant has recently became aware of the use of the mark SSENSE as part of the impugned domain name www.ssense in by the Respondent which leads directly to a landing page listing that states "This premium domain is for sale" allowing any interested party to make an offer, refer ANNEXURE-5.

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5. **DISCUSSION AND FINDINGS:**

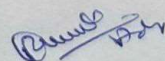
The Rules instructs this Arbitrator as to the Principles to be used in rendering its decision, in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any Rules and Principles of Law that it deems applicable”.

According to the Policy, the Complainant must prove that:-

- A) The registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights;
- B) The registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and
- C) The registrant's domain name has been registered or is being used in bad faith.

(A). **Identical or Confusingly Similar:**

- i. The complainant holds several registered trademarks consisting of or comprising the term ssense or as its sole word element, refer annexure-2. The complainant using the trademark over the years and still used in India and worldwide, refer annexure-6 in this regard.
- ii. The Complainant's Mark has become a distinctive identifier which consumers associate with the Complainant's goods and services and as such entitle for the protection as per common law trademark is “SSENSE” and the respondent with malafide intention got registered the very identical and similar trademark as “SSENSE.com”. The Domain Name is confusingly similar to the Complainant's Marks given that the most striking element in the Domain Name is identical to the textual component of the Complainant's Marks.
- iii. The Complainant relies upon the following judgments:-
 - i. INDRP / 856, wherein in held that “Having regard to the complete similarity Identity between the Complainant's trade mark domain name FUTURO and the disputed domain name www.futuro.co.in of the Respondent, I am of the considered view that an average consumer with imperfect memory would be led into the belief of a possible nexus between the Complainant and the Respondent or of the disputed domain name.”
 - ii. INDRP / 1153, held, in identical domain name and that the "in" suffix of the domain name would be immaterial for the comparison.



- iii. INDRP / 1197 wherein held, the tribunal observed that the Respondent is involved in cyber-squatting by registering domain name containing the well-known trade mark of the complainant and thereby gaining illegal benefits. The Respondent had registered the present domain name with a mala fide intent to generate the profits either by using the domain name for its own commercial purpose or through sale of the disputed domain name to competition or any other third party.

(B). The Respondent has no Rights or Legitimate Interests :

- i. The Respondent neither has any legitimate interest in the trade mark SSENSE nor is the lawful owner of any right relating to the Complainant's mark. The Respondent bears no relationship to the business of Complainant and is neither a licensee nor has obtained authorization of any kind whatsoever to use the Complainant's mark. As per the Complainant's knowledge, the Respondent is not commonly known by the Impugned Domain Name.
- ii. The Impugned Domain Name www.sense.in of the Respondent was created on May 21, 2016 and the Respondent has not developed any website on the said Impugned Domain Name since then, it is evident that the Respondent has no legitimate intention to use the Impugned Domain Name.
- iii. Refer [WIPO Case No. D2010-1364], the Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalize on or otherwise take advantage of the Complainants' trade marks and resulting goodwill. Without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's Marks at issue, again given that there is sufficient evidence to demonstrate (as exposed below) that the Registrant acquired the Domain Name and misuses it for commercial, illegitimate and/or unfair purposes.

WIPO case no. D2009-1529

INDRP case no. INDRP/167

WIPO case no. D2001-0903

WIPO case no. D2010-1017

WIPO case no. D2003-0269

The complainant is the sole legitimate owner of the trade mark SSENSE and domain name SSENSE.com. The complainant neither licensed nor permitted the respondent to use trade/service mark SSENSE and domain name SSENSE.com or to apply for any domain name incorporating the said trade marks.

(C). Registered and Used in Bad Faith:

- i. For bad faith refer the contents of annexure 5 and 6 wherein the entire detail has been provided. Particularly where the domain name at issue is identical or

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confusingly similar to a highly distinctive or famous mark, it should be viewed with a degree of skepticism a Registrant defense that the domain name was merely registered for legitimate speculation.

- ii. In the present case, the Impugned Domain Name is identical to the Complainant's Marks and leads directly to a landing page listing that "This premium domain is for sale" allowing any interested party to make an offer, refer Annexure-5 and 7. Bad faith should also be inferred where a registrant engages in a pattern of registering domain names that are identical to popular website domain names, except for slight differences that may occur as a result of common keyboarding or spelling errors.

WIPO Case No. D2010-0494

WIPO Case No. D2006-0303

WIPO Case No. D2008-0226

WIPO Case No. D2000-0270

WIPO Case No. D2006-0464

WIPO Case No. D2008-0287

WIPO Case No. D2007-0077

WIPO Case No. D2000-0055

WIPO Case No. D2008-0281

The respondent is taking undue advantage of Complainant's trademark to generate profits. The use of a well-known trademark to attract Internet users to a website for commercial gains constitutes a use in bad faith pursuant to the policy and relied upon:-

WIPO Case No. D2007-0956

WIPO Case No. D2009-1231

WIPO Case No. D2007-1736

It is finally submitted that the disputed domain name was registered and is being used in bad faith. If the respondent is not restrained from using the disputed domain name and the same is not transferred to the complainant, loss and hardship will be caused to the complainant.

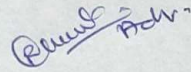
The very use of a domain name by someone with no connection with the Complainant suggests opportunistic bad faith, refer **INDRP case No. 1167**.

6. DECISION

In light of the foregoing findings, namely, that the disputed Domain name is confusingly/deceptively similar to Complainant's well-known brand

Pravish Datta

"SSENSE" and domain name "SSENSE.com", a mark in which the Complainant has rights and the Respondent has no claims, rights or legitimate interests in respect of the disputed Domain name and the disputed Domain name was registered in bad faith and is being used in bad faith, in accordance with the policy and the rules. Hence, the Arbitrator orders that the disputed Domain name "SSENSE.com" be transferred to the Complainant.
This Award is passed at New Delhi on this 12th Day of April, 2023



R. K. KASHYAP
SOLE ARBITRATOR