



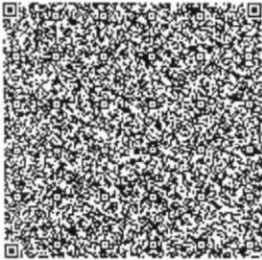
सत्यमेव जयते

# INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

Certificate No.	: IN-DL52732345512370K
Certificate Issued Date	: 06-Dec-2012 02:29 PM
Account Reference	: IMPACC (IV)/ dl719103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71910305388099365262K
Purchased by	: SANJAY KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SANJAY KUMAR SINGH
Second Party	: NA
Stamp Duty Paid By	: SANJAY KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE SH. SANJAY KUMAR SINGH, SOLE ARBITRATOR.  
ARBITRATION AWARD  
DATED - 22-12-2012  
CARL KARCHER ENTERPRISES PVT. --- COMPLAINANT  
vs.  
DING RI GUD --- RESPONDENT

Sanjay K. Singh  
22-12-2012

**BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR**

**IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

**IN THE MATTER OF:**

Carl Karcher Enterprises,  
Inc. 6307 Carpentaria Avenue,  
Suite A Carpentaria, CA93013,  
United States.  
E-mail: lhines@ckr.com

THROUGH

Attorney Navarre Roy  
E-mail nroy@selvamandselvam.in

**..Complainant**

**Versus**

Ding RiGuo  
8F, No. 199 Shifu Road  
Taizhou Zhejiang 318000  
CHINA  
E-mail: juc@qq.com

**..Respondent**

**1. THE PARTIES:**

The complainant is Carl Karcher Enterprises, Inc. 6307 Carpentaria Avenue, Suite A Carpentaria, CA93013, United States. E-mail: lhines@ckr.com

(Complaint has been filed by Attorney Navarre Roy, Selvam and Selvam, 9/3 Valliamal street, Kilpauk, Chennai 600010, Tamil Nadu, India. E-mail nroy@selvamandselvam.in )

The Respondent is Ding RiGuo, 8F, No. 199 Shifu Road, Taizhou Zhejiang 318000, CHINA, E-mail: juc@qq.com

**2. DOMAIN NAME AND TRADEMARK IN DISPUTE:**

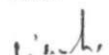
Domain name of the respondent is "**www.carlsjr.in**"

The trademark of the complainant is "**CARL'S JR**".

*... amv kv Singh*

### **AWARD**

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The present dispute pertains to the domain name "**www.carlsjr.in**" in favour of the respondent.
3. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "**www.carlsjr.in**".
4. The complainant herein has filed the instant complaint challenging the registration of the domain name "**www.carlsjr.in**" in favour of the respondent
5. I was appointed as Sole Arbitrator in the matter by NIXI.
6. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
7. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
8. On 22-11-2012 I issued notice to the respondent and informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within seven days of receipt of notice.
9. On 02-12-2012 I again issued notice to the respondent and further directed the respective parties to the complaint, to file their counter/ reply and rejoinder with the supportive document/evidence.
10. The complainant has stated in the instant complaint that it uses the mark **CARL'S JR** in connection with its restaurant services, food products and other related services through out the world. The complainant has submitted copies of complainant's marks as well as corresponding applications and registrations as *Annexure-C*. The



complainant has stated that the respondent has deliberately infringed and diluted the Complainant's invaluable rights in the **CARL'S JR** Mark through the unlawful registration of domain name "**www.carlsjr.in**".

11. The complainant has stated that it is the owner of a famous family of **CARL'S JR** trademarks in the United States and internationally, including the following U.S registrations for the **CARL'S JR** Marks and various formatives thereof for its restaurant services, food products and other related services:

<u>MARK</u>	<u>U.S Reg. No.</u>
<b>CARL'S JR</b>	901,315
<b>CARL'S JR</b>	1,400,272
<b>CARL'S JR JR</b>	2,141,498
<b>CARL'S JR (stylized)</b>	2,290,206
<b>CARL'S JR (and Design)</b>	2,288,997
<b>CARL'S JR CHARBROILED BURGERS (and Design)</b>	3,524,587
<b>CARL'S JR CHARBROILED BURGERS (and Design)</b>	3,550,634
<b>CARL'S JR CHARBROILED BURGERS (and Design)</b>	3,807,406
<b>CARL'S JR CHARBROILED BURGERS OPEN 'TIL MIDNIGHT OR LATER (and Design)</b>	3,719,412
<b>CARL'S JR CHARBROILED BURGERS OPEN 'TIL MIDNIGHT OR LATER (and Design)</b>	3,828,829
<b>CARL'S JR GOING GREEN (and Design)</b>	3,791,079

The complainant has further stated that it owns registration in India in respect to its trade mark **CARL'S JR** for its restaurant services, food products and other related services. The complainant has given the details in its complaint.

Sanjay Singh  
22-12-2012

The complainant has further stated that it owns registered numerous domain names including following:

www.carlsjr.com  
www.carlsjr.net  
www.carlsjr.org  
www.carlsjr.biz  
www.carlsjr.us  
www.carls-jr.com  
www.carlsjrfranchise.com  
www.carlsjrfranchise.net  
www.carlsjrfranchise.biz  
www.carlsjrfranchise.info  
www.carlsjrcareers.net  
www.carlsjrcareers.org  
www.carlsjrcareers.com  
www.carlsjrjobs.com  
www.carlsjrjobs.net  
www.carlsjrjobs.org

12. The complainant has relied on INDRP cases in its support. The complainant has relied on LEGO Juris A/S vs Martin, INDRP/125(2008) and Starbucks Corp vs Mohanraj, INDRP/118(2009). The complainant has also relied on WIPO case Factory Mutual Insurance Co. vs Rhianna Leatherwood, WIPO Case NO. D 2009-1044. The complainant has also relied on other WIPO cases.
13. The complainant has prayed for an award in the above matter for transfer of the domain name "**www.carlsjr.in**" in favour of the complainant.
14. I have perused the records and have gone through the contents of the complaint. Since respondent has not filed any reply hence the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.

*Sanjay K. Singh,*  
22-12-2012

15. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has nor provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.
16. It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & "Sify" were held to be phonetically similar and addition of word 'net' in one of them would not make them dissimilar. It is held in above case that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.
17. Thus the conclusion is that the domain name **"www.carlsjr.in"** is identical and confusingly similar to the trademark of complainant **"CARL'S JR"** and the complainant has established that he has right in the trademark and further the respondent has got registered his domain name **"www.carlsjr.in"** in bad faith.

*Sanjay Kr Singh*  
22-12-2012

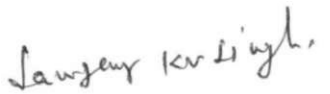
**RELIEF:**

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "**www.carlsjr.in**" to him, as it has established its bonafide rights in trademark in facts and circumstances and as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

**Delhi**

**Date: 22-12-2012.**

  
**(Sanjay Kumar Singh)**  
**Arbitrator**