



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

S.No. 513 Date 29-12-12 50/-

Sold to H. Srinivas Narayanaiah

Sl. No. Dto. with B. Narayanaiah

For Whom S. L. S. Rao

In The Matter Between

M. Saritha Devi S 786454

M. SARITHA DEVI

LICENCED STAMP VENDOR

LIC. No: 16-04-1/2005

RENEWED ON 12/2011

No: 8-3-903/F, Opp: Image Hospitals,  
NAGARJUNANAGAR ROAD, AMERPET  
HYDERABAD (SOUTH) DISTRICT.  
Phone No: 040-23759009, 9290118899

Giorgio Armani S.P.A

Complainant

Versus.

Ye Li, M/s Corporate Domain Management

Respondent

#### 1. The Parties

The Complainant is Giorgio Armani S.P.A, Swiss Branch Mendrisio, formerly known as G.A. Modelfine S.A of Via Penate 4, Mendrisio 6850, Switzerland, represented in these proceedings by L.S Davar & Co. of New Delhi India.

H. Srinivas Narayanaiah



ఆంధ్ర ప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH  
S.No. 5/04 - 29.02.2012 50/-  
Sold to: H. Saritha Devi Narayana Raju  
S/o: D/o: W/o: B. Narayana Raju  
For Whom: S. L. K. Reddy

M. Saritha Devi 86455  
**M. SARITHA DEVI**  
LICENCED STAMP VENDOR  
LIC. No: 16-04-1/2005  
REN. No: 16-04-32/2011  
H. No: 8-3-903/F, Opp: Image Hospitals,  
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HYDERABAD (SOUTH) DISTRICT.  
Phone No: 040-23759009, 9290118899

The Respondent is Ye Li M/s Corporate Domain Management. The contact details of the Respondent as per the records are: Tianmushan Lu 2800 Hao DS, Hangzou, Zhejiang 320 000 China.

**2. The Domain name, Registrar and Policy**

The present Arbitration pertains to the domain name <emporioarmaniwatches.in> registered by the Respondent. The sponsoring registrar for the disputed domain name is Directi Web Services Pvt. Ltd., India.

H. Saritha Devi

### **3. Procedural History**

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

The Arbitrator received the Complaint from the .IN registry on May 5, 2012 and on May 6, 2012 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent did not reply to the notification or file any response in these proceedings. Based on the material on record the Arbitrator now proceeds to determine the case on its merits.

### **Factual Background**

The Complainant is an internationally well-known fashion house that uses the trademarks ARMANI and EMPORIO ARMANI among others to market its products. The Complainant has provided documents of its trademark registrations in several countries and jurisdictions for the said marks.

The Complainant has also filed documents of its Indian registered trademarks, some of these are: Indian trademark No. 756811 dated 11-07-1997 for device mark EMPORIO ARMANI under class 18. Indian trademark registration number 1008222 dated 09-05-2005 in class 3 for trademark EMPORIO ARMANI device. Indian trademark No 756988 dated 11-07-1997 for trademark EMPORIO ARMANI device under class 25. Indian trademark No. 756810 dated 11-07-1997 for EMPORIO ARMANI device under class 9. The Complainant has provided copies of several international trademark registrations for its trademark ARMANI and EMPORIO ARMANI including US trademark registration No. 1,615,356 under classes 3, 14, 18, 24, and 25 dated October 2, 1990 for device mark EMPORIO ARMANI.

*Harini Narayanswamy*  
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A list showing the Complainant's domain name registrations in several top level domains including county code domains has been furnished by the Complainant. The domain names includes its trademark ARMANI. Some of the Complainant's domain names under the Indian ".in" domain space are: <giorgioarmani.co.in>, <emporioarmani.co.in>, <armaniprive.co.in>, <armani.in> and <armani.co.in>.

The Respondent registered the disputed domain name <emporioarmaniwatches.in> on July 31, 2011.

#### **4. Parties contentions**

##### **A. Complainant's Submissions**

The Complainant states that it is a Swiss public limited company, incorporated in the year 1988. The word Armani is the surname of Mr. Giorgio Armani and the Complainant alleges the name was adopted as a trademark for his first fashion collection in Italy in 1974. The Complainant states it has about 263 trademarks registrations throughout the world for the trademark ARMANI, and has submitted a lengthy list providing details of these trademark registrations. The Complainant has 650 domain name registrations that has ARMANI as the significant part of the domain name and has provided a list of such registered domain names.

The Complainant contends that these facts establish its prior use of the ARMANI mark throughout the world including India. The Complainant has provided figures of its worldwide sales for the past six years that demonstrate its sales turnover under the ARMANI trademark runs into several million Euros each year. Given its extensive turnover, reputation and goodwill, the Complainant argues that the trademark ARMANI is associated exclusively with the Complainant and its high quality products offered under the mark.

*Harini Narayanan*

The Complainant contends that to the best of its knowledge, the Respondent is an individual residing in Shanghai, China. The Complainant states that the disputed domain registration meets the three criteria for obtaining a remedy under the INDRP Policy: First, that the name is identical or confusingly similar to its registered trademarks ARMANI and EMPORIO ARMANI. Second, the Respondent has no rights and legitimate interests in the domain name, as ARMANI is not the personal name or surname, trademark, service mark or trading name of the Respondent. Third, the Respondent has registered the disputed domain name in bad faith to prevent the proprietor of the trademark ARMANI from reflecting its mark in a corresponding domain name. The Respondent has intentionally attempted to attract Internet users to the Respondent's website or other online location, by creating a likelihood with the Complainant's mark and seeks to exploit the fame associated with its marks to attract Internet users.

The Complainant further argues that the disputed domain name was registered for purposes of selling, renting or otherwise transferring the domain name to a competitor of the Complainant, as the domain name has been advertised for sale at an exorbitant price of 6200 Euro. As evidence the Complainant has filed prints out of the web page showing the domain name has been advertised for sale. The Complainant asserts that these facts show the disputed domain name was registered and is used in bad faith by the Respondent and therefore requests for the transfer of the disputed domain name for the above stated reasons.

#### **Respondent's Submissions**

The Respondent did not respond and has filed no response in these proceedings.

*Hansi Narayany*

## **Discussion and Findings**

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:

- (i) The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

### **Identical or Confusingly Similar**

The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant's statutory rights in the trademarks ARMANI and EMPORIO ARMANI is clearly evident from its numerous trademarks registrations in several countries including India. It is well established in domain name cases that if a trademark is found in its entirety in the disputed domain name, despite the addition of other generic terms to the mark, the disputed domain name is considered confusingly similar to the mark. See for instance *L'Oréal v. Zeng Wei* <loreal-paris.in>, INDRP/342, May 3, 2012. The addition of generic terms or geographic terms to the mark does not sufficiently distinguish the domain name from the mark, as the mark constitutes the distinctive part of the domain name.

*Havin Narayana* 6

Accordingly, in the present case it is found that the word "watches" with the trademark EMPORIO ARMANI in the disputed domain name does not sufficiently distinguish the domain name from the Complainant's mark. The country code top-level domain (cc TLD) ".in" suffix also does not lessen the confusing similarity of the domain name with the trademark. See *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 dated October 27, 2010.

For the reasons discussed, the Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

#### **Rights and Legitimate Interests**

The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, 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 responded in these proceedings and has not provided any material to show rights in the disputed domain name. The Arbitrator finds the material on record does not show the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. See *Starbucks Corporation v. Mohan Raj* INDRP case 118, (<starbucks.co.in> November 26,

*Havsi Narayany* 7

2009). Further, there is no indication from the material on record that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, or for any legitimate noncommercial fair use purposes.

There is no reason for the Respondent to adopt a domain name that is a well-known registered trademark of the Complainant. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name refers to the Complainant. Misleading users by incorporating others trademarks in a domain name does not confer legitimate rights under the Policy.

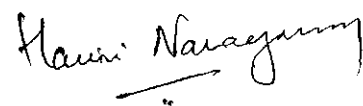
The Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

#### **Bad Faith**

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons: that the Complainant has well-established rights in the trademarks ARMANI and EMPORIO ARMANI. The Respondent has intentionally attempted to attract users by creating a likelihood of confusion with the Complainant's mark as to source of endorsement and affiliation; The Respondent has attempted to sell the disputed domain name for an amount in excess of documented out of pocket expenses.

The Complainant has clearly established its trademark applications were made much before the disputed domain name was registered. The Complainant's Indian trademark registrations date back to 1997, whereas the disputed domain name was registered in July



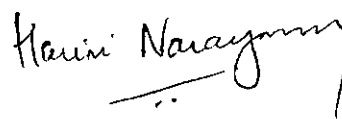


2011. The evidence on record also shows the Complainant has used its trademarks extensively on a worldwide basis and therefore it is unlikely that the Respondent was unaware of the Complainant's prior rights when the disputed domain name was registered. Taking into account these facts and circumstances, the registration of the disputed domain name appears to be a deliberate use of a well-recognized mark to attract unsuspecting Internet users. Registration of a domain name, based on awareness of a complainant's trademark rights is indicative of bad faith registration under the Policy. See *L'Oréal v. Jack Sun*, INDRP case 343, <[lorealprofessionnel.in](http://lorealprofessionnel.in)> May 17, 2012).

The Registration of a domain name that is confusingly similar or identical to a famous mark by an entity that has no relationship to the mark is evidence of bad faith registration and use. See *The Ritz-Carlton Hotel Company LLC v. Netlon*, INDRP Case 250, Dec 30 2011, <[ritzcarlton.in](http://ritzcarlton.in)>. (Where the domain name is so obviously connected to the complainant, the registration and use by the respondent suggests opportunistic bad faith, citing *Pavillion Agency v. Greenhouse Agency Ltd.* WIPO Case 2000-1221).

Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant. See *Bharati Airtel Limited v. Rajeev Garg* INDRP 285 <[airtelworld.net.in](http://airtelworld.net.in)> January 12, 2012. (where respondent's bad faith was found from intentionally attempting to attract for gain Internet users to the respondent's website or other online location by creating a likelihood of confusion with the complainant's mark).

There is merit in the Complainant's arguments that the Respondent has used the disputed domain name for opportunistic reasons of deriving commercial gain. The evidence furnished by the Complainant shows the Respondent has placed an advertisement for selling the disputed domain name. In several previous cases it has been found that when a domain name uses a well-known mark and it is advertised for sale based on its trademark value, it constitutes evidence of bad faith. See *AB Electrolux v. Chung Ruo* INDRP/333, Monday, April 2, 2012 <[electrolux-professional.co.in](http://electrolux-professional.co.in)>, where it was held that advertising the domain name containing a well known mark for sale for an amount of Euro 6200 was indicative of bad faith use. In the present case also the Respondent's bad



faith intention is evident from the advertisement to sell the disputed domain name for 6200 Euro.

It can be reasonably inferred from these facts that the Respondent has registered the disputed domain name to obtain undue advantage of the goodwill associated with the Complainant's trademark. The registration and use of a domain name that exploits the goodwill of another's trademark is an indication of bad faith use. See *Karnataka Bank v. ELL Shoval*, INDRP case 210 April 15 2011 <karnatakabank.in> .

Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanations for the registration and use of the disputed domain name except that the Respondent seeks to exploit the reputation and goodwill associated with the Complainant's mark in the manner mentioned under Paragraph 6 (iii) of the Policy.

Given the international reputation of the Complainant's marks and the unchallenged evidence furnished by the Complainant that indicates the Respondent's use of the disputed domain name in bad faith; the Arbitrator finds the disputed domain name has been registered and used in bad faith as understood under the Policy.


Accordingly the Complainant has satisfied the third element under paragraph 4 of the Policy.



### **Decision**

The Complainant has established the disputed domain name is identical or confusingly similar to a mark in which it has rights, the Respondent has no rights or legitimate interests in the disputed domain name and the disputed domain name has been registered or is being used in bad faith. The Complainant has successfully established all the three grounds required under the Policy to succeed in these proceedings.

For the reasons discussed, it is ordered that the disputed domain name: <emporioarmaniwatches.in> be transferred to the Complainant.



**Harini Narayanswamy**

**(Arbitrator)**

**Date: July 5, 2012**