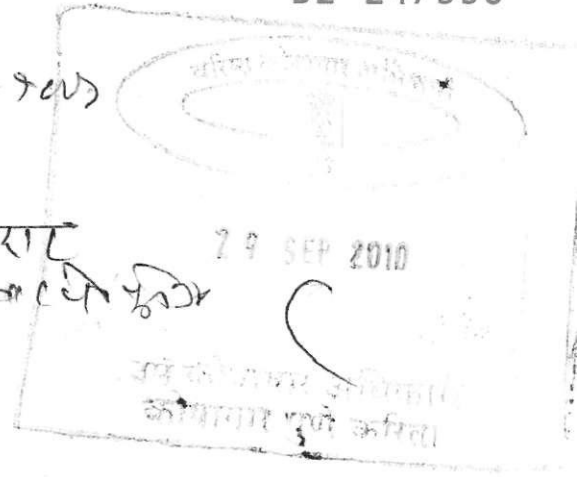




महाराष्ट्र MAHARASHTRA

DL 247358

नंबर 330e रुपये 900795-9007  
दिनांक 29/09/10  
नाव शिरीष विनायक इंगारकर  
पता 208 इंडिया बस शाखा (पुणे) पुणे  
हस्ते शिरीष विनायक  
सौ. जयश्री वेतसरे, स्टॅम्प व्हेंडर, ला.नं. - हवेली 1/36/9994  
824 ब, शनिवार पेठ, पुणे-411004



**AWARD**

**IN ARBITRATION**

**Ben Sherman Group Ltd.**  
Of 20 Portadown Road  
Lurgan, Co. Armagh  
Northern Ireland.  
UNITED KINGDOM

**THE COMPLAINANT**

**AND**

**Mr. Riguo Ding**  
Netlon Inc.  
3F, No. 199, Shifu Road  
Taizhou  
Zhejiang.

**THE RESPONDENT**

**IN THE MATTER OF DISPUTED DOMAIN NAME: - bensherman.co.in**  
CASE NO. - NOT ALLOTTED BY NATIONAL INTERNET EXCHANGE OF  
INDIA (NIXI)

**BEFORE MR.S.C.INAMDAR, B.COM, LL.B., F.C.S.**  
**SOLE ARBITRATOR**

**DELIVERED ON THIS 18<sup>th</sup> DAY OF NOVEMBER TWO THOUSAND TEN.**  
**SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

**01. Names and addresses**

Of the Complainant: -

Through its authorized

**Ben Sherman Group Ltd.**

Of 20 Portadown Road  
Lurgan, Co. Armagh  
Northern Ireland.  
UNITED KINGDOM

DePenning & DePenning  
representative  
Patents Trademarks Designs Copyright  
120 Velachery Main Road, Guindy  
Chennai. 600032. INDIA

**02. Name and address of  
The Respondent: -**

**Mr. Riguo Ding**  
Netlon Inc.  
3 F No. 199, Shifu Road  
Taizhou, Zhejiang  
China.

**03. Calendar of Major events:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date (Communications in electronic mode)</b>
01	Arbitration case was referred to me	25/10/2010
02	Acceptance was given by me	25/10/2010
03	Hard copy of the complaint was received and Notice of arbitration was issued	01/11/2010
05	Submission of say by the Respondent	No say submitted
06	Reminder sent to the Respondent to submit his say, if any	14/11/2010
07	Submission of say by the Complainant	No say submitted
10	Award	18/11/2010

**I] PRELIMINARY: -**

- 1) M/s Ben Sherman Group Ltd. having its office at Of20, Portadown Road, Lurgan, Co. Armagh, Northern Ireland, United Kingdom (**The Complainant**) have filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name **bensherman.co.in** (**the disputed domain name / domain name**)..
- 2) Since the Complainant claimed to be the holder of trademark / service mark with the word **BENSHERMAN**, it has disputed registration of domain name '**bensherman.co.in**' in the name of **Mr. Riguo Ding, Netlon Inc., 3F, NO.199, Shifu Road, Taizhou, Zhejiang, China** (**The Respondent**).
- 3) Major events took place as enumerated in the above table.

**II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -**

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 1<sup>st</sup> November 2010 with the instructions to file his say latest by 10<sup>th</sup> November 2010.
02. The Respondent failed to file his reply to the Complaint by 10<sup>th</sup> November 2010.
03. Thereafter the reminder was sent to the Respondent to submit his say, if any, on the Complaint by allowing extension till 18<sup>th</sup> November 2010.
04. The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award.

**III] SUMMARY OF THE COMPLAINT: -**

- (A) The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -



- a) The Complainant is a registered proprietor of various trademarks in various countries, a list of which is provided by the Complainant. However the Complainant has mentioned that it has not yet filed applications for registration of trademarks in India.
- b) The Complainant is a corporation organized and incorporated under the laws of United Kingdom and has a history of more than 50 years. The Complainant is engaged in the business of readymade shirts and fancy clothing.
- c) Mr. Ben Sherman founded the company in 1950 which started initially the business of readymade shirts and later on went to dress business. The Oxford shirt brand became a status symbol and the business of the company went on increasing consistently.
- d) Initially the company was doing business in U.K. only which later on expanded over Europe and USA also.
- e) The Complainant has several domain names registered in its name all over the world. A list of such domain names has been provided by the Complainant.
- f) The Complainant has also attached a copy of search on Google which shows that Ben Sherman words take us to their website [www.bensherman.com](http://www.bensherman.com). It also tops the rankings with these words on making search. The Complainant claims that on average 3500000 hits are made to search the key words ben Sherman on internet.
- g) The average annual turnover of the Complainant is about GBP 74000.00 million. Accordingly it claims that it has established itself as leading, reputed and established manufacturer of a range of readymade shirts and dresses all over the world.



- h) The domain name www.bensherman.com was registered on 29.07.1997 which gives information about the complainant and their products. The Complainant has approximately 900 wholesale clothing customers and 300 wholesale footwear customers in U.K. and Republic of Ireland.
- i) The Complainant owns the intellectual property of all the worldwide trademark applications and registrations and domain name registrations of the brand name 'Tien Sherman'.
- j) The Respondent's domain name bensherman.co.in is identical to the trademark Ben Sherman in which the Complainant has rights on account of prior registrations and use all over the world.
- k) The Respondent has not created any content to his website and merely offering his domain for sale. This act of the Respondent establishes malafide intention of his part to merely ride on the goodwill associated with the Complainant.
- l) The Respondent's domain name is phonetically, visually and conceptually identical as that of the Complainant. The same would cause the public to believe that the Respondent and their domain name is sponsored by or affiliated to the Complainant.
- m) The Respondent is not the bonafide owner, honest adopter or true/actual user of the disputed domain name and being aware of the Complainant's reputation and goodwill has created to trade and benefit under it.
- n) The Respondent has no rights or legitimate interests in respect of the domain name.
- o) The domain name is registered and is being used in bad faith.



- p) The complainant has requested for transfer of disputed domain name in his favour alongwith costs for the same.

**IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

In response to the contentions of the Complainant, the Respondent has failed / neglected to file any reply or say.

**ISSUES & FINDINGS: -**

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

<b>SR. NO.</b>	<b>ISSUE</b>	<b>FINDING</b>
01	Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?	<b>Yes</b>
02	Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?	<b>Yes</b>
03	Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?	<b>Not known</b>
04	Whether the Registrant / Respondent has registered domain name in bad faith?	<b>Yes</b>
05	Whether the Registrant has commonly been known by the domain name?	<b>No</b>



VII] BASIS OF FINDINGS: -

(A) Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?

The complaint has been lodged by 'Ben Sherman Group Limited', a company incorporated in U.K. It has produced a list of various trade marks registered all over the world. It has also furnished a list of various domain names registered in various countries.

Therefore my finding on the first issue is affirmative.

(B) Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?

The disputed domain name has been registered containing words 'ben sherman' which identical to the trade marks of the Complainant.

My finding on this issue is affirmative.

(C) Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?

The Respondent has not bothered to file any say / reply to the complaint.

My finding on this issue is negative.

(D) Whether the Registrant / Respondent has registered domain name in bad faith?

The Respondent has not made out his case by filing his say / reply to the complaint. Very importantly when one visits the disputed website there is

a clear message appearing as 'This site is for sale'. Moreover there is also a link given to 4.cn for completing the sale transaction.

My finding on this issue is therefore affirmative.

(E) Whether the Registrant has commonly been known by the domain name?

The name of the Respondent / Registrant is Mr. Riguo Ding, which has no similarity, nexus, or resemblance to the word ben sherman.

My finding on this issue is therefore negative.

A handwritten signature in black ink, consisting of a stylized, cursive letter 'f' or similar character.



**IX] AWARD: -**

On the basis of findings and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name - bensherman.co.in and accordingly the same shall be transferred to the Complainant.
02. No order as to the costs.

Dated: -18.11.2010

  
**(S.C.INAMDAR)**  
**ARBITRATOR**