



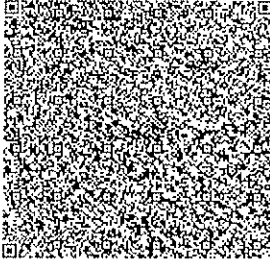
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL241046381953840
Certificate Issued Date : 28-Nov-2016 02:49 PM
Account Reference : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP17485023491479680
Purchased by : SUDARSHAN KUMAR BANSAL
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SUDARSHAN KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : SUDARSHAN KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



.....Please write or type below this line.....

.IN Registry
(NATIONAL INTERNET EXCHANGE OF INDIA)

COMPLAINANT
Kimberly Clark Worldwide Inc.

Vs.

RESPONDENT
Lin Yanxiao

ARBITRATION AWARD

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

.IN Registry
(NATIONAL INTERNET EXCHANGE OF INDIA)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: SUDARSHAN KUMAR BANSAL

COMPLAINANT

Kimberly Clark Worldwide Inc.
Neenah, Wisconsin 5496,
United States of America

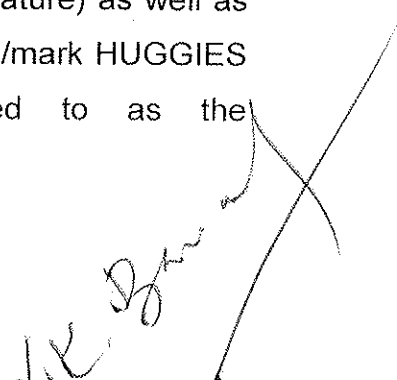
Vs.

RESPONDENT

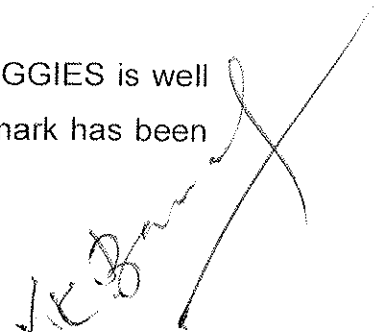
Lin Yanxiao
Panyu,
Guangzhou,
Guangdong, 510006, China

ARBITRATION AWARD

1. The Complainant is aggrieved by the Respondents registration of the domain name www.huggies.in registered through the sponsoring Registrar 'Name.com LLC' (R65-AFIN) and has accordingly made this Complaint seeking the relief that the domain name www.huggies.in (Disputed domain name in short) be either cancelled or transferred to the Complainant with costs.
2. The Complainant has preferred this Complaint on the basis of its claimed proprietorship and ownership rights in the Trade mark HUGGIES (word) and (formative as its essential feature) as well as on the basis of its domain names bearing the word/mark HUGGIES as its essential feature (collectively referred to as the Trademark/Domain Name HUGGIES).



3. The Complainant claims to be a company organized and existing under the laws of the United States of America and claims to be one of the leading companies in the tissue, diapers, personal and health care segments headquartered in Wisconsin, USA. The Complainant also claims to be the registered proprietor of the trade mark HUGGIES since 1976 in the United State of America and since 1985 in India.
4. The complainant further claims that it is home to a variety of well-known and recognized trademarks such as KLEENEX, KOTEX, HUGGIES, SCOTT, DEPEND and that the said trademarks of the Complainant are considered as 'Well-known Earlier Marks'. The present Domain name dispute relates to one of these marks, viz. HUGGIES.
5. The Complainant claims its various HUGGIES and HUGGIES formative trade marks to be registered under various numbers and classes under the Trade Marks Act, 1999 in India in its favour as well as in The United States of America. The particulars of such registrations as well as copies of the respective registration certificates have been pleaded in and filed along with the complaint. Consequently the Complainant claims to have rights in the Trade Mark HUGGIES. In addition the Complainant also claims to have acquired a valuable trade goodwill and reputation under its trade mark HUGGIES being used by it in relation to its goods and business of tissues, diapers, personal and healthcare products and which trade mark according to the Complainant identifies and distinguishes the Complainants said products and business from its source and origin.
6. According to the Complainant its said Trade Mark HUGGIES is well known in India since the year 1985 and which trade mark has been

A handwritten signature in black ink, appearing to be 'A. B. B.', is written over the bottom right portion of the text in item 6.

well used, well advertised, well established and extremely visible in the market and trade with it in relation to its aforementioned goods and business.

7. The Complainant also claims that the said trade mark HUGGIES was coined in the year 1978 by the Complainant and was first launched in the USA in the same year with respect to diapers with elastic at the legs to stop leaks, which was an innovation at that time. The Complainant further claims that products under its Trademark HUGGIES enjoy a wide reputation and substantial goodwill and its trade mark HUGGIES to be distinctive.
8. The Complainant states that in addition to aforesaid, HUGGIES also forms part of the Complainant's domain name www.huggies.com & www.huggies.co.in and that the Complainant itself is the registrant of the above two domain names.
9. The Complainant claims that the consumers' at large associate the trademark/ domain name HUGGIES with the Complainant alone.
10. According to the Complainant, the Disputed Domain name www.huggies.in is identical with and deceptively similar to the Complainant's registered Trade Marks HUGGIES, domain Name www.huggies.com & www.huggies.co.in and is in violation of the Complainant's rights therein. The adoption of the disputed domain name (www.huggies.in) is mala fide and the same is allegedly being used by the Respondents for making illegal gains to trade upon the Complainant's goodwill and reputation attached to the Complainant's said trademarks/domain name HUGGIES.
11. The Complainant states that Respondent has illegally adopted the Disputed Domain name and is using the Complainant's mark (HUGGIES) in full to mislead the online visitors and the general

VK Bhandari

public into believing that the Disputed Domain name is an off-shoot of the Complainant or is in some manner legitimately associated with the Complainant, which is not the case. In addition to this, according to the Complainant, the Respondent is also advertising goods of direct competitors of the Complainant on the Disputed Domain name with the mala fide intention of disrupting the goodwill and reputation of the Complainant's mark.

12. The Complainant also claimed, in its Complaint that the Domain names are registered and used by the Respondent in bad faith as the mark of the Complainant is an arbitrary mark and of the Respondent to have no legitimate rights and interest therein.
13. In support of its rights and use the Complainant has made numerous pleadings and filed numerous documents which would be dealt with in so far as they are relevant, in the course of this award.
14. The .IN Registry appointed me as an Arbitrator to adjudicate this Complaint in accordance with the Arbitration and Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules of Procedure and/or bye-laws, rules and guidelines made therein and notified the factum thereof to the Complainant through its attorneys and authorized representatives, as well as the Respondent vide its email of 25th October, 2016.
15. Thereafter, I issued a notice to the Respondent vide email dated 2nd November, 2016 with a copy of the Complaint and documents wherein the Respondent was notified about my appointment as the Arbitrator and was also given an opportunity to submit its written response to the Complaint stating its defense together with documents supporting its position within ten days thereof. No reply was received to the said notice and the Respondent did not submit its response and documents within the stipulated time. In the interest

V.K. Dhanraj

of justice, the Respondent was given a further opportunity of ten (10) days to file the response along with documents vide my notice dated 12th November, 2016 wherein it was stated that in the event of the Respondent not so filing, the Complaint would be decided on the basis of the material on record filed by the Complainant. The copies of the aforesaid notices dated 2nd November, 2016 and 12th November, 2016 were also sent to the authorized representative of the Complainant. The Respondent never filed any response or documents.

16. Consequently I proceed to adjudicate this Complaint on the basis of the material available on the record.
17. The Trade Mark HUGGIES (Word and Formative) is duly registered in India under the Trade Marks Act, 1999 (the Act for short) as per the following:

S.No.	Registration No.	Class	Trademark	Date of application
1	431954B	16	HUGGIES	January 8 th , 1985.
2	622996	25	HUGGIES	March 23 rd , 1994
3	662008	16	HUGGIES DRI-FIT	April 10 th , 1995
4	764398	25	HUGGIES PULL-UPS	July 9 th , 1997
5	764399	16	HUGGIES PULL-UPS	July 9 th , 1997
6	769426	25	HUGGIES NAPPI PADS	September 29 th , 1997

V.K. Bannu

7	860915	16	HUGGIES NAPPI – PADS LABEL	June 14 th , 1999
8	1249075	16	HUGGIES DRY COMFORT	November 12 th , 2003
9	1323863	3,5,16,25	HUGGIES (WORD)	December 03 rd , 2004

These registrations cover a wide range of goods falling in class 3, 5, 16 & 25 of the then applicable Fourth Schedule to the Trade Mark Rules framed under the Act respectively and some such goods covered by the respective registrations include -

CLASS	GOODS
3	Baby shampoo, baby bath soaps and cleansers, baby lotions and powders, disposable wash mitts impregnated with skin cleansers, disposable washcloths impregnated with skin cleansers, tissues or wipes impregnated with skin cleansers.
5	Diaper rash creams and ointment
16	Babies' napkins of paper for infants, liners for diapers for infants, disposable wash cloths, mitts, changing pads and disposable diapers for infants made primarily from cellulose fiber.
25	Clothing for infants, babies and toddlers, diapers and napkins of textile, disposable diapers, napkins, training pants and bibs.

18. The copies of the registration certificates of the afore mentioned Indian registrations have been placed on record by the Complainant as **Annexure G**. A perusal thereof reveal that the Trade Mark registrations under Nos.622996 in class 25, 662008 in class 16, 764398 in class 25, 764399 in class 16, 769426 in class 25,

J.K. B...

1249075 in class 16 and 1323863 in classes 3, 5, 16 & 25 are in the name of the Complainant herein.

19. As per the online status records of the Registrar of Trade Marks India, the aforesaid Indian registrations under Nos. 662008 in class 16, 764398 in class 25, 764399 in class 16, 769426 in class 25, 1249075 in class 16 and 1323863 in classes 3, 5, 16 & 25 are duly renewed while renewal request have been filed for the Trade Mark under No.622996 in class 25.
20. The afore noticed Indian Trade Mark Registrations in the name of the Complainant confer valuable rights in the registered Trade Marks upon the Registrant, i.e. the Complainant in this case and have a presumptive validity attached to them and are a presumptive evidence of title in favor of the Registrant **[See American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. &Anr. reported in AIR 1986 SC 137; National Bell Co. Vs. Metal Goods Mfg. Co (P) Ltd. &Anr. reported in AIR 1971 SC 898; Section 2(i) (v), 28 and 29 of the Act].**
21. As per the search results placed on record by the Complainant as **Annexure D** from the Whols database available on the INDRP website pertaining to the disputed domain name www.huggies.in, this domain name is registered in the name of the Respondent with the sponsoring registrar "Name.com" with the date of creation as 19.07.2013.
22. All the Indian Trade Mark Registrations in favour of the Complainant as per para 18 above pre date the creation of the disputed domain name in the name of the Respondent. These trade mark registrations in the name of the Complainant span across the years 1994 to 2004 while the creation of the disputed domain name is only

JKB

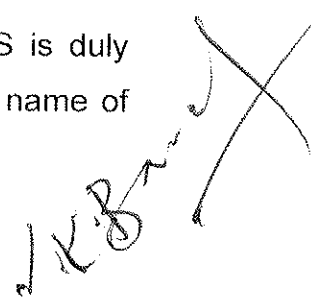
of the year 2013. Thus it can safely be taken that the trade mark HUGGIES with the Complainant is a prior mark.

23. In my considered view the trade mark HUGGIES is an arbitrary and fanciful trade mark in relation to the goods of the Complainant viz. Tissues, diapers, personal and health care products as the mark HUGGIES has no descriptive, suggestive or generic connotation with these products. The trademark HUGGIES possesses no specific dictionary meaning and has been coined by the Complainant by adding a suffix to the English word 'HUG' in relation to the nature of the goods/services being offered by it and thus giving to the resultant trade mark (HUGGIES) a distinct connotation and comprehension over and above the word "HUG". As such the trade mark HUGGIES enjoys inherent distinctiveness and is a consequent strong trade mark.
24. The Respondent has not contested the Complainant's rights and use including the Complainant's claim of its said Trade Mark/Domain Name HUGGIES to be well known, enjoying noticeable distinctiveness, goodwill, presence and visibility in the commercial market.
25. In my considered view the disputed domain name in the name of the Respondent bears the Complainant's registered trademark HUGGIES as its essential and memorable feature. It is the word/trade mark HUGGIES that the disputed domain name (www.huggies.in) would be remembered by the general internet user(s) who would access the internet services being offered by the Respondent. Consequently, an average consumer exercising average caution would remember and associate the disputed domain name with the Complainant's trademark. **[K.R. Chinna Krishna Chettiar Vs. Sri Ambal and Co.& anr. (AIR 1970 SC 146)]**

K.R. Chinna

; Ruston & Hornby Ltd., Vs. Zamindara Engineering Co. (1970 (2) SCR 222) ; B.K. Engineering Co. v/s U.B.H.I. Enterprises (AIR 1985 Delhi 210)]

26. Having regard to the complete similarity/identity between the Complainant's Trade Mark HUGGIES and the disputed domain name www.huggies.in of the Respondent, 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. A consumer may also believe in fact that the disputed domain name is sponsored, licensed or affiliated with the Complainant or is an extension of the Complainant's business, while in fact it is not so. Such a similarity in addition to being qualified as deception is also acts as evidence of bad faith and malafide intention on the part of the Respondent to gain illegal monetary benefit. [Montari Overseas Ltd., Vs. Montari Industries Ltd., 1996 PTC (16) 142 Del (DB) ; (McCarthy on Trademarks and Unfair Competition, 3rd Edition, Volume 3, Chapter 24, Para-24.03) Marks & Spencer Vs. One-In-A-Million (1998 FSR 265)].
27. A consumer or internet user seeking to access the Complainant would not only be misled with reference to the Trade Mark HUGGIES in case they come across the Respondent's website by erroneously or inadvertently suffixing the "second level" domain name i.e., HUGGIES with the ccTLD (country code top-level domain) .in instead of gTLD (generic top-level domain) .com or the gTLD (generic top-level domain) .co.in. The said internet user/consumer would be deceived by being led to somewhere else or in not reaching the Complainant's website.
28. As noticed in above paragraphs, the trademark HUGGIES is duly registered in India under the Trademarks Act, 1999 in the name of



the Complainant. The disputed domain name bearing the identical registered trade mark of the Complainant would be in complete violation of the said registered trade-marks of the Complainant (Section 29 of the Act) [Lt Foods Limited Vs. Sulson Overseas Pvt. Ltd. 2012(51)PTC 283(Del)].

29. A right in the Trade Mark/Domain Name can be violated even by the use of the Trade Mark/Domain Name as a part of a rival domain name and that a probability/likelihood of consumer deception is the test and not actual consumer deception. A right in the Trade Mark and especially in the registered Trade Mark has to be protected even if it is being used as a material part of a rival domain name. [See Bharti Airtel Limited Vs. Rajiv Kumar-2013 (53) PTC 568(Del); Tata Sons Limited Vs. D. Sharma & anr - 2011 (47) PTC 65(Del.); Dr. Reddy's Laboratories Limited Vs. Manu Kosuri & Anr.-2001 PTC 859 (Del); Mars Incorporated Vs. Kumar Krishna Mukherjee &Ors.- 2003 (26) PTC 60 (Del)]
30. The Complainant has placed on record as Annexure-I, a screenshot taken from the website of the Respondent under the disputed domain name mentioning therein, at the top and at an eye catching placement the following words: "The domain huggies.in may be for sale. Click here to inquire about this domain". (Emphasis supplied).
31. A perusal of Annexure-I reveals the Respondents to be a cyber squatter/cyber pirate whose only interest in the disputed domain name is to derive illegal money from its sale. "Cyber-piracy" has been defined as "the act of registering a well-known name or mark" (or one that is confusingly similar) as a website's domain name, usually for the purpose of deriving revenue" [See The BLACKS LAW DICTIONARY 444 (9th ed. 2009)].

J.K. Bhatnagar

32. The Complainant has also placed on record as Annexure-J another screenshot obtained from the same website under the disputed domain name wherein the Respondent is advertising to sell diaper goods bearing the trade mark HUGGIES as also under other trade marks like Pampers, Mamy Poko, Libero of other businesses/legal entities and is also offering discounts on such goods/services including those on the Complainants goods. According to the Complainant all such acts on behalf of the Respondents are without its leave and license. The Complainant's said averments have not been controverted to by the Respondent. In my considered view such an act by the Respondent is a legal wrong. This is so as the Complainant would have no control over the Respondent or over the standard or quality of the goods/services being offered by it under the disputed domain name. Any inferior or unauthorized goods/services offered by the Respondent, would adversely affect the Complainant's business and reputation under the said word/mark HUGGIES due to consumer deception. In addition, any internet user who may erroneously access the Respondent while intending to access the Complainant can be led by the Respondent to a competitor/rival of the Complainant which would invariably cause business and clientele loss to the Complainant.
33. All these violative acts of the Respondents would perpetually and irreparably not only tarnish the business of the Complainant but also diminish, erode and eclipse the distinctiveness attached to the Complainants HUGGIES trade mark.
34. All the aforesaid acts of the Respondent, in my considered view clearly establish the Respondent's very adoption of the disputed domain name and its registration with the sponsoring Registrar to be actuated in bad faith, malafide and fraud. The Respondent thereby is also guilty of cyber piracy & cyber squatting which in itself is a facet

J.R. B. [Signature]

of bad faith and that the Respondent has no legitimate right or interest in the disputed domain name. This in addition is also apparent from the following :-

- (a) The Respondent has not furnished any explanation on its adoption of an identical prior Trade Mark HUGGIES belonging to the Complainant. This is more so as the Complainants said HUGGIES trade mark is duly registered on the Indian Register as also is an extremely arbitrary and fanciful trade mark in relation to the nature of the goods/services being dealt with in the course of trade by the Complainant.
- (b) The Respondent was well aware of or ought to have been aware of the Complainant's said Trade Mark before its alleged adoption and registration of the disputed domain name using a deceptively similar mark, as is the case. The Respondent must have possessed prior knowledge and interest in the internet and awareness of the concepts of E-commerce and online markets actuated through the internet medium triggered through domain names. The Complainant and its said trade mark HUGGIES and the business thereunder has been reported and written upon and has been a subject of independent market research studies. One such study has placed the Complainants trade mark HUGGIES as a part of 43 brands having a billion dollar global presence. Copies of some such reports and studies have been placed by the Complainant as **Annexure-H** to the Complaint.
- (c) The Respondent's prior knowledge of the Complainant's Trade Mark HUGGIES also stand established by the fact that the Respondent is commercially carrying out unauthorized

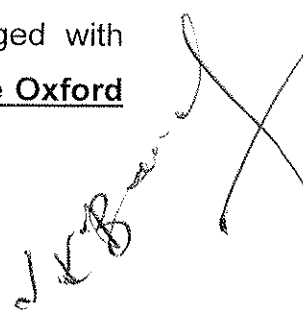
JKB

advertisement and sale of HUGGIES products (which can only be that of the Complainant) [Annexure-I and J above] on a public platform by creating a false & deceptive association with the Complainant in the eyes of the general public.

(d) The Respondent's impugned conduct speaks for itself (*res ipsa loquitur*) and falls short of the standards of acceptable commercial behavior. Accordingly, it can be concluded that the motive of the Respondent was to derive unjust benefit from the Complainant's Trade Mark HUGGIES.

35. The Courts have repeatedly held the basic principles of Trade Mark law as also the laws of passing off to apply to disputes in respect of internet domain names [See Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC)]

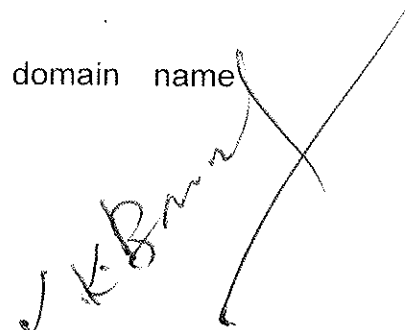
36. While considering the concept of malafide the Hon'ble Supreme Court in its celebrated case of Parbodh Sagar v/s The Punjab State Electricity Board and Ors reported in 2000 (5) JT 378 has held – ".....that the expression "malafide" is not a meaningless jargon and it has its proper connotation. Malice or malafide can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set of guidelines in regard to the proof of malafides. Malafides, where it is alleged, depends upon its own facts and circumstances." In light of the aforesaid pronouncement it can be safely held that the concept of or what amounts to bad faith, malafide or dishonesty is not one that lends itself to an exhaustive definition and for the determination of which there can be no rigid strait jacket formula and nor prescribed hard and fast rules or set guidelines. They have to be judged with reference to the facts and circumstances of each case. The Oxford



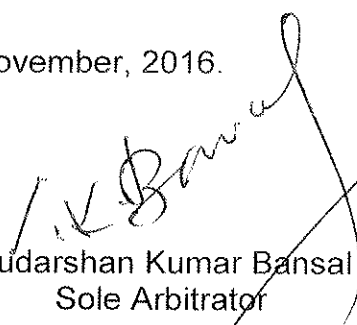
dictionary of law 6th Edition 2006 defines malafide as - [Latin: bad faith] Describing an act performed fraudulently or dishonestly. In GramaxPlasticulture Limited V/s Don & Low Nonwovens Limited 1999 RPC 367 at page 379 bad faith has been defined to include dishonesty and dealings which fall short of the standards of acceptable commercial behavior observed by reasonable and experienced men in the particular area being examined. In Road Tech Computer Systems Limited v/s Unison Software (UK) reported in 1996 FSR 805 at page 817 bad faith has been defined to mean dishonest, lack of good faith : not necessarily for a financial motive but still dishonesty.

37. In my considered view the Complainant has discharged its onus/burden of proof and has established its proprietary and enforceable rights in its Trade Mark HUGGIES. The wrongs of the Respondents are also apparent from the fact that it has not traversed nor challenged the Complaint facts against him. Such a non-traverse has to be taken against the Respondent (Uttam Singh Dugal & Company Limited V/s Union Bank of India & Ors – reported in AIR 2000 SC 2740).
38. Trade Marks have been accepted to be valuable business assets to be protected against their wrongful adoption and use even as part of a rival domain name and such violations have to be removed in the interest of the right holder as also of the consumers.
39. In the aforesaid view of the matter I have no reservation against holding that the Complaint must be allowed.

Accordingly it is decided that the disputed domain name www.huggies.in be transferred to the Complainant.



Signed at New Delhi, India on this 29th of November, 2016.


Sudarshan Kumar Bansal
Sole Arbitrator