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Sridharan, Chennai

R. RAGUPATHI
R. RAGUPATHI,
STAMP VENDOR, L/No. C314839183
No. 37, VILLAGE ROAD, NOW KNOWN AS
No. 79/91, VALLUVARKOTTAM HIGH ROAD
NUNGAMBAKKAM, CHENNAI-600 034
PHONE: 9445114347

BEFORE S SRIDHARAN, SOLE ARBITRATOR

OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 11th November 2015

Lululemon Athletica Canada, Inc. ... Complainant
Versus
Liheng ... Respondent
Just Traffic Supervision Consulting

Sridharan

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OF NATIONAL INTERNET EXCHANGE OF INDIA

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	Versus	
Liheng		
Just Traffic Supervision Consulting	...	Respondent

1 The Parties

- 1.1 The Complainant, **Lululemon Athletica Canada, Inc.**, is an entity organized and existing under the laws of Canada having its registered office at 1818 Cornwall Avenue, Vancouver, BC V6J 1C7, Canada. The Complainant is represented by its constituted attorney Ms. Sudarshana Sen-Mitra, of D. P. Ahuja & Co. Advocates at 14/2 Palm Avenue, Kolkata - 700 019.
- 1.2 Respondent is Liheng of Just Traffic Supervision Consulting at Room 1326, Kexin Building, 999077 Hong Kong.

The Domain Name and Registrar

- 1.3 The disputed domain name **<www.lululemon.in>** created on 16.05.2012 is registered with the registrar, IN Registrar d.b.a. inregistrar.com (R123-AFIN).

2 Procedural History

- 2.1 On 12th October 2015, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On the same day, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially. I sent signed declaration of independency and impartiality to NIXI.
- 2.2 On 20th October 2015, I received hardcopy of the Complaint.
- 2.3 On 22nd October 2015, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 23rd October 2015, I received soft copy of the Complaint from the Complainant.

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- 2.5 On 26th October 2015, I directed the Complainant to serve electronically by email a copy of the Complaint and annexures on the Respondent.
- 2.6 On the same day, I sent another mail asking the Complainant to clarify whether the Complainant is using the mark LULULEMON in India at all. This clarification was necessitated because the Complainant's Indian registration for the mark LULULEMON was on 'propose to use' basis and there is no specific pleading to the use of the mark in India.
- 2.7 At this stage, the Complainant's counsel sought change of arbitrator on the ground of conflict of interest. I replied that there was no conflict of interest. The Complainant informed that so far as the present proceeding is concerned, neither the complainant nor its counsel has any specific charge of bias or prejudice against the arbitrator.
- 2.8 On 5th November 2015, the Complainant clarified the points raised by the arbitrator by email and also sought time to file additional evidence establishing the use of the mark LULULEMON in India. The Complainant was granted time till 9th November 2015 to file additional evidence, if any.
- 2.9 On 5th November 2015, NIXI informed by email that the request of the Complainant to change the arbitrator was time barred and notified that the proceedings shall continue before the same arbitrator.
- 2.10 On 9th November 2015, the Complainant submitted soft copy of evidence.
- 2.11 Respondent has not filed any response to the Complaint.
- 2.12 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.
- 2.13 I have not received any pleadings / documents by courier/post from the Parties. I have returned to NIXI by courier all pleadings / documents that I received from it.

3 **Factual Background**

A **Complainant**

- 3.1 Complainant was founded by Chip Wilson in 1998, who introduced the concept of technical athletic fabrics to the power yoga segment. The "lululemon" name was chosen in a survey of 100 people from a list of 20 brand names and 20 logos. Complainant grew as a pioneer in yoga-inspired athletic apparel. Originally, Complainant was incorporated as 'Lululemon Athletica, Inc.' In 2008, Complainant changed its name to 'Lululemon Athletica Canada, Inc.' The Certificate of change of Name is attached.
- 3.2 The first LULULEMON store was opened in Vancouver BC in November of 2000. Complainant now has 336 stores in fourteen countries, including 3 stores each in Hong Kong and mainland China. Besides standalone stores, Complainant's products are also sold through its certified partners and online. The first showroom in Hong Kong was opened in October 2008. The latest Lululemon showroom in Hong Kong was opened in the International Financial Centre on 19 June, 2015. The Facebook page for Lululemon Athletica Hong Kong was created on October 2011. Complainant's website

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<http://www.lululemon.com.hk/> has been available and accessible to public since December 2011. Since inception, Complainant has been regularly and extensively covered in the international media, both print and electronic, and discussed and critiqued in blogs and wellness forums. Few news articles about Complainant are attached.

- 3.3 As per .IN Registry who-is record, the disputed domain name <**lululemon.in**> is currently registered in the name of the Respondent. According to Whois History, Respondent acquired the disputed domain name sometime between mid-March and mid-May, 2015. The Complainant has attached Whois history of 12 March, 2015 and 14 June, 2015.
- 3.4 The Complainant has acquired the following registrations for the mark LULULEMON in India and other countries as below:

Sl. No.	Country	Registration No.	Class	Registration Date	Status
1	Benelux	1142267	25	08.11.2012	Registered
2	Benelux	1086102	35	17.04.2013	Registered
3	Canada	TMA813087	25, 35	01.12.2011	Registered
4	China	1939499	25	28.10.2002	Registered
5	EU	1086102	35	26.06.2012	Registered
6	EU	002304848	18, 25, 27	02.11.2002	Registered
7	India	1284534	25	18.05.2004	Registered under rectification*
8	Int'l Regn.	1086102	35	18.08.2011	Registered
9	Int'l Regn.	1142267	25	08.11.2012	Registered
10	Hong Kong	10171/2002	25	11.07.2001	Registered
11	Hong Kong	301963918	35	04.07.2011	Registered
12	U.S.A.	3990179	35	05.07.2011	Registered
13	U.S.A.	4391115	25	27.08.2013	Registered

- 3.5 The Complainant has attached a photocopy of registration certificate of Complainant's Indian trademark no. 1284534. Photocopy of Legal Proceedings Certificate with respect to **LULULEMON** Indian registered trademark no. 1284534 is attached. The Complainant's Indian trademark registration is under rectification filed by Lulu International Shopping Mall Pvt. Ltd., Kochi, Kerala. The Complainant is suitably defending its trademark registration in the rectification proceeding.

- 3.6 The Complainant changed its name from Lululemon Athletica, Inc. to Lululemon Athletica Canada, Inc. in 2007. Application for recordal of change of name on Form TM-33 was filed with the Registrar of Trade Marks, Mumbai on 8 April, 2008, along

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with Certificate of Change of Name. The change of name is yet to be taken on record of the Trade Marks Registry. The Complainant has filed copies of application for recordal of change of name and Form TM-33.

3.7 The Complainant owns, *inter alia*, the following domain names:

- (i) lululemon.com registered on 25.03.1999
- (ii) lululemon.net registered on 17.07.2002
- (iii) lululemon.biz registered on 17.07.2002
- (iv) lululemon.org registered on 17.07.2002
- (v) lululemon.ca registered on 25.07.2002
- (vi) lululemon.hk (through Lululemon HK Limited) registered on 25.05.2012
- (vii) lululemon.com.hk (through Lululemon HK Limited) registered on 16.12.2011
- (viii) lululemon.cn (through Lululemon HK Limited) registered on 26.02.2010
- (ix) lululemon.com.cn (through Lululemon HK Limited) registered on 04.08.2012

B Respondent

3.8 The Respondent has not filed any reply to the Complainant's Compliant in this arbitration.

4 Parties Contentions

A Complainant

- 4.1 The disputed domain name entirely comprised of Complainant's mark LULULEMON with the ccTLD *.in* as extension. If a well-known trademark is incorporated in its entirety, it is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark.
- 4.2 Somebody looking for Complainant's India-specific offers would be misled by the address <http://www.lululemon.in/> and likely mistakenly believe that a website accessible by the URL <http://www.lululemon.in/> belongs to or is endorsed by Complainant
- 4.3 The ownership issue concerning the trademark **LULULEMON** of Complainant has been considered by various international arbitration panels and decided in favour of Complainant.
- 4.4 Therefore the disputed domain name is identical to a trademark in which Complainant has rights in accordance with Paragraph 4(i) of the Policy.
- 4.5 The trademark 'lululemon' was conceived and coined by the founder of the complainant company, Mr. Chip Wilson, in 1998. "LULULEMON" is a fanciful collection of letters and has no meaning or significance whatsoever. Complainant believes Respondent has acquired the domain from the previous registrant some time between May and May 2015. Respondent would be interested in acquiring the unusual domain name only if he was

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aware of the LULULEMON trademark and brand name and thus the value of the disputed domain name.

- 4.6 Respondent's name is Liheng. There is no indication that he is commonly known by a name, or carrying on business under a name, corresponding to the disputed domain name.
- 4.7 Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use the distinctive mark "LULULEMON" or to register the disputed domain name.
- 4.8 Complainant has defended its LULULEMON trademark all over the world; Respondent, on the other hand, does not appear to have registered or applied for registration of "LULULEMON" as a trademark.
- 4.9 The disputed domain name does not support a legitimate and functional website of Respondent. The website address <http://www.lululemon.in> directs Internet users to a "parking page" which contains pay-per-click advertisements and misleading links unrelated to Complainant, such as "Buy Lululemon", "Lululemon Clothes", "Lululemon Yoga Clothes", and "Lululemon Cheap Online". The contents/links displayed on the parked page change frequently, depending on the Internet traffic. Thus, Respondent has not made any legitimate offering of goods or services under the disputed domain name.
- 4.10 Monetized domain parking without the domain being associated with any e-mail or website service, cannot be said to be *bona fide* and active use of the domain, particularly when that domain almost entirely consists of somebody else's well known trademark. Respondent's registration and passive holding of the domain name <lululemon.in> fails to show *bona fide* use of the domain name by Respondent. [finding no rights or legitimate interests in the domain name <solgarvitamins.com> where Respondent merely passively held the domain name: *American Home Prod. Corp. v. Malgioglio*, WIPO Case No. D2000-1602; merely registering the domain name is not sufficient to establish rights or legitimate interests: *Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci*, WIPO Case No. D2000-1244].
- 4.11 Respondent has already put the disputed domain on sale. Domain parking, evidently for the sole purpose of sale of the domain to the trademark right holder at a high price or to its competitor, cannot be said to be legitimate and active use of the domain.
- 4.12 Therefore the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(ii) of the Policy.
- 4.13 Complainant's **LULULEMON** trademark is highly distinctive, unique and popular over the world. Lululemon stores and showrooms have been operating in Hong Kong since 2008. Opening of each showroom and retail store in Hong Kong had been well covered and extensively reported in the local media. **LULULEMON** products are widely advertised in Hong Kong and China. Thus Respondent, being a resident of Hong Kong, cannot but be aware of the **LULULEMON** brand name at the time of obtaining the disputed domain. [Registration of a domain name that is identical to a trademark, with actual knowledge of the trademark holder's rights, is strong evidence that the domain

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name was registered in bad faith: *American International Group, Inc. v. Walter Busby d/b/a AIG Mergers and Acquisitions* National Arbitration Forum Claim Number: FA0304000156251 citing *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1148 (9th Cir. Feb. 11, 2002)].

- 4.14 Respondent is not using the domain name <lululemon.in> for any apparent fair and legitimate purpose but has already put the domain on sale: non-use and passive holding are evidence of bad-faith registration [*HSBC Holdings plc v. Hooman Esmail Zadeh*, Case No. INDRP/032]. [**Exhibit O**].
- 4.15 Respondent has acquired several domain names all of which containing well-known trademarks and trade names. Some of these domain names are: <louisvuitton.co.in>; <capgemini.in>; <viviennewestwood.org>; <johnniewalker.biz>; <timberland.in>; <hewlettpackard.biz>; <exide.biz>; <forever21.biz>; <goodyear.biz>.
- 4.16 UDRP and INDRP proceedings have been decided against Respondent and in favour of trademark right holders:
- *Emerson Electric Co. v. Liheng/Just Traffic Supervision Consulting*; National Arbitration Forum Case No. 1586640 :
<http://www.adrforum.com/domaindecisions/1586640.htm>
 - *CollegeNET, Inc. v. Liheng / Just Traffic Supervision Consulting*; National Arbitration Forum Case No. 1534444 :
<http://www.adrforum.com/domaindecisions/1534444.htm>
 - *Caviar Petrossian SA v. Liheng/Just Traffic Supervision Consulting*; NIXI Arbitration Case No. INDRP/562
- 4.17 Respondent is thus a confirmed infringer and cybersquatter. Respondent acquires domain names in order to sell these to the trademark owners, or to their competitors, for valuable consideration well in excess of documented out-of-pocket costs directly related to the domain name.
- 4.18 Since Complainant's mark LULULEMON is distinctive, unique and well-known over the world, Respondent clearly has not acquired the disputed domain by chance. As per Whois History of the disputed domain, in or before May 2015, Respondent obtained the disputed domain from the previous registrant. Immediately thereafter, Respondent through his aliases offered to sell the disputed domain to Complainant for USD 3890. This conclusively establishes Respondent's utter bad faith registration of the disputed domain as also reveals Respondent's questionable business model, that of acquiring domain names with well known or popular trademarks and then selling those domains to the respective trademark owners at an exorbitant price. [Registration of a domain name with actual knowledge of a trademark holder's rights in a mark is strong evidence that the domain name was registered in bad faith: *ITC Limited v. Travel India*, Case No. INDRP/065].
- 4.19 Indeed, Respondent knows about Complainant's trademark and activities since it is using the disputed domain name to direct visitors to a "parking page" which contains pay-per-click advertisements and misleading links containing Complainant's name. Diversion of traffic to third parties/competitors and their products demonstrates that Respondent is

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using the disputed domain name for commercial purposes. [*The Bear Stearns Companies Inc. v. Darryl Pope*, WIPO Case No. D2007-0593 - “[t]he Panel is free to infer that Respondent is likely receiving some pecuniary benefit . . . in consideration of directing traffic to that site” (citing *COMSAT Corporation v. Ronald Isaacs*, WIPO Case No. D2004-1082); *Sanofi-aventis v. Montanya ILtd*, WIPO Case No. D2006-1079.]

- 4.20 LULULEMON has a strong reputation and popularity among the fashion and wellness conscious consumers throughout the world. It has been widely held that bad faith is found if it is unlikely that the registrant would have selected the domain name without knowing the reputation of the well-known trademark in question [*Northwest Airlines, Inc. v. Mario Koch* NAF Case No. FA9000095688; *Educational Testing Service v. Atak Teknoloji Ltd. Sti.*, WIPO Case No. D2010-0479; “The panel also recognizes the notoriety of the Complainant's trademarks and it believes that Respondent must have known of the Complainant's trademark TOEFL when registering the disputed domain names.”].
- 4.21 The Rules of Procedure of the INDRP clearly state that, at the time of application for a domain name, the registrant must accurately represent that to the registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. It is absolutely inconceivable that Respondent did not know of Complainant and its rights over the mark/name **LULULEMON**. Respondent is thus guilty of wilful misrepresentation and providing inaccurate/incorrect information to the Registry.
- 4.22 In light of the international fame and wide use of Complainant's mark **LULULEMON**, Complainant believes that Respondent knew of and knowingly exploited Complainant's mark, brand name and its substantial accompanying goodwill [registration of a domain name containing a famous mark is strong evidence of bad faith: *Barney's Inc. v B N Y Bulletin Board*, WIPO Case No. D2000-0059 **[Exhibit W]**; “Only a person who is familiar with Complainant's mark could have registered a domain name that is confusingly similar”: *ITC Limited v. Travel India, Case No. L-2/5/R4*]. The circumstances indicate that the domain name was registered in bad faith.
- 4.23 Accordingly, there is evidence of bad faith use and registration and that the requirements of INDRP Rule 3(b)(vi)(3).
- 4.24 The Complainant vide his email dated 5th November 2015 submitted the following among others. I have given my findings below each point.
- a) Complainant, by submitting the Complaint, has agreed to the settlement of the subject dispute by arbitration in India in accordance with the Arbitration and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy of .IN Registry; Rules of Procedure and any bye-laws, rules or guidelines framed thereunder. Hence, the Indian Trade Marks Act, 1999, which deals with the requirement of use of the mark in India, is not applicable in the arbitration proceeding under INDRP.

This argument is not correct. The Arbitration and Conciliation Act governs only the procedural aspects of arbitration, enforcement of and challenge to the award passed.

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The substantive rights of the parties are still governed by the respective laws, in this case, the Trade Marks Act 1999 and common law.

- b) Courts in India have consistently upheld that a foreign trademark, in order to seek protection in India, need not have use or even registration in India. [*N.R. Dongre and Ors. vs Whirlpool Corporation and Anr.* AIR 1995 Delhi 300; *N.R. Dongre and Ors. vs. Whirlpool Corpn. and Anr.* 1996 PTC (16) 583 (SC)]. [*Calvin Klein Inc. vs International Apparel Syndicate* 1996 PTC 293 (Cal)]

In all such cases, it is to be particularly pleaded that the foreign mark is known to the consumers / market in India. In this case, there is no such specific pleading.

- c) INDRP Rule 3(b)(v) requires that Complainant should specify the trademark(s) or service mark(s) on which the Complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used. The Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future. The present complaint and annexures provide all required details of Complainant's Indian and international trademark rights with corresponding Classes of goods and services, and the nature and duration of use of the trademark in various jurisdictions [Paragraph 10 of the complaint : Complainant's established rights in its well known LULULEMON trademark and brand name]. It will be pertinent to point out that Rule 3(b)(v) does not mandate India-specific right, registration or use of the subject trademark.

The Complainant in order to succeed in the Complaint must establish all the three elements under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP). India specific right, registration or use of the subject trade mark may very well be required to fully appreciate "malafide use or lack of bonafide use on the part of the Respondent". Again, it is a matter of pleadings and India specific pleadings cannot be dispensed with.

- d) Lastly, we would draw the attention of the Learned Arbitrator to Complainant's official website, www.lululemon.com which is accessible and can be viewed from any part of the world, including from India. Furthermore, as can be seen from the Complainant's website, Lululemon products can be ordered from India on <http://shop.lululemon.com/home.jsp> and the products are shipped to India (screen shots attached). Complainant has been executing direct orders from India at least since 2013.

B. Respondent

- 4.25 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5 Discussion and Findings

- 5.1 Respondent has not filed his response. I have not received any communication from him until the date of this award. Therefore, I am proceeding to determine this Complaint on the basis of the materials available on record.

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5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

(i) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

(ii) Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) Respondent's domain name has been registered or is being used in bad faith.

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark Lululemon. The Complainant has been using the mark since 2000. The Complainant owns numerous registrations for the trade mark Lululemon in many countries around the world including India. The Indian Registration under Application No.1284534 dates back to 18.5.2004. The Complainant's domain name www.lululemon.com was created on 25.3.1999. This active web site can be accessed by any one from India. People from India can place orders on this web site and can make purchases from India. The disputed domain name <lululemon.in> was created on 16.05.2012. Obviously, the Complainant is the prior adopter of Lululemon mark. The above facts have established that the Complainant has statutory and common law rights in respect of its Lululemon mark.

5.5 The Complainant's Lululemon mark is famous and well known throughout India. It is obvious that the disputed domain name <lululemon.in> wholly incorporates the prior registered mark Lululemon of the Complainant. The expressions .in and .com need to be discarded while comparing the marks with the domain names. The disputed domain name <lululemon.in> is similar to the Complainant's domain name www.lululemon.com.

5.6 I, therefore, find that:

(a) The Complaint has common law and statutory rights in respect of its Lululemon mark.

(b) The disputed domain name <lululemon.in> is:

(i) Similar to the Complainant's prior registered trade mark Lululemon and

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(ii) Similar to the Complainant's domain name www.lululemon.com.

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.7 It is already seen that:

(a) The Complainant is the prior adopter and user of the Lululemon mark. The Complainant's Lululemon mark is well known in many countries across the globe including India.

(b) The Complainant's Lululemon mark was adopted in 2000. The first Indian registrations for the mark Lululemon was obtained in 2004. The Complainant's domain name www.lululemon.com was created on 25.3.1999. The disputed domain name <**lululemon.in**> was created on 16.05.2012.

5.8 Respondent did not register the disputed domain name until 16.5.2012. Complainant has adopted and used the mark Lululemon and a domain name containing the mark Lululemon before Respondent registered the disputed domain name <**lululemon.in**>. It is unlikely that the Respondent was unaware of existence of Complainant's trademark and domain name rights before registering the disputed domain name <**lululemon.in**>.

5.9 I have visited the web site of the Respondent [using Edge browser in Windows 10 system on 11.11.2015] under the disputed domain name <**lululemon.in**>. It has led to a web page having so many sponsored links and containing a notice prominently at the top:-

The domain lululemon.in is listed for sale. Click here to inquire about this domain name.

And a click of this link leads to another web page. This web page asks you to fill in your bid amount for the sale of the disputed domain name <**lululemon.in**>. It is obvious that the Respondent never intended to use the disputed domain name <**lululemon.in**> in connection with a bona fide offering of goods or services and has simply parked it for sale.

5.10 In the absence of any reply from the Respondent, I agree with the contentions of the Complainant:

(a) Respondent's name is Liheng. There is no indication that he is commonly known by a name, or carrying on business under a name, corresponding to the disputed domain name.

(b) Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use the distinctive mark "LULULEMON" or to register the disputed domain name.

(c) Complainant has defended its LULULEMON trademark all over the world; Respondent, on the other hand, does not appear to have registered or applied for registration of "LULULEMON" as a trademark.

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(d) The disputed domain name does not support a legitimate and functional website of Respondent. The website address <http://www.lululemon.in> directs Internet users to a "parking page" which contains pay-per-click advertisements and misleading links unrelated to Complainant, such as "Buy Lululemon", "Lululemon Clothes", "Lululemon Yoga Clothes", and "Lululemon Cheap Online". The contents/links displayed on the parked page change frequently, depending on the Internet traffic. Thus, Respondent has not made any legitimate offering of goods or services under the domain name <lululemon.in>.

(e) Monetized domain parking without the domain being associated with any e-mail or website service, cannot be said to be *bona fide* and active use of the domain, particularly when that domain almost entirely consists of somebody else's well known trademark.

5.11 Therefore, I have no hesitation to hold, for the above reason that the Respondent has no right or legitimate interest in respect of the disputed domain name <[lululemon.in](http://www.lululemon.in)>.

Respondent's domain name has been registered or is being used in bad faith.

5.12 The Complainant is the proprietor of the mark Lululemon. Complainant has been using Lululemon as a trade mark continuously since 2000. The first Indian registrations for the mark Lululemon was obtained in 2004. The Complainant's domain name www.lululemon.com was created on 25.3.1999. The products of the Complainant are available for sale in India through this active web site. Consumers in India can access the web site of the Complainant and place orders and make purchases. The disputed domain name <[lululemon.in](http://www.lululemon.in)> was created on 16.05.2012. Obviously, Complainant's rights in the Lululemon mark pre-date Respondent's registration of the disputed domain name <[lululemon.in](http://www.lululemon.in)>. The Respondent could not have ignored, rather actually influenced by, the well-known Lululemon mark of the Complainant at the time he acquired the disputed domain name <[lululemon.in](http://www.lululemon.in)>.

5.13 As seen above, the Respondent is not making any legitimate non-commercial or fair use of the disputed domain name <[lululemon.in](http://www.lululemon.in)>. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <[lululemon.in](http://www.lululemon.in)> is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered Lululemon mark. In the past, the Respondent demanded the Complainant to pay US 3890/- (about Rs.2.5 lakhs) to transfer the disputed domain name <[lululemon.in](http://www.lululemon.in)>. The Complainant refused to pay this exorbitant amount and instead has come up with this Complaint.

5.14 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's Lululemon mark.

5.15 Thus it is clearly established that Respondent registered the disputed the disputed domain name <[lululemon.in](http://www.lululemon.in)> in bad faith.

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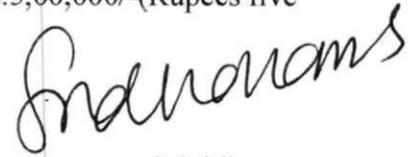
5.16 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <lululemon.in> into any fair/useful purpose. Respondent not even considered it worth responding the complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

6 **Decision**

6.1 For all the foregoing reasons, the Complaint is allowed as below.

6.2 It is hereby ordered that the disputed domain name <www.lululemon.in> be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs.5,00,000/- (Rupees five lakh only) towards costs of the proceedings.



S. Sridharan
Arbitrator