



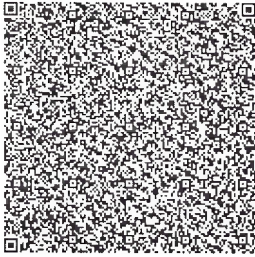
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INDIA NON JUDICIAL

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e-Stamp

Certificate No. : IN-DL206883857373240
Certificate Issued Date : 16-Nov-2016 12:03 PM
Account Reference : IMPACC (IV)/ dl881103/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL881103415897076011930
Purchased by : LUCY RANA
Description of Document : Article Others
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : LUCY RANA
Second Party : NA
Stamp Duty Paid By : LUCY RANA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry – National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <LUMENPLUSLED.IN>

IN THE MATTER OF:

Lumenpulse Lighting Inc.
1751 Rue Richardson,
Montreal, Quebec,
H3K1G6 Canada

Complainant

Versus

Abhay Shah
Lumenpulse Technologies
244, Gala Complex
Mumbai – 400080,
Maharashtra, India
Email: lumenpulselighting@gmail.com

Respondent

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.

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1. **The Parties:**

The **Complainant** in this arbitration proceeding is Lumenpulse Lighting Inc. of the address 1751 Rue Richardson, Montreal, Quebec, H3K1G6 Canada.

The **Respondent** in this arbitration proceeding is Abhay Shah, Lumenpulse Technologies, 244, Gala Complex, Mumbai – 400080, Maharashtra, India.

2. **The Domain Name, Registrar and Registrant:**

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <lumenplusled.in> with the .IN Registry. The Registrant in the present matter is Abhay Shah and the Registrar is Trunkoz Technologies Private Limited d/b/a OwnRegistrar.com.

3. **Procedural History:**

The arbitration proceeding is in accordance with the .IN Domain Name dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated October 19, 2016, sought consent of Mrs. Lucy Rana to act as the Sole arbitrator in the matter. The Arbitrator informed of its availability and consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure on the same day.

In accordance with Rules 2(a) and 4(a), NIXI vide email dated October 25, 2016, notified the Respondent of the filing of the complaint and the appointment of the Arbitrator for adjudicating upon the disputed domain name <lumenplusled.in>.

The Arbitrator received the Complaint dated September 30, 2016, from NIXI on October 26, 2016.

Thereafter, the Arbitrator sent a notice to the Respondent vide email on October 31, 2016, informing that copy of this complaint along with annexures has already been forwarded to



the Respondent by the .IN Registry and granting the Respondent a period of 14 days **(Fourteen Days)** from the receipt of the notice to file its response to the Complaint in both hard as well as soft copy.

NIXI had also sent the hard copy of the said complaint via courier at the given address of the Respondent and the said complaint has been received by the Respondent on October 26, 2016.

The Respondent vide email dated November 15, 2016, requested for an additional time period of 7 days to respond to the Complaint as filed on medical grounds.

In the interest of justice the requested time period was granted to the Respondent thereby allowing him to file his response by November 23, 2016.

However, the Respondent failed to file reply within the extended time period.

On November 24, 2016, the Respondent's counsel requested for further extension of 3 days to file a suitable reply.

Thereafter, the Complainant's counsel vide email dated November 25, 2016, informed the Arbitrator that the Complainant had sent the Respondent a cease and desist notice which was not responded to, though acknowledged in a telephonic conversation. Further the Complainant filed a suit for trademark passing off, and the Honorable High Court of Bombay passed an order against the Respondent which was served on them, accepted and yet they continued to disregard the order, which restrained them from using the trademark LUMENPULSE or any deceptively similar mark. Thereafter the Complainant filed a UDRP Complaint which the Respondent failed to respond to [and the domain was transferred to the Complainant].

Vide email dated November 25, 2016, the Arbitrator informed the parties that upon expiry of the non extendable deadline of November 23, 2016, the award as passed has been reserved and the Arbitrator shall proceed with the arbitration proceedings on the basis of the material submitted and put on record by the Complainant.



1. Factual Background

The Complainant submits that the relevant trade mark in the present proceedings is LUMENPULSE which the Complainant uses in connection with the design, development, manufacturing and sales of a wide range of high performance and sustainable specification-grade LED lighting solutions for commercial, institutional and urban environments. The complainant further states that they were incorporated in Canada in 2008. The Complainant further states that its founder Francois Xavier Souvay bought over a company called Luxtec which was in the business of distributing LED lights and spent several years in research and development of lighting solutions in the field of LED lighting. The Complainant further submits that in 2008 based on the research and the expertise that Mr. Souvay had gained the Complainant was incorporated with the trading name Lumenpulse Lighting Inc. The Complainant submits that it has its business operations in several jurisdictions of the world including its headquarters at United States, Boston, Massachusetts, EMEA headquarters in London, United States, Southeast Asian headquarters at Singapore as well as offices in Paris, France, Manchester, United Kingdom.

The Complainant states that the Complainant has been using the LUMENPULSE trade mark since at least early 2008 and owns multiple trade mark registrations for the LUMENPULSE trade mark around the world. In this regard the complainant has also annexed its trade mark certificates as **Annexure C**.

The Complainant has also provided a list of trade mark registrations for the mark LUMENPULSE across the world:

Country	Application / Registration No.	Class	Status
United States of America	4,071,210	11	Registered
United States of America	4,154,206	9	Registered
China	10943791	9	Registered
China	10250994	11	Registered

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Community Trade Mark	009701392	9, 11, 42	Pending
Canada	TMA844,412	N/A	Registered
Canada	TMA825,034	N/A	Registered
Singapore	T1116354G	11	Registered
Hong Kong	302122802	11	Registered
Australia	1460772	11	Registered
Brazil	831267690	11	Published
Brazil	840133332	9	Published
India	2335105	9	Pending
India	2241514	11	Pending
Japan	2014-026210	9, 11	Pending

Additionally, the Complainant has also provided a list of trade mark applications in India which are pending registration, details of which are copied below:

APPLICATION NUMBER	FILING DATE	MARK TEXT	CLASSES
2241514	November 29, 2011	LUMENPULSE	11
2311999	April 9, 2012	LUMENLINE	11
2335105	May 21, 2012	LUMENPULSE	9
2370352	July 26, 2012	LUMENIRIS	9, 11
2770011	July 08, 2014	LUMENOPTIFLEX	11
2770010	July 08, 2014	LUMENCOOL	11
2770012	July 08, 2014	LUMENSMART	9, 11
2770009	July 08, 2014	LUMENDRIVE	9, 11
2870441	December 24, 2014	LUMENPULSE ALPHALED	9, 11
2870440	December 24, 2014	LUMENALPHA	9, 11

The complainant further states that it owns and operates the domain name www.lumenpulse.com since 2006. The Complainant states that the profile and popularity of its products under the **LUMENPULSE** trade mark has been continuously increasing

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since the date of its adoption and use of the trade mark. By virtue of such continuous use of the said trade mark, the Complainant's trade mark is identified by the purchasing public exclusively with the Complainant which has acquired enormous goodwill across the globe.

The Complainant also states that they have been awarded with several accolades over the years for the design and quality of products which includes Red Dot Award, LFI Innovation Award, two Next Generation Luminaires Awards, and several PIA Awards from Architectural SSL magazine and recognized as a Top New Growth Company in Profit Magazine's Hot 50 in 2011.

The Complainant further states that they initially encountered the Respondent in the year 2014 when the Respondent registered the domain name <**www.lumenpulselighting.com**> which not only incorporated the Complainant's **LUMENPULSE** trade mark in the domain but also listed products which are identical to that of the Complainant. The Complainant states that a Cease and Desist Notice was sent to the Respondent to cease all use of the said trade mark. Further, the Complainant also states that they filed a suit for trade mark infringement (CS. OS 812 of 2015) along with an application for interim injunction (Notice of Motion 2154 of 2015) before Bombay High Court in August 2015. The Complainant submits that on October 19, 2015, the Bombay High Court granted an ex-parte interim injunction against the Respondent for the use of trade mark LUMENPULSE and any deceptively similar trade mark. The Complainant have also annexed copies of the High Court's order along with the Complaint and has marked the same as **Annexure D**.

The Complainant also states that the Complainant had filed complaint with the National Arbitration Forum for the recovery of domain name **lumenpulselighting.com** registered by the Respondent under UDRP which was awarded in favour of the Complainant on December 20, 2015. The Complainant has also annexed a copy of the award as passed and marked it as **Annexure E**.

The Complaint further states that despite injunction against the Respondent vide order of the Hon'ble High Court of Bombay, the Respondent registered the disputed domain **www.lumenplusled.in**.

2. Parties Contentions



A. Complainant

The Complainant submits as follows:

1. The disputed domain name is identical or confusingly similar to a name, trade mark or services mark in which the Complainant has rights.

The Complainant states that it is the registered proprietor of the trade mark **LUMENPULSE**. Further, the Complainant also states that its trade mark is distinctive and well-known. The Complainant further states that the Respondent's domain name contains the identical LUMENPULSE trade marks and has annexed a copy of the disputed domain's website as **Annexure F**. The Complainant states that the fact that the Respondent has registered the disputed domain name which contains the registered trade marks owned by the Complainant leads to the inevitable conclusion that the disputed domain name is confusingly similar to LUMENPULSE trademark, as well as the Complainant's domain name www.lumenpulse.com.

The Complainant has also referred to case laws in this regard such as *M/s Satyam Infoway Ltd. vs M/s Sifynet Solution (P) Ltd. Jt. (2004 (5) SC 541*, wherein it was held that, domain name has all characteristics of trade mark. As such principles applicable to trade mark are applicable to domain name also. In modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. In *LEGO Juris A/S v. Robert Martin, INDRP/125 (2010)*, it was held that incorporating a trade mark in its entirety, particularly if the mark is internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to Complainant's registered mark. Further in *Starbuck Corporation vs. Mohanraj, INDRP/118 (2009)*, Domain name wholly incorporating a Complainant's registered trade mark may be sufficient to establish identity or confusing similarity, despite addition of other words to such marks.

The complainant further states that the malafide intention of the Respondent is evident from the fact that the disputed domain name incorporates **LUMENPULSE** trade mark in respect of similar goods.

The complainant further referred to *Google, Inc. vs. Mr. Gulshan Khatri INDRP/189 (2011)*, wherein it was held that the act of registering a domain name similar to or identical to a famous trade mark is an act of unfair competition whereby the domain name registrant takes unfair advantage of the fame of the Complainant's trade mark to either increase traffic to the disputed domain name, or to seize a potential asset of the trade mark owner in the hope that the trade mark owner will pay the requirement to relinquish the domain name.

The Complainant states that the disputed domain name is directed to page that has identical products as listed on the Complainant's official website www.lumenpulse.com. Thus, the Complainants states that the Respondent is using the disputed domain name to create an impression that the said website originates with the Complainant, or is affiliated to, or endorsed by the Complainant.

2. **The Respondent has no rights or legitimate interests in respect of the disputed domain name**

The Complainant states that the disputed domain name is confusingly similar to **LUMENPULSE** trade mark in which Complainant enjoys substantial goodwill. The Complainant further states that the Respondent has no right or legitimate interest with respect to its use of the disputed domain name

The Complainant further states that the Respondent has been notified by the Complainant of their trade mark rights, through cease and desist notices sent and a suit for infringement both of which the Complainant failed to contest.

In this regard the Complainant has referred to *Morgan Stanley vs. Keep Guessing, INDRP/24 (June 27, 2007)* wherein it was held that the Respondent has failed to show that he has a right or legitimate interest in the domain, as he is neither known by the domain name, nor is it his personal name. In *Kennametal Inc. vs. Guechi Raouf, INDRP/582 (March 18, 2014)* it was held that the Respondent neither has any registered trade mark in his name containing the disputed domain name, nor has been commonly known by the disputed domain name, thus affirmatively establishing the claim that he does not have any legitimate interest in the disputed domain name.

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The Complainant further states that the Respondent sells similar products as the Complainant. The Respondent has added the suffix LED along with the trade mark LUMENPULSE so as to encash on the reputation of the Complainant.

The Complainant further states that the Respondent is not authorized by them to use the trade mark LUMENPULSE.

The Complainant states that the Respondent had registered the trade mark in the hope and expectation that the web users searching for the Complainant, would instead come across the disputed domain's site.

3. **The disputed domain name has been registered or is being used in bad faith.**

The Complainant states that by using the disputed domain name, the Respondent has intentionally attempted to attract for commercial gain, internet users to the disputed domain's website by creating likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the disputed domain name.

The Complainant states that the Respondent must be well aware of its prior registered and famous trade mark **LUMENPULSE** and therefore adopted the said disputed domain name with a bad faith to attract internet users by exploiting the fame of a well-known trade mark of the Complainant.

The Complainant states that registration of a well known trade mark in a domain name, of which the Respondent must reasonably have been aware, constitutes opportunistic bad faith. The Complainant has also referred to case laws upholding the said contention such as *LEGO Juris A/S v. Martin INDRP/125(2008)* (Where a domain name is found to have been registered with an intention to attract internet users by exploiting the fame of a well known trade mark, it constitutes bad faith registration.""). The registration of a well-known trade mark of which the respondent must reasonably be aware of is in itself sufficient to amount to bad faith; *Coldwell Banker LLC v. JIAAI, EAC International Co. Ltd. Australia INDRP/548*.

The Complainant further states that as the Respondent has copied Complainant's website, it is clear that Respondent is familiar with the Complainant, its website and its well-known trade mark. Registration of a well-known trade mark in a domain name, of which Respondent must reasonably have been aware, constitutes opportunistic bad faith; *Microsoft Corporation vs. Montrose Corporation, WIPO Case No. D2000-1568*, the incorporation of a well-known trade mark in to a domain name by the registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith.

The Complainant further states that the Respondent is very well aware of the injunction granted by Bombay High Court against them for the use of the trade mark **LUMENPULSE** or any deceptively similar trade mark, therefore, registration of the disputed domain name, after three months of the order of injunction amounts to contempt of court which the Complainant is pursuing and indubitably amounts to bad faith.

The Complainant also submits that the Respondent has failed to comply with Para 3 of the INDRP Rules which requires that it is the responsibility of the Respondent to ensure before registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights (*AB Electolux v. Liheng INDRP/700 (August 03, 2015)*).

B. Respondent:

Despite the receipt of soft copy as well as hard copy of the complaint and adequate notification from the Arbitrator, the Respondent has not filed any response and submissions to the complaint. Therefore, the Arbitrator has proceeded with the Arbitration proceedings on the basis of the material submitted and put on record by the Complainant.

C. Discussion and Findings:

In the present circumstances, the decision of the Arbitrator is based on the documents as filed by the Complainant.



After perusing the Complaint and annexures as filed, the arbitrator is of the view that the Complainant has satisfied all the three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e., :-

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

i. **The domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights**

(Paragraph 4 (i) of .IN Domain Name Dispute Resolution Policy)

The Complainant is the proprietor of the trade mark **LUMENPULSE** and variations thereof, in various jurisdiction of the world including India.

It is well established that trade mark registration/application is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trade marks has established that it has rights in the trade mark **LUMENPULSE** in numerous jurisdiction of the world.

The Complainant also asserts that the adoption and use of trade mark **LUMENPLUS** confusingly similar to Complainant's **LUMENPULSE** trade mark with the mere addition of the suffix LED in respect of similar products/services with that of the Complainant, clearly shows that the Respondent has done so in a bid to encash on the reputation of the Complainant.

The disputed domain name **<lumenplusled.in>** is confusingly identical/similar to the registered trade mark of the Complainant **LUMENPULSE** and completely incorporates the said registered trade mark of the Complainant. It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed name incorporates the Complainant's trade mark such as *Kenneth Cole productions v. Viswas Infomedia INDRP/093*. Therefore, it is observed that the

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domain name <lumenplusled.in> is similar to the Complainant's registered trade mark LUMENPULSE.

Since .IN is an essential part of any top level domain name, it does not distinguish the Respondent's domain name <lumenplusled.in> from the Complainant's trade mark LUMENPULSE. This has also been held in prior panels such as *Lego Juris A/s v. Robert martin INDRP/125* and *AB Electrolux v. GaoGou of Yerec, INDRP/630*.

Therefore, the disputed domain name <lumenplusled.in> is confusingly similar/identical to the registered trade mark of the Complainant and the Complainant has satisfied the requirement paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name**

(Paragraph 4(ii); paragraph 7 of .IN Domain Name Dispute Resolution Policy)

The Complainant submits that the disputed domain name incorporates the mark LUMENPLUS which is confusingly and deceptively similar/identical to Complainant trade mark LUMENPULSE in which Complainant enjoys substantial goodwill. Further the Respondent has considerably failed to contest/rebut the Cease and Desist notices sent and the suit for infringement filed by the Complainant and therefore has no legitimate rights to the trade mark LUMENPULSE.

Further, the Respondent had previously registered the domain <lumenpulselighting.com> wherein also the trade mark LUMENPULSE of the Complainant formed a prominent part. Thereafter, the Complaint filed a complaint with the National Arbitration Forum under UDRP against the Respondent for the recovery of domain name <lumenpulselighting.com>. The award in the said matter was passed in favour of the Complainant.

The Complainant has no relationship with the Respondent and has not permitted or licensed the Respondent to use or register the disputed domain name. Further the

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Respondent is using the disputed domain name **lumenplusled.in** for identical goods and services and the same is phonetically, visually, confusingly and deceptively similar/identical to Complainant's prior adopted an registered trade mark **LUMENPULSE** and this would mislead public to believe that the Respondent and the domain name is associated, affiliated and connected with the Complainant, when it is not so. Further, in *Consorzio del Prosciutto di Parma of Via Marco dell' Arpa v. Jim Muller, INDRP/218*, it was held that "misleading users by incorporating other's trade marks in a domain name gives false impression to users and does not constitute a bonafide offering of goods and services."

Use of such confusingly and deceptively similar/identical mark by the Respondent is likely to mislead and misrepresent general public and members of trade as to the source, sponsorship, affiliation or association of the activity being carried on through the website. The Respondent's website is not bonafide as the Respondent is using the disputed domain name to divert/redirect internet users seeking Complainant's goods to its own website.

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent is not authorized or permitted to use the trade mark **LUMENPULSE** or any deceptively similar trade mark such as **LUMENPLUS** and therefore, the Respondent has no rights or legitimate interest in the domain name **<lumenplusled.in>** and conditions under paragraph 4(ii) and paragraph 7 of .IN Domain Name Dispute Resolution Policy, have been satisfied.

iii. **The Registrant's domain name has been registered or is being used in bad faith.**

(Paragraph 4(iii) and paragraph 6 of the .IN Policy)

The disputed domain leads user to a page that offers identical products or services with that of the Complainant. The Respondent intends to benefit by creating an impression that the Respondent is in some manner related or connected to the Complainant.

Further the Respondent is aware of an injunction order passed against them for the use of the trade mark **LUMENPULSE** or any deceptively similar trade mark, therefore, registration of the disputed domain, after three months after the order of injunction of the Bombay High Court clearly shows the malafide intention of the Respondent to use the confusingly similar/identical mark to deceive and mislead consumers in to thinking that the Respondent's business is related, affiliated and connected with the Complainant.

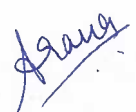
The view thereof, the Arbitrator concludes that the Complainant has proved the requirements under paragraph 4 (iii) and paragraph 6 of the .IN Domain Name Dispute Resolution Policy.

Despite being given adequate notification the Respondent has not filed any reply till date hence, they are deemed to be admitted by them. Therefore, in absence of any response received from the Respondent, the Arbitrator has proceeded with the award ex parte. (As held in *Intercontinental Corporation v. Jaswinder Singh*, INDRP/265 and *Park Hospitality Worldwide LLC v. Kristin Frakfurter*, INDRP/659)

D. Decision:

Based upon the facts and circumstances and further replying on the documents as annexed with the Complaint, the Arbitrator is of the view that Complainant has statutory and proprietary rights over the trade mark **LUMENPULSE** and variations thereof. The Complainant has been able to prove that:

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



The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**lumenplusled.in**> to the Complainant. The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana

Sole Arbitrator

Date: 28th November 2016

Place: New Delhi, India