

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100



सत्यमेव जयते

ONE
HUNDRED RUPEES

भारत INDIA

INDIA NON JUDICIAL



मिलनाडु TAMILNADU

39048

21.07.15

SRIDHARAN

CHENNAI

AV 847145
R. RAGUPATHI

STAMP VENDOR, L/No. C3/4839/83
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: 19th July 2015

Nalli Chinnasami Chetty, Chennai

...

Complainant

Versus

Mr.Nalli Sambasivam, Mumbai

...

Respondent

Nallarams

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Mr.Nalli Sambasivam, Mumbai	...	Respondent

1. The Parties

- 1.1 The Complainant, Nalli Chinnasamy Chetty, is a registered partnership firm having its office at 9 Nageswaran Road, T Nagar, Chennai 600017. The Complainant is represented by Mr. A. Vijay Anand, advocate of **De Penning & De Penning** at 120 Velachery Main Road, Guindy, Chennai – 600 032.
- 1.2 Respondent is Mr. Nalli Sambasivam of Nalli's Silk Saree Centre at 401 Telang Road, Concerns Building, Opp Shankara Mutt, Mathunga East, Mumbai 400019. The Respondent is represented by Mr.Gopal Trivedi and Ms Amrit Sandhu, advocates of **Chadha & Chadha** at 37, Akashneem Marg, DLF Phase II, Gurgaon, Haryana -122002, India

The Domain Name and Registrar

- 1.3 The disputed domain name <www.nalli.org.in> created on 18.09.2013 is registered with the Registrar, Trunkoz Technologies Private Limited (R85-AFIN).

2. Procedural History

- 2.1 On 15th May 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 22nd May 2015, I received hardcopy of the Complaint.
- 2.3 On 23rd May 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.
- 2.4 On the same day, 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. It is mentioned at Para 11.13 of the Compliant that the appeal filed by the Respondent against the order dated 25th July 2009 of the WIPO panelist Ms Harini Narayanasamy in respect of domain name www.nallis.com is pending for disposal before the Mumbai High Court. I asked the Complainant to inform the status of the said appeal and details of the interim order, if any passed therein within 7 days.

Sridharan

- 2.5 On 29th May 2015, I received soft copy of the Complaint from the Complainant. The Complainant informed me that the appeal filed by the Respondent was pending before the Mumbai High Court and no interim order was passed in the said appeal.
- 2.6 I understood from the mail that an appeal is still pending and the rights of the parties to the expression "Nalli" are not yet settled. In this background, I wanted to ascertain whether the Complainant should wait till the appeal is decided or should I resolve the current dispute on merits.
- 2.7 On 6th June 2015, I received the Respondent's Response to the Complaint.
- 2.8 On 8th June 2015, the Complainant made a request for personal hearing. I granted a personal hearing. The hearing was held on 21.06.2015 in Chennai to decide the preliminary issue whether the current arbitration proceedings must be continued in view of the appeal of the Respondent against the WIPO arbitration decision dated 25th July 2009 of the WIPO panelist Ms Harini Narayanasamy in respect of domain name www.nallis.com is pending for disposal before the Mumbai High Court.
- 2.9 Both the parties attended the hearing. On 22nd June 2015, I informed by email my decision to continue with the current arbitration proceedings. I have prima facie found that:
- a) The Complainant and the Respondent have been using the expression Nalli in respect of their products.
 - b) As regards the proceedings pending before the Mumbai High Court, it is a declaratory suit for the domain name www.nallis.com and no interim order is granted in favour of the Respondent.
 - c) Respondent is not using any web site to promote and or sell its products.
- 2.10 As regards the web site, it is the Complainant who owns and uses active web sites to promote/market its products and the Respondent does not own / use any web site for his business. Therefore, I am prima facie of opinion that I can proceed with the current arbitration proceedings. The parties were further informed that this is only a prima facie opinion and it is open to the parties to raise this issue, if required, again in the main arbitration proceedings.
- 2.11 Another personal hearing was held on 28.06.2015 at NIXI office, Delhi at the request of the Respondent. Both the parties attended the hearing and advanced detailed arguments.
- 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 sent NIXI all pleadings / documents that I received from the Parties.

3. Factual Background

A Complainant

- 3.1 The Complainant, Nalli Chinnasamy Chetty was established in the year 1928. Mr. Nalli Kuppuswami Chetti and his son N.K. Ramanathan are the present partners of the said firm.
- 3.2 Headquartered in Chennai the Complainant is a leading manufacturer and merchant dealing in clothes through their famous showrooms all over the world. With approximately 87 years of business in Chennai and several years of business in other parts in India and worldwide, the Complainant combines global expertise and operations with local knowledge in the market. They can pride itself for being a pioneer in revolutionizing the concept of large-scale retailing and hence enjoys immense admiration and popularity amongst the general public and people in the trade. The Complainant is the prior adopter and original proprietor of the trade mark NALLI.



- 3.3 The Complainant is also doing business through their website www.nalli.com. The said domain name was registered on 28/04/1998 and the associated website was launched in the same year. The registration details of the domain name are at Annexure - D. This domain name is widely being accessed by the general public and has gained popularity in respect of the goods and services internationally including India. The said website gives the Complainant exists and prospective customers varied information on the Complainant's goods and related services. Further, the said website offers online sales of the goods emanating from the Complainant under the trade mark NALLI to facilitate the purchase of goods from any parts of the world.
- 3.4 The telephone bill issued by Bharat Sanchar Nigam Limited which shows the installation date of telephone for Complainant M/s. Nalli Chinnaasami Chetty as 27 March 1947 is at Annexure - E. The cheque dated 27 February 1953 issued in favour of the Complainant M/s. Nalli Chinnaasami Chetty by the then President of India Dr. Rajendra Prasad, who was an esteemed customer of the Complainant is at Annexure - F.
- 3.5 By virtue of long, continuous and extensive use of the mark NALLI for more than eight decades, a huge impact has been created in the minds of the consumers. The trade mark NALLI has developed a loyal customer base, which is associated with the service levels of the Complainant and the high quality goods emanating therefrom. The invoices showing the use of NALLI as a dominant part of the Complainant's trade mark/ trading style/ trade name is at Annexure - G.
- 3.6 The Complainant has spent enormous amount in popularizing the trade mark NALLI by way of advertisement campaigns in various media including website, radio, T.V., magazine, newspapers, pamphlets, brochures, hoardings, banners, diaries, card boards, etc. Further, several articles have been published about the Complainant in various newspapers and magazines. A copy of few of the above said promotional materials and articles about the Complainant are at Annexure - H. The invoices raised by the advertising agency for promoting the mark NALLI in various newspapers are produced at Annexure - I. Recognizing Dr. Nalli Kuppaswami Chetti's patronage to arts and culture, the Tamil Nadu Government has presented him with the title, KALAIMAMANI. Further, Dr. Nalli Kuppaswami Chetti has also been awarded the prestigious PADMASHRI award from the then President of India Dr. Abdul Kalam for his contribution to the national trade and industry.
- 3.7 The Complainant has affected large-scale retail service in India and in other jurisdictions for the goods predominantly falling in classes 14, 24 and 25 using the trade mark NALLI. Considerable time, money and effort have been expended in building the brand value associated with the said trade mark. Hence, the Complainant has become the exclusive proprietor of the said well-known trade mark in India and several countries abroad. Messages given by various Ministries of the Government of India recognizing the well-known status of the mark NALLI on the occasion of opening of our showroom at Bombay is at Annexure - J. Due to the superior and high quality of a wide range of goods, the said trade mark NALLI has gained dedicated customers of all age groups in India and abroad. The ISO 9001:2000 certificate awarded to the Complainant is at Annexure - K. An approximate year-wise sales turnover and advertisement expenses in respect of the trade mark NALLI duly certified by a Chartered Accountant is at Annexure - L.
- 3.8 The Complainant has obtained registrations of the trade mark NALLI in India and the certificates issued in their favour along with the renewal certificates are marked at Annexure - M. The Complainant has applied for and registered the trade mark NALLI and its variants in several countries including India. Particulars of few registered trade mark of the Complainant are given herein below:

COUNTRY	TRADE MARK	NUMBER	CLASS	REGISTERED & RENEWED UP TO
India	NALLI	472754	24	27 th May 2018

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COUNTRY	TRADE MARK	NUMBER	CLASS	REGISTERED & RENEWED UP TO
India	NALLI	903811	25	16 th February 2020
European Union	NALLI	EU1373786	24 & 25	2 nd November 2019
European Union	NALLI	EU005690839	14,20, 24	15 th February 2017
United States	NALLI	3828371		

- 3.9 Further, the said mark NALLI has been registered by the Complainant in several countries under the provisions of the respective Trade Marks Laws. In view of the innumerable tourists, visitors, businessmen, executives, officials, foreign delegates, ministers etc. traveling to these countries, immense cross border reputation has percolated into several countries world over. Copy of few registration certificates and relevant pages taken from the website of the respective Trade Marks Registry for the trade mark NALLI in the name of the Complainant in foreign countries is at Annexure - N.
- 3.10 The said trade mark NALLI has in particular achieved extensive reputation amongst the customers and traders in India and in other countries such as UK, USA, Canada, Australia, Singapore, Mauritius, etc. in respect of the goods and retail services. In view of the high quality of goods and long and continuous presence in India and world over, the trade mark NALLI is a well-known mark within the definition of the Trade Marks Act, 1999.
- 3.11 By virtue of long, continuous and extensive sales in India and many countries abroad the mark NALLI has gained tremendous reputation and goodwill amongst the trade and public. The Complainant has spent a considerable amount of money in promoting its house mark NALLI worldwide. Further, they have participated in various events, exhibitions etc. national and internationally since 1992 wherein some of which were sponsored by them.
- 3.12 The Complainant is the first to conceive, adopt, use and promote the mark NALLI in respect of their goods and services. The Complainant is also the first to conceive and use the domain name www.nalli.com. On account of extensive usage of the mark NALLI, the said mark has been identified solely and exclusively with the Complainant and none else. Further, www.nalli.com has gained a huge customer base internationally and is identified, associated and recognized only with the Complainant. It is stated that the use of the keyword 'Nalli' in any leading search engine automatically throws the web page of the Complainant among the leading hits. A printout of the search result procured from the famous search engine google.com collectively at Annexure - O. Therefore, adoption and/or use of the mark NALLI by others would amount to not only dilution of the Complainant's rights over the distinct mark and be detrimental to the Complainant but also would result in confusion and deception by any unauthorized use by others. Such unauthorized usage of the Complainant's mark NALLI, and domain names comprising of NALLI by others would also amount to infringement and passing off and is liable to be prevented in Court of law.
- 3.13 The Complainant also holds various 'NALLI' domain name registrations at International level and domestic level. Details of the said domains are as follows:

SL. NO.	DOMAIN NAME	Created on
1.	www.nalli.com	28 th April 1998

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2.	www.nallijewelers.com	2 nd August 2012
3.	www.nallisilks.com	5 th June 1998

- 3.14 The word NALLI forms a predominant part of the firm name of the Complainant and other entities belonging to Nalli Group. The Complainant and the other entities have been incorporated to carry on diverse business. The word 'Nalli' was adopted as a trade mark and has been extensively used in respect of the products manufactured by the entities belonging to Nalli Group.
- 3.15 It is relevant to mention that earlier the respondent with a malafide intention had adopted a domain name i.e. www.nallis.com that is almost identical to the Complainant's domain name www.nalli.com. The Complainant immediately took action against the same by filing an URDP complaint with the World Intellectual Property Organisation ("WIPO") in the year 2009 (M/s. Nalli Chinnasami Chetty Vs Nalli's Silks Sari Centre; Case No. D 2009-0664). The Arbitration Panel of WIPO has considered the merits of the pleadings and documents filed by both parties regarding said domain name and passed an order on July 25, 2009 in favour of the Complainant and ordered that the domain name www.nallis.com be transferred to the Complainant. A copy of the order is at Annexure - P. The Respondent elected to challenge the said order before the Hon'ble High Court of Mumbai and the same is currently pending for disposal.
- 3.16 On account of prior adoption and extensive usage, the trade mark NALLI is exclusively associated with the Complainant and none else. Further, the mark NALLI has gained a huge customer base and is identified, associated and recognized only with the Complainant. Therefore, adoption and/or usage of the mark NALLI by others would amount to not only dilution of the Complainant's rights over the distinct mark but also would result in confusion and deception by any unauthorized usages of others. Such unauthorized usages of the Complainant's mark NALLI and domain names comprising of 'NALLI' by others would also amount to infringement and passing off actions and is liable to be prevented in Courts of Law. The activity of the disputed domain holder is nothing but an act of cyber squatting.
- 3.17 The Complainant conducted a search on 4th December 2014 in the official website of the .In Registry. The search revealed that the Respondent i.e. Mr. Nalli Sambasivam, Nalli's Silk Saree Centre, 401 Telang Road, Concerns Building, Opp Shankara Mutt, Mathunga East, Mumbai 400019, Maharashtra, India is the current Registrant of the disputed domain name <nalli.org.in>. It is noticed that the disputed domain name <nalli.org.in> was created on 18th September 2013. Copy of the said search report is annexed at Annexure - A. Printout of the web pages pertaining to the disputed domain names <nalli.org.in> are at Annexure - B. The disputed domain name was earlier registered in the name of one Mr. Hitesh Gangani. The Complainant through their attorney caused a legal notice inter alia asking him to immediately discontinue the use of the disputed domain name <nalli.org.in> and to transfer the same to the Complainant on 28th October 2014. Upon receipt of the notice, the registrant detail of the disputed domain name <nalli.org.in> was changed to the present Respondent.


B Respondent



- 3.18 The Respondent is the owner and registrant of the domain www.nalli.org.in. The said domain was purchased by Respondent through one of his service providers Mr. Hitesh Gangani. The respondent purchased only the domain name www.nalli.org.in and no hosting was purchased, hence the said domain name displays the default page, on which the Respondent has no control.
- 3.19 Nalli is the surname of the respondent. Before proceeding it is pertinent to note the Family history of the complainant and respondent. Late Shri Nalli Chinnasamy Chetty, had two wives, Late Smt. Munniammal and Late Smt. Lokammal. From the first wife, Mr. Nalli Chinnasamy Chetty had 3 sons Mr. Narayanasamy, Mr. Ramasamy and Mr. Rangasamy. He also had 3 daughters from First wife. From the second wife Mr. Nalli Chinnasamy Chetty had 6 Sons, Mr. Krishnasamy, Mr. Duraisamy,


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Mr. Ponnusamy, Mr. Muthusamy, Mr. Kandasamy and Mr. Kumarasamy. Mr. Nalli Kuppasamy Chetty is son of Mr. Narayanasamy and Mr. Nalli K Ramanathan, is grandson of Mr. Narayanasamy. It is noteworthy that Respondent's Father Mr. Nalli Duraisamy was second son of second wife of Sh. Nalli Chinnasamy Chetty and Respondent is grandson of Sh. Nalli Chinnasamy Chetty. It is pertinent to note that Respondent's Father Mr. Nalli Duraisamy, started a firm as "M/s. Nalli Weaving Centre" in his wife's name (i.e. mother of Respondent) in 1969.

- 3.20 The Firm Nalli Weaving Centre started its operation in Kanchipuram in 1969 with manufacturing and trading of silk sarees and textile piece goods under the name and style of NALLI. The said firm started using the name "Nalli" per se, distinctive and different from trade mark "Nalli Chinnasamy Chetty" of the complainants. The said businesses have been in operation, continuously and uninterruptedly since the said date and over the years have grown leaps and bounds to become one of the major manufacturers, wholesale & retail traders and exporters of silk sarees and various textile goods. Since then, the said trade mark Nalli has been openly, continuously and extensively used by the Respondent for and in relation to the said goods. Respondent started another firm in 1981 under the name Nalli's Silk Sari Center in Mumbai which has also been in operation, continuously and uninterruptedly since said date and over the years has grown leaps and bounds. Copies of the certificate/renewal certificates of registration of Respondent's under the Shops and Establishment Act are at Exhibit A.
- 3.21 Respondent has widely advertised his marks and business in various parts of world through all medias available. Respondent has not only carried the said business under the said trade mark in India but has also taken its goods beyond national boundaries by way of exports and direct presence in international market through its sister concerns. One such company was opened up as sister concern in Singapore in the name of Nalli Pte. Ltd.
- 3.22 The complainant and sister concern of the Respondent viz. M/s Nalli Pte. Ltd. has entered into a coexistence agreement in respect of use of their respective marks in territory of Singapore. Copy of said settlement deed dated 8th February 1997 and affidavit by complainant dated 20th August 1992 filed in said proceedings in High Court of Singapore is at Exhibit B.
- 3.23 The Respondent has taken all care and steps to protect its distinctive trademarks Nalli / Nalli's. Details of registration of trade mark Nalli's in India and worldwide are mentioned in the table below and copies of such Trade mark and Copyright registrations are at Exhibit C.

TRADE MARK	APPLICATION NUMBER	CLASS	COUNTRY	STATUS
NALLI (word mark)	366240	24	Indian Trademark	Order of the Registrar under appeal.
	606409	12	Indian Trademark	Registered

TRADE MARK	APPLICATION NUMBER	CLASS	COUNTRY	STATUS
	607289	24	New Zealand Trademark	Registered
	T98/02254A	24	Singapore Trademark	Registered
NALLI (word mark)	As annexed	24	Nepal Trademark	Registered
NALLI's with Device	BT/T/2000/1881	24	Bhutan Trademark	Registered
As Annexed	92006200	24	Malaysia Trademark	Registered

COPYRIGHT	REGISTRATION NUMBER
	A-52994/95

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- 3.24 The Mother of Respondent, the then proprietor of Nalli Weaving Centre, Smt. Nalli Duraisami Saroja on September 17, 1980, filed application for protection of her Mark "Nalli" in class 24 for Textile Piece goods including silk and cotton sarees, dhoties, lungies etc. under application no. 366240 with a user claim since date of inception of business of Nalli Weaving centre, viz. 1969. The Complainant filed notice of opposition opposing said application vide notice of opposition dated 15.11.1993, which was duly replied by the Respondent, however the complainant decided not to file any evidence in the matter and allowed the opposition to be abandoned, which was abandoned vide order of the Registrar dated 2.11.1995. A copy of said order is at Exhibit D.
- 3.25 The said order was never appealed or challenged by the complainant and attained finality and the application number 366240 proceeded to registration. On 21.07.2000 complainant filed a rectification petition after lapse of 5 years of decision of opposition and after 20 years of the mark being in register. In the said rectification petition, vide order dated September 17, 2012, the registrar of trademarks erroneously expunged the trademark no. 366240. Aggrieved by said order an appeal has been filed by the Respondent, which is pending adjudication before IPAB.
- 3.26 The Respondent filed trademark application for mark Nalli's Silks Sari centre with device of a bust of a woman under number 606409 in class 24 in respect of silk saris and textile goods dated September 10, 1993, which was opposed by the complainant. The said opposition was dismissed and the mark proceeded to be registered subject to the condition that the Respondent no. 1 should not conduct business in the State of Tamil Nadu vide order dated 2.7.2008. The Respondent received the certificate in respect of said mark on or about 10th September 2008. A copy of registration certificate in respect of said mark has been filed with Exhibit E.
- 3.27 Complainant filed an appeal before the Intellectual Property Appellate Board against the said order of the Registrar and also filed a Miscellaneous Petition along with the Appeal praying for the direction from the Appellate Board to the Registrar of Trade Marks not to issue the registration certificate pursuant to the order dated 2.7.2008 till the disposal of the appeal. Although the order was passed in miscellaneous petition on 31st March, 2009 directing the Registrar to not to issue the registration certificate. However, the registration certificate was already issued on 06.08.2008 when the Misc. petition was pending, rendering the said order to be infructuous. Since the complainant were misquoting the said order of IPAB as final finding, Respondent no. 1 filed a writ petition before The High Court of Mumbai (being WP1719/2009) to quash said order of IPAB. The high court did not interfere with order of IPAB being an interlocutory order, however High Court categorically recorded that finding in said order are for deciding interlocutory petition and not on merits. The main appeal is still pending adjudication before IPAB.
- 3.28 As on date the Respondent (and/ or his predecessor) has been in existence and using mark Nalli for over 40 years. It is submitted that due to their long existence, Respondents have made their own goodwill and reputation among general public at large. Moreover, it is submitted that the complainant has no exclusive right over the mark 'Nalli' per se and hence prayer for any relief on the Complainant's part is uncalled for. Without prejudice to averments made earlier, it is further submitted that complainant have been aware of independent existence of Respondent for all these years.
- 3.29 Complainant filed a frivolous litigation against respondent in Mumbai High Court (Being Suit number 812/2013) alleging infringement and passing off of trade mark Nalli. The Hon'ble High Court refused to grant any ad interim relief in the matter and presently, the same is pending adjudication. This clearly shows that there is no weight in the claims of complainant over mark Nalli.

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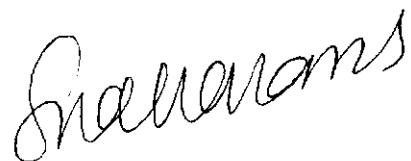
4. Parties Contentions

A Complainant

- 4.1 The Complainant is the lawful owner of the trade mark NALLI. The said trade mark endures as a symbol of quality, dependability and reliability of the products in relation to which it is used and enjoys vast reputation and enviable goodwill associated with the Complainant in several countries.
- 4.2 The disputed domain name <nalli.org.in> is nothing but a blatant imitation of the Complainant's trade mark and trade name. The Respondent is making calculated attempts to deceive the public which will lead to dilution of the reputation associated with the Complainant's business. As a result the Complainant's search engine ranking would be adversely impacted thereby directly resulting in drop of reputation and revenue that cannot be quantified by any means.
- 4.3 The disputed domain name <nalli.org.in> is identical to that of the Complainant. The very existence of the Respondent's domain name would cause the public to believe that the Respondent and their domain name is sponsored by or affiliated to the Complainant.
- 4.4 The disputed domain name <nalli.org.in> without any due cause is taking and would take unfair advantage of and /or be detrimental to the distinctive character and repute of the Complainant's mark, corporate name and domain names.
- 4.5 The disputed domain name <nalli.org.in> is liable to be prevented by Courts of Law by way of an injunction or appropriate order thereby protecting the Complainant's Intellectual Property Rights.
- 4.6 The Respondent has registered the disputed domain name <nalli.org.in> much subsequent to the Complainant's conception, adoption and use of the trade mark NALLI. Further, the disputed domain name <nalli.org.in> has been created subsequent to the launch of the domain name www.nalli.com by the Complainant.
- 4.7 The Respondent is not the bonafide owner, honest adopter or true/actual user of the disputed domain name <nalli.org.in> and created it being fully aware of the Complainant's trade mark NALLI and their domain names so as to trade and benefit from the Complainant's repute and goodwill.
- 4.8 The corporate name, trademarks and domain names of the Complainant are highly distinctive on account of their extensive use which has qualified NALLI under Trade Marks Law. Under the circumstance, if the Respondent is allowed to proceed to operate the website under the disputed domain name <nalli.org.in>, the potential customers would be induced to:
- (a) Subscribe to the services of the impugned website and deal with Respondent believing it to be licensed or authorized by the Complainant;
 - (b) Believe that the Respondent is carrying on activities that have been endorsed by the Complainant;
 - (c) Believe that the Respondent is another business entity of the Complainant;
- 4.9 The Complainant had adopted and registered the domain name 'www.nalli.com' way back in the year 1998 for the purpose of its business and also for providing information to its potential customers around the world. The disputed domain name <nalli.org.in> has been registered by the Respondent on 18th September 2013, which is more than 15 years of the adoption and use of the domain name 'www.nalli.com' by the Complainant. At this time, the Complainant had already established considerable reputation in the trade mark 'NALLI' and had been actively using the website 'www.nalli.com'.

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- 4.10 On account of the long and consistent use of the trade mark NALLI, it is stated that it has attained certain distinctiveness and has become famous to be associated solely and exclusively with the Complainant worldwide including in India. So far as use of the trade mark NALLI is concerned, the Complainant has been continuously using their said well-known trade mark for more than 80 years. Whereas the disputed domain name was created by the Respondent only on 18th September 2013 which is much subsequent to the adoption and use of the trade mark NALLI by the Complainant.
- 4.11 The disputed domain name <nalli.org.in> clearly incorporates the trade mark NALLI of the Complainant in its entirety without any addition or deletion. Therefore, it is beyond doubt that the disputed domain name <nalli.org.in> is identical to the said trade mark of the Complainant. In this regard the Complainant rely on the decision of this Hon'ble Registry passed in the case of *Indian Hotels Company Limited Vs. Mr. Sanjay (gingerhotels.co.in) Jha, INDRP case No. 148 of 27th September 2010. Thereby it was held that a domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.*
- 4.12 The Respondent is not or has never been known by the name NALLI or by any confusingly similar name and assuming but not admitting that even if the Respondent has accrued any rights in the disputed domain name <nalli.org.in> since its registration, any such rights would be significantly predated by the Complainant's rights.
- 4.13 The Respondent's registration and use of the disputed domain name <nalli.org.in> is a clear case of cybersquatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the internet in order to confuse the public by offering similar goods and services as that of the Complainant, divert business, tarnish the repute and goodwill of the Complainant and their mark and unduly gain in all aspects to the detriment of the Complainant. The Respondent has no legitimate interest in the Complainant's trade mark NALLI and has created the disputed domain name <nalli.org.in> with the purpose to derive profit from Pay-Per-Click links.
- 4.14 At the time of creation and registration of the disputed domain name <nalli.org.in> by the Respondent, the Complainant has already established their business presence globally. The Respondent has not been authorized or licensed by the Complainant to use the trade mark NALLI or to seek any sort of registration incorporating the said mark and domain name of the Complainant.
- 4.15 No doubt being aware of the Complainant's aforesaid trademarks, domain names, repute, recognition and goodwill that the Complainant has achieved worldwide, the Respondent has subsequently in all malafide intention adopted the disputed domain name <nalli.org.in> incorporating the said trade mark of the Complainant.
- 4.16 The Respondent is currently providing information about the Complainant's products and any visitor to the impugned website would in all probability have an impression that the Complainant's products may be purchased through the Respondent's website under the disputed domain name <nalli.org.in> and further adversely affect the Complainant's business and thereafter impact the reputation and goodwill entrusted to the Complainant.
- 4.17 The registration of the disputed domain name and its subsequent use by the Respondent has the sole purpose of defrauding the public. The Respondent is making deliberate attempt to attract, for commercial gain, internet users to another online location by creating confusion with the Complainant's NALLI trade mark, trade name and domain name such that the public would in all likelihood falsely believe that the disputed domain name <nalli.org.in> is sponsored, endorsed or authorized by or in association with the Complainant. The Complainant believes this has been done for fraudulent purposes.

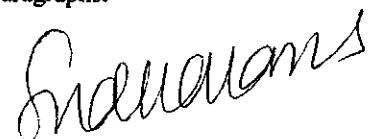


B. Respondent

- 4.18 There is no jurisdictional basis for present complaint. The dispute does not fall within the scope of .IN Domain Name Dispute Resolution Policy. At the outset, the complainant has no exclusive right over word "Nalli" and also has no ground to file the present complaint.
- 4.19 The Complainant has no monopoly or exclusivity over word NALLI. Moreover same is also surname of the respondent and respondent is well within his rights to use the same for his business and organization(s). The trade mark referred by Complainant is a label mark, which was opposed by the respondent and proceedings in respect of same are pending before Madras High Court. Thus complainant has no exclusive right over Nalli.
- 4.20 The Respondent is well within his rights to use his Surname as whole or as part of his business name. Thus the respondent has valid claim, right and legitimate interest in the disputed domain name.
- 4.21 The respondent has his surname Nalli and also has his business under names of Nalli Weaving Centre and Nalli's Silk Sari Centre.
- 4.22 Complainant has no exclusivity over mark Nalli. None of the registrations grant any such right to complainant.
- 4.23 The Respondent has its own goodwill in respect of his products and has been in existence for several years.
- 4.24 The Respondent has not been conducting any commercial activity through the domain in question.
- 4.25 Nalli is Surname of the respondent and also the Respondent and his predecessor have been using the same name NALLI in connection to their business at least since 1969. To register a domain in relation to his surname or its own business, respondent does not require any authorization or approval from complainant. It is submitted that complainant has admitted that Nalli is only part of their corporate name that too in particular writing style, while Nalli forms the entire name of Respondent's business which is "Nalli's Silk Sari Center". Complainant is called upon to prove its claims on basis of cogent documentary evidence.
- 4.26 The Complainant has given no information about how many hits the website of Complainant, www.nalli.com receives or how much revenue is generated through the said website. In any event, such information is completely irrelevant for the present proceedings. It is submitted that the Complainant is trying to drag Respondent in baseless proceedings so as to harass the Respondent. There is no ground for Complainant to claim any sort of right over Respondent's domain name and the Respondent is well within its rights to register the same.
- 4.27 Annexure E, the telephone bill in the name of CHINNASAMY CHETTY is irrelevant to present proceedings and denied. The same is also an illegible copy and denied. Cheque of Dr. Rajendra Prasad also does not prove trademark right over mark NALLI. Annexure F is denied.
- 4.28 Annexure G is denied. Moreover as per own admission of complainant, Nalli is merely part of their name and same does not prove any exclusive right over mark Nalli. Nalli is part of whole name Nalli Chinnasami Chetti as used by the complainant. The Respondent has a huge global presence and reputation. Exhibit F attached with this response includes Respondent's sales figures from 1981 onwards along with the chartered accountants certificates and evidence of use and advertisement of the trademark "NALLI'S" by the Respondent.
- 4.29 The Complainants have no exclusive right over mark NALLI, nor have they done business in name of NALLI. The invoices and other exhibits refer to M/s. Nalli Chinnasamy Chetty. The sales and advertisement figures are false and exaggerated.



- 4.30 No detail of date of opening store(s) in Mumbai is/are given. The details of opening stores do not confer any exclusive right on mark NALLI nor does it is asserted/evidenced by said alleged best wishes/messages. The awards or ISO certification in no way assert any right over the mark NALLI which is a surname and Respondents have equal right over the same. It is denied that Complainant has built the mark NALLI or is exclusively associated with Complainant. The Respondent has its independent goodwill and reputation. The Complainants are trying to claim rights over word NALLI, which should not be allowed as any exclusive right over the same, cannot be granted to them. The word "Nalli" is surname of the respondent, and the respondent has been selling their product, with bonafide intention, under the name "NALLI'S" and own several registrations in India and Abroad. Even as of date, several applications of Respondent are pending registration in India and other countries. Also there are several oppositions going on against Complainant against their mark NALLI. The Complainant has played a fraud upon the CENTER by concealing such material details in the present proceedings.
- 4.31 Registration of domain name is granted on first come first serve basis, thus registration of domain www.nalli.com does not give any exclusive right over mark Nalli or any exclusive right to use Nalli as part of domain, when Nalli in itself is common surname. The search report referred by complainant cannot be taken as true measure of popularity as the search engine optimization tools are available in market to rank up the search position of particular keyword. Annexure O is denied. The domain www.nalli.org.in has only been purchased by the respondent and the website is still under construction. Moreover the respondent has not even put the said domain on hosting so as to invite clicks or be available on search engine. The Complainant is using this proceeding as a method to harass the Respondent. There is no ground for Complainant to claim any sort of right over Respondent's domain name. In fact, the Respondent has been using the trademark "Nalli's" for almost 40 years. Moreover the email address of the respondent is nalli@vsnl.com, which is in use for many years now. Thus any exclusive claim over Nalli by complainant is vehemently denied. Existence of any so-called Nalli group is denied.
- 4.32 Complainant is in habit of initiating baseless proceedings against the respondent as a resort to unfair competition. One such proceeding was complaint against respondent's domain www.nallis.com. An appeal has been filed by the Respondent against the impugned order and the same is pending adjudication. In present proceedings as well the Complainant is trying to drag Respondent in baseless proceedings so as to harass the Respondent. As already stated that with ulterior motives complainant filed an infringement and passing off action against the respondent in Bombay high court and the court refused to grant any ad interim relief. Complainant deliberately concealed this material fact from the Centre with malafide intentions. Further the goods of Respondent are much more superior to that of Complainant and the Respondent enjoys better reputation, good will and recognition in the industry as compared to Complainant. The adoption of mark by Respondent is bonafide and the Respondent is using the said trade name same being the family surname. It is denied there is any cause of action in favor of complaint to initiate any proceeding of passing off or infringement. The suit filed by complainant is pending disposal and no ad interim relief has been granted to the complainant, which clearly shows that claims of complainant are false and baseless.
- A. Whether the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:
- 4.33 The Complainant does not have proprietary or exclusive right over the word Nalli. The same is a common Indian surname and the Complainant cannot be treated as exclusive owner or proprietor of the same. Further the trademark Nalli was a registered trademark under number 366240 in class 24 as in 1981 in favor of Smt. ND Saroja, mother of the Respondent and the trademark "NALLI'S WITH DEVICE " under number 606409 in class 24 was registered as in 1993 in the Respondents favor. Hence the Respondent is well within his right to register the disputed domain. Moreover any use claimed by the complainant is in respect of label mark NALLI in particular writing style and do not confer any exclusive right to use word Nalli. Further the Respondent is holding several registrations of the trademark NALLI'S in India and abroad as detailed in preceding paragraphs.



- 4.34 Any registration of domain does not give exclusive right over the trade mark.
- 4.35 The domain name www.nalli.org.in is not registered by Respondent with a view to gain any advantage due to its alleged similarity with the trade name "Nalli". The domain name is registered with bonafide intention to use in respect to the business activities of the respondent. Respondent is bona fide adopter of marks NALLI and NALLI'S and has been using the same for around 40 years. Any allegation of dilution is totally misconceived and vehemently denied. It is submitted that the respondent has its own independent good will and reputation. Further the Respondent has right to use said domain name by virtue of its trade name and also registration of its trademark in several countries. The Complainant has no rights in the alleged mark NALLI against the Respondent, as the Respondent is the registered proprietor of the trademark NALLI'S in class 24 in several countries. While the website is under construction, the Respondent has plans to use the said website in relation to his business and organization. The website is registered by the Respondent with a view to safe guard the interests in the trademarks, which are already registered or pending registration in various countries in favour of the Respondent.
- 4.36 The Respondent's domain name is the same as Respondent's business name and trademark NALLI/NALLI'S, which has been in use since 1969 without any interference from the Complainant. Hence, the Respondent's trademark and domain name NALLI/NALLI'S is distinctive and the averments and allegations made in para iv are vehemently denied. As the Respondent is the owner of trademark NALLI / NALLI'S. The question of confusion or similarity does not arise.
- 4.37 It is denied that respondent's domain is taking any unfair advantage or is detrimental to distinctive character of complainant's mark. The Respondent is well within his rights to register the domain name of his surname and business name.
- 4.38 Complainant has no cause of action against respondent. Moreover they initiated a frivolous litigation against respondent in Mumbai High Court and Hon'ble court refused to pass any ad interim order. The said matter is pending adjudication.
- 4.39 The complainant has no exclusive right over word Nalli. Moreover the domain has been registered by the respondent with an intention to use the same in respect of his 40 years old business. The reason that the domain is registered subsequent to www.nalli.com does not bar respondent from registering present domain. Moreover the respondent is registered proprietor of trademark NALLI's and has full right to adopt a domain representing his business and activities.
- 4.40 The Respondent enjoys a huge reputation and goodwill in the industry. The consumers identify with the trademark NALLI'S with the Respondent who owns legitimate trademark rights in the said mark. The Respondent has its own goodwill and reputation in the market and said domain name does not indicate any sponsorship by or affiliation to the Complainant. Moreover, the Respondent has used the trademark NALLI/NALLI'S since 1969 in India to distinguish its goods and services from all other, including the Complainant and without any interference from the Complainant. The Respondent is using the present domain name by virtue of its trade existence, family surname and trademark registrations in several countries, for which the Respondent is well within its right. The Respondent has been using the said trademark since 1981 and has obtained various registrations in aspect of said trademark. Respondent has valid trademark rights in the trademark NALLI'S, the domain name www.nalli.org.in is clearly identifiable with the Respondent, as it is same as the trade name, trademark and surname of the Respondent. Moreover the goods of respondent are better than that of complainant and any association with complainant would be detrimental to the goodwill and reputation of the respondent.
- 4.41 The Respondent's domain name is not without due cause and is rather the same as Respondent's trademark, trade name and surname. The Complainant's corporate name and domain name have no distinctive character and repute. The Respondent has valid trademark rights in the mark NALALI/NALLI'S because of its use since 1969 and the word NALLI also forms part of Respondent's company in Singapore (Nalli pvt ltd.) which is well within the knowledge of the

Complainant. There has been no instance of any confusion by use of the Respondent's mark for over 40 years now. Moreover, the Respondent has only registered the domain and is yet to launch his website, thus any question of confusion, affiliation or endorsement do not arise at all. The Respondent is using the name NALLI/NALLI'S since 1969 and has acquired a distinctiveness of its own and the said mark is also registered trademark of the Respondent in many countries. The website of Respondent in no way conveys any association with the complainant and in no way can mislead anyone.

B. Whether Respondent has no rights and legitimate interests in respect of the domain name:

- 4.42 The date of registration of Respondent's domain name is matter of record. It is denied that complainant has built considerable reputation in word NALLI or the domain name NALLI.COM is actively used by the complainant. It is denied that complainant is having any common law right over the word NALLI as the same is a common surname in India and one cannot have a monopoly over the same. It is submitted that the respondent is using mark NALLI /NALLI's since 1969 for his business activities and has a huge reputation and goodwill in the industry. It is reiterated that the Respondent has registered the disputed domain name www.nalli.org.in by virtue of its statutory and legal rights over the trademark NALLI/NALLI'S.
- 4.43 The claimed use of 80 years is denied. Respondent is using the name Nalli/Nalli's since 1969 and the said mark is registered in various classes in India and other countries. The details of which are already given.
- 4.44 Complainant has no monopoly over word Nalli and cannot stop respondent from using Nalli as part of his domain. Respondent is already using Nalli/Nallis as part of his trading name and conducting business since 1969 under said name. Moreover there is no restraint order from any court till date from using his surname by the respondent. The respondent has valid right over the mark Nalli and is well within his right to adopt the domain www.nalli.org.in. The use of mark by Respondent is case of honest adoption and long and continuous bonafide use for over four decades. However, complainant has to prove its alleged exclusive right over the trademark.
- 4.45 The complainant has made deliberate false statement. This clearly indicates that complainant has not come with clean hands before this centre. It is well known to the complainant that Respondent has been using mark Nalli since 1969. Moreover several proceedings are already pending before trade mark registry and different courts and forums. Thus a statement "respondent is not or has ever been known by the name Nalli..." is a false statement. The Respondent is very well known in the industry by the name of NALLI/ Nalli's, has trademark registrations and pending applications in various classes in India and other countries. The Respondent has better goodwill than Complainant. The respondent has full right to use the word NALLI and same is not eclipsed by any alleged prior rights of the complainant. The complainant has not placed a single document on record to prove alleged predated rights of the complainant.
- 4.46 It is denied that the registration of domain name by Respondent is cyber squatting. The Respondent is using its domain name for providing online content information of its business. The domain name is not registered to take advantage of the alleged goodwill or reputation of Complainant. Further, the website is still under construction. Respondent has not put any third party advertisement or the same is not a source of any undue gain through internet. It may be noted that respondent has only registered the domain name and has not put it on hosting, thus the page displayed is a default page and is not under control of respondent. Thus the said registration cannot be alleged to be cyber squatting or a purpose to derive profits from Pay-Per-Clicks, under any circumstances. As the Respondent is still in process to start the website it shows pages that are not authorized by the Respondent, they are in fact the default pages which are shown and uploaded by the registrar and are further free of costs and the Respondent is not earning anything out of those web pages. These pages are further not purchased pages by the Respondent and hence it's a dynamic web page under which the pages would change if opened in different browsers/ ISP.



C. Whether Domain name has been registered and is being used in bad faith.

- 4.47 The Respondents were well known in the industry and famous in business of silk sarees and dress material even before the registration of domain name of the complainant. The Respondent does not require any authorization or permission from the Complainant to register the domain name which is same as the trademark of the Respondents. The Respondent is well within its right to use its trademark/trade name in internet as well. It is also reiterated that Complainant does not have any exclusive monopoly over the word NALLI.
- 4.48 The Respondent has been using the trademark NALLI'S in India since 1981 and with the emergence of internet, it was a logical step for the Respondent to use the domain name www.nalli.org.in. The complainant's allegation are wrong and denied, on the contrary, the complainant was very much aware of trademark registrations, Singapore deed of settlement and other facts of the case and has concealed such facts from the Center. This complaint should be refused on this ground alone. The domain name if the Respondent is same as the trademark of the Respondent and is in no way connected to or shows any connection to the domain name of the complainant.
- 4.49 It is denied that respondent is providing information about complainant's products or any invitation to purchase products of complainant from respondent's website. The said domain name is not registered with view of any alleged wrongful gain and the same is used only for the business purposes of the Respondent. The said domain name is not used in bad faith as described in the policy Para 4. There is no indication of endorsement or authorization by Complainant in the web page of Respondent. The Respondent once again denies the allegations of the complainant.
- 4.50 It is submitted that use of mark NALLI / NALLI'S by the respondent is much prior in time and respondent is well within his right to adopt a domain at any point of time in respect of his business activities. It is denied that respondent is making deliberate attempt to attract for commercial gain internet users to another online location by creating any alleged confusion or show any endorsement or authorisation from complainant. All the allegations of the complainant are vehemently denied.

5. Discussion and Findings

- 5.1 It is a dispute between sons of first wife and second wife of (Late) Nalli Chinnasamy Chetty. Nalli Chinnasamy Chetty had two wives, Late Smt. Munniammal and Late Smt. Lokammal. From the first wife, Mr. Nalli Chinnasamy Chetty had 3 sons Mr. Narayanasamy, Mr. Ramasamy and Mr. Rangasamy. He also had 3 daughters from First wife. From the second wife Mr. Nalli Chinnasamy Chetty had 6 Sons, Mr. Krishnasamy, Mr. Duraisamy, Mr. Ponnusamy, Mr. Muthusamy, Mr. Kandasamy and Mr. Kumarasamy.
- 5.2 One of the partners of the Complainant firm, Mr. Nalli Kuppasamy Chetty is the son of Mr. Narayanasamy. Another partner of the Complainant firm, namely Mr. Nalli K Ramanathan, is the grandson of Mr. Narayanasamy.
- 5.3 Respondent's father Mr. Nalli Duraisamy was the second son of second wife of Sh. Nalli Chinnasamy Chetty and Respondent is grandson of Sh. Nalli Chinnasamy Chetty.
- 5.4 Both the Complainant and the Respondent are in the business of Silk Sarees, dress materials and other goods.
- 5.5 The business started by Nalli Chinnasamy Chetty in 1928 has been continued till date by Mr. Nalli Kuppaswami Chetti and his son N.K. Ramanathan. The Complainant is a leading manufacturer and merchant dealing in clothes through their famous showrooms all over the world.

Enclaves

- 5.6 The Respondent has been in the same business since 1969. Respondent started its business under the name and style of "M/s. Nalli Weaving Centre" in 1969 in Kancheepuram with manufacturing and trading of silk sarees and textile piece goods. Respondent started another firm in 1981 under the name and style of "Nalli's Silk Sari Center" in Mumbai which has also been in operation, continuously and uninterruptedly since said date.
- 5.7 Both the Complainant and the Respondent have been using the mark "Nalli" for their business. The Complainant and the Respondent have separately secured certain registrations for the mark "Nalli". There are disputes pending between the parties regarding the trade mark registrations before various forums. Though each party disputes the registrations granted to the other party, none of them has secured any order restraining the use of the mark Nalli by the other party. Registration is not mandatory for using trademarks. Both the Complainant and the Respondent are concurrently using the mark Nalli in connection with their businesses.
- 5.8 In the year 1996, the Complainant planned to expand its business to Mumbai. At that time, Respondent was doing business using the mark Nalli in Mumbai. The Complainant anticipated that the Respondent would oppose the Complainant's entry into Mumbai. The Complainant to prevent unexpected court action from the Respondent filed caveat against the Respondent before Mumbai High Court. But Respondent did not take any action as anticipated by the Complainant. Complainant also did not take any action against the Respondent thereafter. Both the parties have been doing business using the mark Nalli in Mumbai since March 1996.
- 5.9 The reputation earned by the mark Nalli by the use made by the Complainant is substantially more than the reputation achieved by the use of the mark Nalli by the Respondent. The promotional expenses incurred by the Complainant are much more than the annual sales turnover of the Respondent. Obviously, without any doubt, the reputation of the Complainant is very high.
- 5.10 Though the Respondent has been using the mark "Nalli" along with the Complainant, the Respondent has not adopted on-line platform for promoting and or marketing its products. The Respondent has been doing its business only through brick and mortar physical stores. Particularly, the Respondent is not doing business through any web sites. The Respondent has admitted on several occasions in its pleadings that it has not made any use of the disputed domain name so far and has also no intention to do so in near future.
- 5.11 On the other hand, the Complainant has adopted on-line platform for its business. The Complainant owns several active web sites such as www.nalli.com and www.nallisilks.com . Both these websites were created in the year 1998. One can place orders and buy the products of the complainant through these web-sites.
- 5.12 Since both the parties are using the mark Nalli and their rights to the mark Nalli are in dispute, I cannot rely on the parties' rights to their respective trademarks to resolve this dispute. The above observations are not "findings" on the rights of the parties to the trade mark Nalli. The parties have disputes before various courts and tribunals. It is not my intention to give any finding on the parties' inter se trade mark rights.
- 5.13 Domain name and trade mark are two separate intellectual properties. Though domain name is similar to trade mark and right to domain name may be asserted with reference to the right to the underlying trademarks, yet they differ significantly in some crucial respects. Firstly, registration is compulsory in the case of domain names. No one can either own or use a domain name without registering it with an appropriate authority. Secondly, concurrent use as understood in the field of trademarks is not applicable to domain names.
- 5.14 Thus, domain name is distinct and separate from trade mark, and is a property on its own that can be acquired, used and dispossessed like any other property. Therefore, a property dispute over a domain name can be resolved with reference only to a similar domain names owned by the parties and without any reference whatsoever to trade marks of the parties.



5.15 Beneficial Owner: It appears that the Respondent is the beneficial owner of the disputed domain name <www.nalli.org.in>. The disputed domain name <www.nalli.org.in> was created at the instructions of the Respondent. The service provider acquired the disputed domain name <www.nalli.org.in> on its name and kept it renewed from time to time on behalf of the Respondent. The Respondent did not own the disputed domain name <www.nalli.org.in> continuously from 2009 as claimed by the Respondent. It was not renewed for more than 10 months spread over 2012 and 2013. The disputed domain name <www.nalli.org.in> was deleted on 7.11.2012 and was created afresh in favour of the Respondent on 18.09.2013. On 13.11.2014, the Registrant contact details including name was updated to "NALLI SAMBBASIVAM". I have captured the creation and renewal details of the domain name www.nalli.org.in provided by NIXI.

Table of creation and Renewal of domain name www.nalli.org.in

S.No.	Date	Event
1	27.09.2009	Created by Mr.Ajay of Criti
2	27.09.2010	Registration was renewed for one year
3	27.09.2011	Registration was renewed for one year
4	27.09.2012	Registration was renewed for one year
5	07.11.2012	Deleted by the registrar
6	18.09.2013	Created by Mr. Hitesh Gangani of Criti
7	15.09.2014	Registration was renewed
8	13.11.2014	Registrant contact details including name was updated to "NALLI SAMBBASIVAM"
9	17.04.2015	Domain was put on Server Hold by the Registry

5.16 The name of the registrant was updated to "Nalli Sambasivam" on 13.11.2014. Normally, name change happens on two occasions - (1) assignment/sale of domain name or (2) change of name of the registrant himself. I have asked the Respondent to clarify on what basis the name change was made. The Respondent has not clarified it.

5.17 The narration of the chronological events above does not in any way help the Respondent to claim of creation date of 27.09.2009. The domain name created in the year 2009 was abandoned by the Respondent in the year 2012. Even from 2009 till date of abandonment in 2012, the Respondent did not put the domain name into any use. The Respondent kept all along the domain name unused. The Respondent's name did not appear in the "who-is" records.

5.18 Respondent again created the domain name through proxy in the year 2013. Respondent's name was brought on record only on 13.11.2014. The Respondent has not clarified how his name was brought on record as the registrant.

5.19 I will proceed with this complaint with the creation date of 18.09.2013 as per the "who-is" records.

5.20 As stated above, I will consider the domain names of the parties to resolve the current dispute. I will not consider any of their trade marks. The Complainant's pleadings include its rights over disputed domain name <www.nalli.org.in> on the basis of the domain names owned by it.

5.21 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:

- (1) 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.

5.22 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 domain name of the Complainant.

5.23 The Complainant is the owner of the domain names www.nalli.com created on 28.4.1998 and www.nallisilks.com created on 5.6.1998. The disputed domain name www.nalli.org.in was created on 18.09.2013. Nalli is the distinctive and predominant part of the above domain names. Obviously, the Complainant is the prior adopter of the domain names incorporating the expression Nalli. The above facts have established that the Complainant has statutory in respect of its domain names.

5.24 The Complainant's domain names are famous and well known throughout India and abroad. The expressions "silks", ".in", ".org" and .com are generic and need to be discarded while comparing the domain names. The disputed domain name www.nalli.org.in is similar to the Complainant's domain names www.nalli.com and www.nallisilks.com.

5.25 I, therefore, find that:

- (a) The Complaint has common law and statutory rights in respect of its domain names
- (b) The disputed domain name www.nalli.org.in is similar to the Complainant's domain names www.nalli.com and www.nallisilks.com

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

5.26 It is already seen that:

- (a) The Complainant is the prior adopter and user of the domain names www.nalli.com and www.nallisilks.com. The Complainant's domain names are well known in many countries across the globe including India.
- (b) The Complainant's domain names www.nalli.com was created on 28.4.1998 and www.nallisilks.com on 5.6.1998. The disputed domain name www.nalli.org.in was created on 18.09.2013.

5.27 Respondent did not register the disputed domain name until 18.9.2013. Complainant has adopted and used the domain names containing the expression Nalli before Respondent registered the disputed domain name www.nalli.org.in. It is unlikely that the Respondent was unaware of existence of Complainant's domain name rights before registering the disputed domain name www.nalli.org.in. Respondent earlier created similar domain name www.nallis.com and the same was ordered in the year 2009 to be transferred to the Complainant. Therefore, Respondent had absolute knowledge about the domain names of the Complainant prior to the creation date of the disputed domain name. Though the Respondent filed a declaratory suit against the said award and the same is pending for decision, his knowledge about the Complainant's similar domain names prior to the date of creation of the disputed domain name cannot be refuted.

5.28 I have visited the web site (on 16.7.2015 using Safari for windows browser) of the Respondent under the disputed domain name www.nalli.org.in. It redirects to a non-active web site, which gives links to Complainant's web site www.nallisilks.com and third party sites such as www.mirraw.com, www.shoclues.com, www.zohraa.com, www.askmebazaar.com, www.aliexpress.com, www.us2chennai.com etc. These web sites offer sarees and other products of third party competitors of the Complainant. It goes against the contention of the Respondent that the website is still under construction. Respondent has not put any third party advertisement or the same is not a source of any

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undue gain through internet. Respondent has only registered the domain name and has not put it on hosting, thus the page displayed is a default page and is not under control of Respondent.

- 5.29 I agree with the contention of the Complainant that the Respondent's registration and use of the disputed domain name is a clear case of cyber squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the internet in order to confuse the public by offering similar goods and services as that of the Complainant, divert business, tarnish the repute and goodwill of the Complainant and unduly gain in all aspects to the detriment of the Complainant. The Respondent has no legitimate interest in the disputed domain name <www.nalli.org.in> and has created the disputed domain name <www.nalli.org.in> with the purpose to derive profit from Pay-Per-Click links.
- 5.30 Admittedly, Respondent has no intention to use the disputed domain name. It is clear that the Respondent is not making any legitimate non-commercial or fair use of the disputed domain name <www.nalli.org.in>.
- 5.31 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 <www.nalli.org.in>.

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

- 5.32 The Complainant is the prior adopter and user of the domain names www.nalli.com and www.nallisilks.com. The Complainant's domain names www.nalli.com was created on 28.4.1998 and www.nallisilks.com on 5.6.1998. The disputed domain name <www.nalli.org.in> was created on 18.09.2013. Obviously, Complainant's rights in the domain names incorporating the expression Nalli pre-date Respondent's registration of the disputed domain name <www.nalli.org.in>. The Respondent could not have ignored, rather actually influenced by, the well-known domain names of the Complainant at the time he acquired the disputed domain name <www.nalli.org.in>.
- 5.33 As seen above, the Respondent is not making any legitimate non-commercial or fair use of the disputed domain name <www.nalli.org.in>. Respondent earlier created similar domain name www.nallis.com and the same was ordered in the year 2009 to be transferred to the Complainant. Therefore, Respondent had absolute knowledge about the domain names of the Complainant prior to the creation date of the disputed domain name.
- 5.34 The Respondent has admitted on several occasions in its pleadings that it has not made any use of the disputed domain name.
- 5.35 I agree with the contentions of the Complainant that :
- (a) At the time of creation and registration of the disputed domain name by the Respondent, the Complainant has already established their business presence globally. The Respondent has not been authorized or licensed by the Complainant to use the domain name of the Complainant.
 - (b) The Respondent is currently providing information about the Complainant's products and any visitor to the impugned website would in all probability have an impression that the Complainant's products may be purchased through the Respondent's website and further adversely affect the Complainant's business and thereafter impact the reputation and goodwill entrusted to the Complainant.
 - (c) The Respondent is making deliberate attempt to attract, for commercial gain, internet users to another online location by creating confusion with the Complainant's domain names such that the public would in all likelihood falsely believe that the disputed domain name is sponsored, endorsed or authorized by or in association with the Complainant.

Induvarans

5.36 Thus it is clearly established that Respondent registered the disputed domain name <www.nalli.org.in> in bad faith.

5.37 Both the parties incurred expenses in attending the hearing in Chennai and Delhi. Considering the costs incurred by them, I order the Complainant to pay Rs.50,000/-(Rupees fifty thousand only) to the Respondent towards costs of the proceedings.

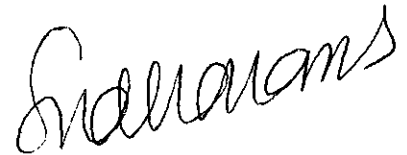
6. Decision

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.nalli.org.in> be transferred to the Complainant.

6.3 Complainant is ordered to pay the Respondent a sum of Rs.50,000/-(Rupees Fifty Thousand Only) towards costs of the proceedings.

6.4 Transfer of the disputed domain name <www.nalli.org.in> will take place only after the payment of Rs.50,000/- by the Complainant to the Respondent.



S.Sridharan
Arbitrator