



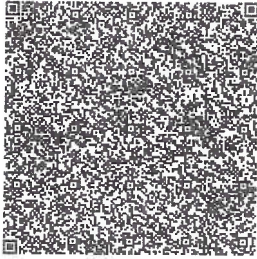
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL08437308432062Q
Certificate Issued Date : 02-Apr-2018 02:31 PM
Account Reference : IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP1720458673763554Q
Purchased by : JAYANT KUMAR
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : JAYANT KUMAR
Second Party : Not Applicable
Stamp Duty Paid By : JAYANT KUMAR
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION AWARD

Simba Sleep Limited

v.

Virginia Barham

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shocestamp.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.
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BEFORE THE SOLE ARBITRATOR
.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN THE MATTER BETWEEN

Simba Sleep Limited

Complainant

v.

Virginia Barham

Respondent

ARBITRATION AWARD

1. The Complainant is Simba Sleep Limited, a company incorporated and trading under the laws of United Kingdom having its office at Mezzanine Floor, Southside Building, 105 Victoria Street, London, SW1E 6QT.
2. The Respondent is Virginia Barham, residing at 419 Wetzel Lane, Merritt, Michigan, 49667, United States.
3. The Arbitration pertains to the disputed domain name <simbasleep.co.in>, registered on December 6, 2017 by the Respondent. The Registrar for the disputed domain name is Endurance Domains Technology Pvt. Ltd.
4. The Sole Arbitrator appointed in this complaint by NIXI is Jayant Kumar. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI on January 24, 2018.
5. The Complaint was served upon the Respondent by NIXI by way of email dated January 30, 2018. The Arbitrator vide email dated February 3, 2018 directed the Respondent to file its Reply by February 24, 2018. In the meantime, the courier agency informed the NIXI that the physical copy of the complaint could not be delivered at the Respondent's address mentioned in the WhoIs details due to "bad address and invalid contact number 1231328568".

AKG

The Complainant then informed that it has made enquiries into the contact details of the Respondent and the same were found to be fictitious, which is also pleaded in the Complaint. Since it is the responsibility of the registrant to provide its complete and accurate contact details in the WhoIs data, the service of the complaint upon the Respondent was deemed complete by serving the electronic copy by email and no further actions were required for service of the physical copy of the complaint upon the Respondent. The Respondent however did not file any Reply and was proceeded ex-parte vide email dated March 21, 2018.

Complainant's Submissions

6. The Complainant submits that it adopted Simba Sleep Limited as its trading name since 2015. It also owns trademark registration for the mark SIMBA in class 20 and 24 in EUIPO vide trademark Registration No. 014654693. In India, the trademark application for the mark SIMBA is stated to be pending, however, no details are mentioned in the Complaint.
7. The Complainant also owns domain name registrations for <simbasleep.com>, <simbasleep.co.uk>, <simbasleep.fr>, <simbasleep.ie>, <simbasleep.be>, <simbasleep.co.il>, <simbasleep.de>, <simbasleep.nl> and <simbasleep.is>. The Complainant also stated that its CEO personally owned the domain name registration for <simbasleep.in> since 2016.
8. The Complainant submitted that it has been continuously using the mark "SIMBA SLEEP" as a trade name, corporate name, business name, trading style, etc. since 2015.
9. The Complainant further submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent registered the disputed domain name after the Complainant had acquired and



established rights in the trademark SIMBA SLEEP. The Respondent is further alleged to have not been commonly known by the name or mark SIMBA SLEEP and have also not applied for registration of the mark SIMBA SLEEP or any similar mark anywhere in the world. The Respondent is further alleged to have not used the domain name in connection with bonafide sale or trading of goods or services.

10. The Complainant submitted that the disputed domain name was registered by the Respondent for selling it. Further, the Complainant submitted that the Respondent is a habitual cyber-squatter and has been a party to various domain name dispute proceedings and in all of them, Award has been passed against it. The Respondent is offering the disputed domain name for sale via www.sedo.com for US\$ 8,500. The Complainant further alleged that the Respondent's email address ruochang@gmail.com is associated with 192 domain names, with 43 distinct names/aliases and out of these 192 domain names, 148 domain names are 'parked' with www.sedo.com and are offered for sale thereat.

Discussion and Finding

11. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

- a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- b. The Respondent has no rights or legitimate interests in respect of the domain name; and
- c. The Respondent's domain name has been registered and is being used in bad faith.

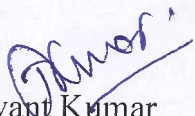
12. The Complainant has filed sufficient evidence of its rights in the mark SIMBA and SIMBA SLEEP. Furthermore, the Complainant has been using the mark since 2015 as a trade mark as well as a trade name and corporate name. The Respondent, however, registered the domain name only in December, 2017 viz. much after the Complainant had acquired rights in the mark. The disputed domain name <simbasleep.co.in> incorporates the Complainant's mark in entirety and hence, the disputed domain name is held to be confusingly similar with the Complainant's mark.

13. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Respondent has not filed any evidence on record to show that the Respondent has made preparations to use the disputed domain name for a bona fide offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes legitimate non-commercial fair use of the website linked to the disputed domain name. Moreover, the Respondent does not appear to have any connection with the mark SIMBA SLEEP. The Respondent is offering the disputed domain name for sale and thus, it is evident, as is asserted by the Complainant, that the primary purpose of registration of the disputed domain name by the Respondent is for wrongful and illegal profit by intending to sell the domain name back to the Complainant or to a third party which is dishonest, willful and in bad faith. Based on the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

14. The Respondent has made no bonafide use of the domain name or website that connects with the domain name, and has listed it for sale. The Complainant has also filed copy of Arbitration Award passed by WIPO in Case No. D2012-0357 against the current Respondent and the list of various domain names registered by the Respondent and thereafter offered for sale, which shows that the Respondent is a habitual and wilful cyber-squatter, and the same is also an evidence of bad faith registration and use by the Respondent. The Respondent's action of offering the dispute domain name for sale is sufficient evidence to hold the disputed domain name was registered and is being used in bad faith by the Respondent.

Decision

15. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <simbasleep.co.in> be transferred to the Complainant.


Jayant Kumar
(Sole Arbitrator)

Dated: April 2, 2018