

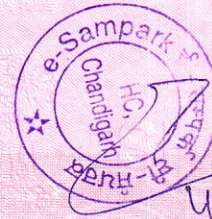
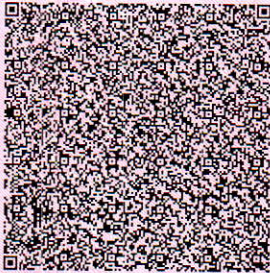


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No. : IN-CH03496804380583O
Certificate Issued Date : 04-May-2016 02:20 PM
Certificate Issued By : chmukumau
Account Reference : IMPACC (GV)/ chimp07/ E-SMP HIGH COURT/ CH-CH
Unique Doc. Reference : SUBIN-CHCHIMPSP0706909323472191O
Purchased by : ASHWINIE KUMAR BANSAL
Description of Document : Article 12 Award
Property Description : H NO 187A ADVOCATE ENCLAVE SEC 49 CHD
Consideration Price (Rs.) : 0
(Zero)
First Party : ASHWINIE KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION AWARD

(On Stamp Paper)

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Statutory Alert:

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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]

ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR:
DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.
Advocate, Punjab & Haryana High Court,
Chandigarh

In the matter of:

The Sunrider Corporation
d.b.a. Sunrider International
1625, Abalone Avenue,
Torrance, CA 9050,
U.S.A

...Complainant

VERSUS

Mr. Ravinder Sanap
Room No. 3, Mustaq Compound
Near Ramleela Maidan,
Khairani Road, Sakinaka,
Mumbai- 40007,
Maharashtra

...Respondent/Registrant

REGARDING: DISPUTED DOMAIN NAME: SUNRIDERS.CO.IN

1. The Parties:

Complainant:

The Sunrider Corporation, d.b.a. Sunrider International 1625,
Abalone Avenue, Torrance, CA 9050, U.S.A.

Respondent:

Mr. Ravinder Sanap, Room No. 3, Mustaq Compound, Near
Ramleela Maidan, Khairani Road, Sakinaka, Mumbai- 40007,
Maharashtra.

2. The Domain Name and the Registrar:

The disputed domain name <sunriders.co.in> is registered with
GoDaddy.com, LLC (R101-AFIN), 14455 N Hayden Suite 226,
Scottsdale, Arizona 85260, US, (the "Registrar").

3. Procedural History [Arbitration Proceedings]

A Complaint has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the Registrar verification in connection with the disputed domain name <sunriders.co.in>. It is confirmed that at present the Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI had sent the hard copy of the Complaint and annexures to the Respondent. In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed the Respondent on 02.04.2016, with copy to Complainant and NIXI, through the email, to give his Reply within 15 days. Notice was also sent through speed post on 02.04.2016. The Complainant was also requested to send a soft copy of the Complaint to the Respondent along with Annexures and accordingly the Complainant had sent a soft copy of the Complaint and Annexures on 02.04.2016 to the Respondent as per direction of the Arbitrator. The Respondent had acknowledged the receipt of email dated 02.04.2016 of the Arbitrator. The Respondent was given one more opportunity to file the Reply within 7 days vide by email dated 26.04.2016. But Respondent has not filed the Reply to the Complaint.

4. Factual Background

The Complainant Sunrider Corporation is engaged in the business as manufacturer, distributors and merchant of herbal goods and food stuffs, herbal beverages, cosmetics, articles for personal and beauty care, health care products, beverages and mineral and aerated waters and other non-alcoholic drinks along with its other relating companies since 1982.

Complainant has registered the domain name <surider.co.in> on February 28, 2004 as well as <sunrider.in> on February 10, 2005 respectively. The Complainant is also operating websites that are specific to individual countries including in India such as www.sunrider.co.in and www.sunrider.in.

The Respondent has registered the disputed domain name <sunriders.co.in> on December 03, 2015. Hence, present Complaint has been filed by the Complainant against the Respondent.

5. Parties Contentions

A. Complainant

The Complainant duly incorporated, organized and existing under the laws of the State of Utah, U.S.A. The Complainant is doing business as Sunrider International in nearly 50 countries including the regions like Australia, Brazil, Canada, China, Columbia, European Union, Honk Kong, Hungry, India, Indonesia, Israel, Japan, Korea, Malaysia, Mexico, Netherland, Philippines, Russia, Singapore, South Africa, Taiwan, Thailand, Vietnam, U.S.A. etc., with millions of distributors and consumers. The Complainant has office in more than 22 countries with Sunrider as the prominent corporate name and trading style. The Complainant has registrations as well as pending applications for its Trademarks SUNRIDER and SUNRIDER DESIGN in various classes in many jurisdictions of the world as per long list given in the Complaint. Few registration certificates and renewal certificates of some of the Trademarks have also been produced by the Complainant. Complainant has registered the domain name <sunrider.com> on March 19, 1997 and it is also operating the corresponding website www.sunrider.com which showcases the product lines sold with the Trademarks SUNRIDER and SUNRIDER DESIGN.

The Complainant's Trademarks have been used in U.S.A. and other countries since October 1982. The Complainant by reason of use, sales and promotion works has developed goodwill and reputation of its Trademarks. The Complainant's prominence in the US and global markets, as well as its reputation for quality, has grown through the years. The Complainant and its Trademarks have been featured the focus of much media attention over the years and have been featured in popular trade magazines and newspapers, those dealing with economic matters including health, fashion, beauty etc.

The Government of India allowed the Complainant to set up a company to manufacture and market herbal based nutritional, personal care products and a wholly owned subsidiary Surinder India Private Limited which was incorporated in India on November 27, 1998. Complainant has also set up a manufacturing unit in Gurgaon, Haryana, NCR.

The disputed domain name <sunriders.co.in> is identical or confusingly similar to the Complainant's Trademark. Registration and use of the disputed domain name is bound to cause confusion and deception in the minds of the public that Respondent has some connection, association or affiliation with the Complainant's Trademark SUNRIDER and its domain names <sunrider.com>, <sunrider.co.in> and <sunrider.in>.

The Respondent has no rights or legitimate interest in respect of the domain name <sunriders.co.in>. The Complainant has not authorized, licensed or otherwise allowed the Respondent to make use of its Trademark SUNRIDER. The Respondent cannot use the

disputed domain name in connection with a bonafide offering of goods and services.

The disputed domain name was registered or is being used in bad faith. The Complainant's company incorporation, Trademark registrations as well as domain name registrations are prior to the Respondent's registration of the disputed domain name <sunriders.co.in>.

B. Respondent

The Respondent has not filed the Response to the Complaint nor any evidence inspite of opportunity given to him.

6. Discussion and Findings

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response.

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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

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

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

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant has established that it has made applications for registration of the Trademarks across various classes of the Fourth Schedule to the Trademarks Rules, 2002, with the Trademarks Registry, Mumbai. The Complainant has also produced list of Trademarks for which it has made applications for registrations with the Trademarks Registry.

The Trademark SUNRIDER has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registrations as well as website incorporating the Trademark SUNRIDER.

The Respondent has registered the disputed domain name <sunriders.co.in> wholly incorporating the Trademark SUNRIDER of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the registration of the Trademark

SUNRIDER is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy¹. Internet users who enter the disputed domain name <sunriders.co.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Arbitrator finds that the disputed domain name <sunriders.co.in> is confusingly similar to the website and Trademark SUNRIDER of the Complainant.

B. Rights or Legitimate Interests

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name².

The Complainant has registered the disputed domain name consisting of the Trademark SUNRIDER owned by the Complainant. The Complainant has been using the Trademark for many years. The Complainant has not authorized or permitted the Respondent to use the Trademark SUNRIDER.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed

¹ See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

² See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

to demonstrate any rights or legitimate interests in the disputed domain name <sunriders.co.in> as per Paragraph 7 of the Policy. The Arbitrator finds that the Complainant has made out a *prima facie* case.

Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <sunriders.co.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the

domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the Trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered the disputed domain name <sunriders.co.in> but there is no corresponding website and message displayed on the landing page states that domain is parked free with Godaddy.com. The Complainant has not granted the Respondent permission, or, a license of any kind to use its Trademark SUNRIDER and register the disputed domain name

<sunriders.co.in>. Such unauthorized registration of the Trademark by the Respondent suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <sunriders.co.in> which incorporates the Trademark of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark SUNRIDER.

The Arbitrator relies on Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, to find that the apparent lack of so-called active use of the disputed domain name does not as such prevent a finding of bad faith (see also paragraph 3.2 of the WIPO Overview 2.0).

The Arbitrator therefore finds that the disputed domain name <sunriders.co.in> has been registered by the Respondent in bad faith.

The Trademark SUNRIDER has been a well-known name. The domain disputed name <sunriders.co.in> is confusingly similar to the Complainant's Trademark SUNRIDER, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <sunriders.co.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <sunriders.co.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <sunriders.co.in> be transferred in favour of the Complainant.

7. Decision

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <sunriders.co.in> is similar to the Trademark SUNRIDER in which the Complainant has rights.

The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.sunriders.co.in> be transferred to the Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 15.05.2016



Dr. Ashwinie Kumar Bansal

Sole Arbitrator

Advocate, Punjab and Haryana High Court
#187, Advocates Society, Sector 49-A
Chandigarh, India