



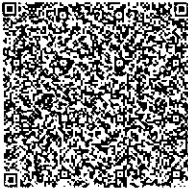
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL87319196228855R
Certificate Issued Date : 13-May-2019 11:19 AM
Account Reference : IMPACC (IV)/ dl916803/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL91680379771285659498R
Purchased by : LUCY RANA
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : LUCY RANA
Second Party : Not Applicable
Stamp Duty Paid By : LUCY RANA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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

ARBITRATION AWARD

Disputed Domain Name: <HUGOBOSS-ONLINE.CO.IN>

IN THE MATTER OF

Hugo Boss Trade Mark Management GmbH & Co. KG
Dieselstrasse 12,
72555 Metzingen,
Germany.

Complainant

-----versus-----

Oliver Cunningham,
63, Henley Road,
City: Boxley,
State: Boxley,
Country: Great Britain.
Zip: ME14 4SR

Respondent

Lucy Rana

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shoilestamp.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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1. The Parties

The **Complainant** in this arbitration proceeding is **Hugo Boss Trade Mark Management GmbH & Co. KG** of the address Dieselstrasse 12, 72555 Metzingen, Germany.

The **Respondent** in this arbitration proceeding is **Oliver Cunningham**, an individual, of the address 63, Henley Road, City: Boxley, State: Boxley, Country: Great Britain, Zip: ME14 4SR.

2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <**hugoboss-online.co.in**> with the .IN Registry. The Registrant in the present matter is **Oliver Cunningham**, and the Registrar is **Endurance Domains Technology, LLP**.

3. Procedural History

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

NIXI vide its email dated March 13, 2019, had sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day.

Thereafter, NIXI forwarded the soft copy of the Complaint, along with Annexures, as filed by the Complainant in the matter, to all Parties, including the Arbitrator vide emails dated March 18, 2019 and made the pronouncement that Mrs. Lucy Rana, in her capacity as Arbitrator, would be handling the matter.

On March 25, 2019, NIXI confirmed that the soft copy of the Complaint along with annexures, as sent to the Respondent vide email, had not bounced back.

Vide email of March 28, 2019, NIXI informed the Arbitrator that although they had been following up with the courier agency regarding service of the Complaint in hard copy upon the Respondent, the said courier agency had requested for alternate consignee details owing to the shipment having been held up due to an address query.

Therefore, the Arbitrator had, vide email dated March 29, 2019, requested the Complainant to provide alternate details for the Respondent if available.

As the Complainant did not provide alternate details as requested, the Arbitrator, vide email dated April 04, 2019, announced that the Complaint along with Annexures had been duly served upon the Respondent, vide email, as is evidenced by the fact that the emails as sent have not bounced back, and as per Rule 2(a)(ii) of the INDRP Rules of Procedure, this constitutes effective service. Further, Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 provides that *"If none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by*

Lucy Rana

registered letter or by any other means which provides a record of the attempt to deliver it." Hence the service of notice was deemed to have been completed upon the Respondent. Therefore, the Respondent was deemed to have been duly served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of receipt of the email within which to file a response to the Complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law.

On April 20, 2019, the Arbitrator, vide email, addressed to the Respondent brought it on the record that despite the prescribed deadline for the Respondent to respond in the matter (having elapsed on April 18, 2019) in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **three (3) days** within which to submit a response (if any) in the matter.

As no response to the Complaint was preferred by the Respondent in the matter even after expiration of the aforementioned final time period of **three (3) days**, the Arbitrator, vide email dated April 29, 2019, reserved the award to be passed on the basis of facts and documents available on the record.

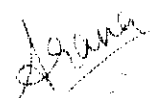
4. Factual Background

The Complainant, (i.e. **Hugo Boss Trade Mark Management GmbH & Co. KG** along with its group companies, subsidiaries, predecessors-in-title and licensed trademark users), is a listed company and claims to carry out its business through its various group companies and subsidiaries as incorporated around the world in more than 127 countries via over 400 physical outlets/stores and 6,700 points of sale, in addition to online retail stores. In India, the Complainant operates through its partner/authorised user.

The Complainant claims to be an internationally reputed and one of the leading companies in the premium/luxury segment of the global apparel/fashion market. The Complainant's portfolio focusses on menswear, womenswear, including business and casual outfits, perfumes, clothing, accessories eyewear and watches. The Complainant claims that the products manufactured under their well-known and famous marks are associated with superiority and high quality and have acquired substantial reputation and goodwill internationally.

The Complainant has submitted that they are the proprietors of the well-known trademarks **HUGO, BOSS** and **HUGO BOSS** and marks consisting of **HUGO** and/or **BOSS** (hereinafter collectively referred to as the **Complainant's Marks**). The Complainant has submitted that their mark **HUGO BOSS** was adopted by the Complainant since at least 1924, and that business under the Complainant's Marks has been conducted in several countries of the world since many decades. The Complainant has submitted that the Complainant's Marks are used as a part of the Complainant's corporate name, trading style, domain names as well as being used as a product/service identification mark. The Complainant has submitted that they also use the Complainant's Marks in relation to various ancillary services, such as events, campaigns and shows, including at international fashion weeks, exhibitions, and art awards as well as for social causes.

The Complainant has submitted that they are the proprietor of valid and subsisting registrations as well as application for their trademarks in several countries around the world in numerous



classes, including for retail and online retail services. The Complainant has annexed (non-exhaustive) online records for their international trademark registrations in numerous classes as **Annexure 4**.

The Complainant has submitted that they are the proprietor of valid and subsisting registrations as well as application for their trademarks in India and have submitted several records thereof (as derived from the online database of the Trade Marks Registry) as **Annexure 5**.

The Complainant has submitted that they are the proprietor of several domain names comprising the words 'HUGO', 'BOSS' and 'HUGO BOSS', in addition to its official website at www.hugoboss.com and has annexed WHOIS records of the same as **Annexure 6**.

The Complainant has submitted that the products and services provided by the Complainant under its trademarks since the last several decades enjoy worldwide reputation and goodwill, including trans-border reputation penetrating into India and the same vests exclusively in the Complainant. That members of the trade and the public at large exclusively associate the Complainant's Marks with the Complainant, inter alia owing to the facts that:

- The Complainant has garnered sales revenue amounting to millions of dollars over the past decades, In 2017 alone, the Complainant's sales figures surpassed Euro 2,600 million approx;
- The Complainant has incurred substantial promotional/marketing expenditure in advertising/promoting their business under the Complainant's Marks internationally over the past decades;
- Over the years, the Complainant's products/services under its trademarks has been cited/discussed in numerous leading publications which have circulation and readership all around the world, including in India;
- The Complainant's products/services have been promoted or depicted internationally on diverse media, including listings in magazines, hoardings, television advertisements, sponsorships, newsletters and social initiatives.

The Complainant has annexed evidentiary proof of its submissions with regard to the above as **Annexures 7-9**.

The Complainant has submitted that the prominence of the Complainant's listings in internet searches on various prominent search engines (such as Google, Yahoo, Bing etc.) clearly establishes the enormous goodwill and reputation as acquired by the Complainant in respect of its trademarks.

The Complainant has submitted that since the last several years, the Complainant's Marks and their combinations are depicted on the Complainant's official website at www.hugoboss.com, which can be accessed from around the world including from India.

The Complainant has submitted that over the years, Indian travellers travelling abroad are likely to have come across the Complainant's products/services as provided under the Complainant's Marks in other countries, especially at duty-free shops at airports where the Complainant has its stores.

The Complainant has submitted that they have regularly taken action against infringing domain names by filing domain complaints before the appropriate forums. The Complainant has further

submitted that their rights in the Complainant's Marks have been recognized in the recent judgement as delivered by the Delhi High Court in the matter of *Hugo Boss Trade Mark Management v. Ms. Sheeta Sabharwal* (2019).

5. Complainant's Contentions

The Complainant has contended that the Respondent had registered the disputed domain name, i.e. <**hugoboss-online.co.in**>, without any permission or authorisation from the Complainant.

The Complainant has contended that at the time of initiating the domain complaint the disputed domain name resolved to an active website wherein the Respondent had been infringing the Complainant's trade marks as well as copyrighted content. The Complainant has included a screenshot of the home page of the website as had been available at the time as **Annexure 14**.

The Complainant has contended that the disputed domain name has been registered in an attempt to attract, for commercial gain, internet users to the website bearing the disputed domain name or other online locations, by creating a likelihood of confusion with the Complainant as to the source, association, affiliation or endorsement of the impugned website or the products/services advertised thereon.

The Complainant has contended that the disputed domain name also appears to be using meta tags consisting of the Complainant's Marks which is further likely to misdirect traffic to the disputed domain name. The Complainant has also contended that the disputed domain name is likely to be linked to a domain name parking service (like Google AdSense) to wrongfully generate revenue from misdirected/misguided internet traffic to the impugned website resulting from the confusing nature of the disputed domain name.

6. Legal Grounds Submitted by the Complainant

The Complainant has submitted the following legal grounds in support of its complaint:

- A. The Disputed Domain Name's Similarity to the Complainant's Rights
[IN Domain Dispute Resolution Policy, Paragraph 4(i); INDRP Rules, Paragraph 3(b)(vi)(1)]

The Complainant has contended that they have statutory as well as common law rights in their well-known marks in several countries around the world including in India, and also by virtue of their extensive use thereof. The Complainant has further contended that they are the prior adopters and users of their trademarks and have placed reliance, in this regard, upon the decision in the matter of *Dell India v. Raj Kumar, INDRP/249 (22 September 2011)* wherein it had been held that the Complainant establishes its proprietary right in the trademark by virtue of its global trademark registrations and use.

The Complainant has contended that the disputed domain name incorporates the Complainant's well-known trademark **HUGO BOSS** in its entirety, which makes the same identical/confusingly similar to the Complainant's Marks. The Complainant has also contended that the disputed domain name misrepresents that the Complainant's products are sold under the Complainant's Marks through the impugned website.

The Complainant has placed reliance on the decisions in the matters of *Lego Juris A/S v. Robert Martin*, INDRP/125 (14 February 2010) and *G.A. Modefine S.A. v. Naveen Tiwari*, INDRP/082 (20 February 2009) wherein it was held that when a domain name contains a trademark in its entirety, the domain name is identical or at least confusingly similar to the Complainant's trademark.

The Complainant has contended that the dominant and distinctive feature of the disputed domain name are the words '**HUGO BOSS**' and the only difference between the disputed domain name and the Complainant's registered domain name in India-i.e. <**hugoboss.in**>- is the adjunction of the terms '-online' and '.co' in the former. The Complainant has contended that the terms '-online' and '.co' can be classified as non-distinctive generic wording and is not sufficient to avoid the likelihood of confusion among internet users and the general public. The Complainant has also contended that it is a well-established principle that similarity cannot be avoided by the addition of generic terms to trademarks and that inclusion of generic wording does not impact the consumer's perception that the disputed domain name is confusingly similar to the Complainant's Marks. The Complainant has relied once again on the decision given in *Lego Juris A/S v. Robert Martin*, INDRP/125 (14 February 2010) wherein it had been held that the ccTLD '.co.in' may be disregarded for the purposes of assessing similarity of the domain name to the trademark.

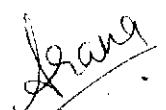
B. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

[IN Domain Dispute Resolution Policy, Paragraph 4(ii); INDRP Rules, Paragraph 3(b)(vi)(2)]

The Complainant has contended that the Respondent does not have any rights or legitimate interest in the disputed domain name because the Respondent has only demonstrated the use of the disputed domain name for misrepresenting the public and trade and not in connection with a bonafide offering of goods or services. The Complainant has relied on the matter of *Compagnie Gervais Danone v. Digitech Software Solutions*, INDRP/096 (27 June 2009) to claim that such passive holding of a domain name evinces the lack of rights and legitimate interest in the domain name.

The Complainant has contended that the Respondent is not commonly known by the disputed domain name as the name of the Respondent is not **HUGO BOSS**, and in any event the Respondent is not in a position to make any claim in this regard as Complainant's Marks are associated exclusively with the Complainant. The Complainant has relied on the decision as delivered in the matter of *Morgan Stanley v. M/s Keep Guessin*, INDRP/024 (27 June 2007) in support of its argument in this regard. The Complainant has also contended that upon their information and belief, the Respondent does not actually engage in any business or commerce under the disputed domain name for the same to become associated with the Respondent.

In view of the Complainant's statutory and common law rights in its well-known marks in several countries around the world including in India, as they have established previously, by virtue of their global trademark registrations and extensive use thereof, and further in view of the Complainant being the prior adopter and user of its trademarks, the Complainant has contended that the Respondent cannot claim any rights or legitimate interests in respect of the disputed domain name. The Complainant has relied on the decision as delivered in the matter of *HSBC Holdings Plc v. Hooman Esmail Zadeh, M-Commerce AG*, INDRP/032 (24 March 2007) in support of its arguments in this regard.



The Complainant has submitted that they have not authorised the Respondent to use the Complainant's Marks in any way or manner whatsoever, and that the disputed domain name has therefore been registered wrongfully by the Respondent for commercial purposes to misleadingly divert consumers or to tarnish the Complainant's Marks.

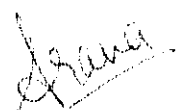
The Complainant has contended that the Respondent cannot have any rights or legitimate interests in the disputed domain name when the same incorporates the Complainant's mark in its entirety. The Complainant has relied on the decision as delivered in the matter of *Wockhardt Limited v. Kishore Tarachandani, INDRP/382 (14 August 2012)* in support of its arguments in this regard.

Therefore, the Complainant has contended that the absence of rights or legitimate interests in the disputed domain name in favour of the Respondent is evident.

C. The Registrant's Domain Name has been registered or is being used in bad faith [IN Domain Dispute Resolution Policy, Paragraph 4(iii); INDRP Rules, Paragraph 3(b)(vi)(3)]

The Complainant has once again reiterated that the Complainant's Marks have acquired tremendous reputation and goodwill across the globe and that their products bearing the said marks have come to be exclusively associated with the Complainant alone. The Complainant has further submitted that the website of the Respondent (at the time of initiating the present domain complaint) stated that the respondent was "one of the leaders in Hugo Boss India online store" and "Hugo Boss India Store: Last Chance to Save 70% on hugo boss clothing!" Therefore, the Complainant has contended that it is inconceivable that the Respondent was not aware of the Complainant's Marks and/or the exclusive rights of the Complainant over the said marks. In fact, the Complainant has contended, that the language as used by the Respondent attests to and admits their knowledge about the Complainant's Marks. That it is inconceivable that the Respondent could have had any other intention behind registering and using the disputed domain name, inter alia containing the entirety of the Complainant's trademark **HUGO BOSS**, but to trade-off on the reputation of the Complainant's Marks. The Complainant has once again relied on the decision as delivered in the matter of *Wockhardt Limited v. Kishore Tarachandani, INDRP/382 (14 August 2012)* wherein it had been stated that when the entire trademark has been copied in a domain name, it is a clear case of abusive registration of a well-known mark.

The Complainant has contended that, per the provisions of Paragraph 3 of the INDRP, it is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. The Complainant has once again relied on the decision as delivered in the matter of *Wockhardt Limited v. Kishore Tarachandani, INDRP/382 (14 August 2012)* in support of its argument. The Complainant has further contended that the Respondent ought to have conducted an availability search before registering the disputed domain name. That whilst registering the disputed domain name the Respondent must have realized that the Complainant has already registered domain names comprising of the Complainant's Marks. The Complainant has annexed as **Annexure 15** a copy of the webpage obtained while trying to seek a dummy registration of the domain names <**hugoboss.com**> and <**hugoboss.in**> clearly showing that during the registration process, the said domain names always appear as having been registered.



The Complainant has contended that the Respondent has malafidely adopted the disputed domain name with the ulterior motive of usurping the Complainant's Marks in which the Complainant has acquired immense goodwill and reputation. The Complainant has reiterated that the disputed domain name has been registered in an attempt to attract, for commercial gain, internet users to the website bearing the disputed domain name or other online locations, by creating a likelihood of confusion with the Complainant as to the source, association, affiliation or endorsement of the impugned website or the products/services advertised thereon. The Complainant has also reiterated that the disputed domain is likely to misdirect internet traffic from the Complainant's websites.

The Complainant has contended that registration and use of the disputed domain name constitutes trademark infringement and is resulting in the dilution of the Complainant's well known and reputed marks. That the same also amounts to the tort of passing off. The Complainant has also contended that the Respondent has therefore made false representations whilst registering the disputed domain name (in contravention of the provisions of paragraph 3 of the Policy) and has therefore breached the service agreement with the Registrar.

In view of all the above, the Complainant has submitted that the Respondent's registration of the disputed domain name was clearly in bad faith.

Other Legal Proceedings

The Complainant has submitted that there are no other legal proceedings that have been commenced, are continuing, or have terminated with regards to the disputed domain name.

Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed for the disputed domain name, i.e. <hugoboss-online.co.in> to be cancelled and transferred to the Complainant by means of the present Complaint.

7. Respondent's Contentions

As mentioned in the Factual Background of the matter, despite being duly served with a copy of the Domain Complaint as filed and thereafter granted adequate time to respond to the same, along with a grace period after expiry of the initial response period, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.

8. Discussion and Findings

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;



- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

i. **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**
(Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established its rights in the trademarks **HUGO, BOSS** and **HUGO BOSS** by virtue of its numerous trademark registrations for the same in jurisdictions worldwide, including in India. The first trademark registration in respect of the Complainant's Marks in the name of the Complainant in India dates back to 2000 (by virtue of their registration no. 942292, as placed on record), while adoption and use of the same by the Complainant for its goods and services worldwide dates back to 1924. The Complainant has submitted copies of the Trade Mark Registry status pages of some of their trademark registrations as obtained by them in India on the record, all of which pre-date the registration of the Respondent's domain name.

It is well established that trade mark registration is recognized as prima facie evidence of rights in a mark. The Complainant, by filing documents of its registered trademarks has established that it has prior statutory rights in the trademarks **HUGO, BOSS** and **HUGO BOSS** in jurisdictions around the world as well as in India.

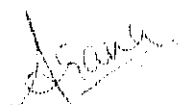
The Complainant has also submitted that it has registration of its own domain www.hugoboss.com since 1997, wherein it advertises its various goods and services, inter alia under the Complainant's Marks.

The Complainant has, in support of its arguments, further pointed out that the disputed domain name, www.hugoboss-online.co.in, incorporates its trade name/trademark **HUGO BOSS** in its entirety and may, therefore, be said to be identical/confusingly similar to the Complainant's aforementioned trademark.

The Complainant has submitted that Respondent has intentionally adopted a domain name identical/ confusingly similar to the Complainant's popular trademark **HUGO BOSS** with a view to attracting internet users and consumers for commercial gain by abusing the goodwill and reputation associated with the Complainant's aforementioned mark such that the lay public consumers may easily, though erroneously, infer affiliation, association or sponsorship of the Respondent's activities by the Complainant.

The Complainant has established that it did not at any time license or otherwise authorize the respondent to register the disputed domain name or carry out its activities under the Complainant's trademark **HUGO BOSS**.

The Complainant has referred to several Panel decisions under the INDRP, as has been mentioned above, in favour of its contentions and arguments. The Complainant has further referred to the Delhi High Court judgement in the matter of *Hugo Boss Trade Mark Management v. Ms. Sheeta Sabharwal* as decided in 2019 wherein in an ex-parte order, the Learned Court upheld the trademark rights of the plaintiff (Complainant herein) against a third party infringer.



The Complainant has submitted a number of annexures, as described above, to establish the availability, extent of use and popularity of its **HUGO BOSS** marks worldwide including in India.

It may be stated that the disputed domain name <**hugoboss-online.co.in**> is confusingly identical/similar to the Complainant's trade mark **HUGO BOSS** and completely incorporates the said trademark of the Complainant. It has been held by prior panels deciding under the INDRP that there exists confusing similarity where the disputed name incorporates the Complainant's trade mark, such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, *Indian Hotel Companies Limited v. Mr. Sanjay Jha, INDRP/148 <Gingerhotels.co.in>*, *Carrier Corporation, USA v. Prakash K.R. INDRP/238 <Carrier.net.in>*, *M/s Merck KGaA v. Zeng Wei INDRP/323 <Merckchemicals.in>*, *Colgate-Palmolive Company & Anr. v. Zhaxia INDRP/887 <Colgate.in>* and *The Singer Company Limited v. Novation In Limited INDRP/905 <singer.co.in>*.

Further, the Complainant's arguments that adjunction of the non-distinctive and generic terms '**-online**' and '**.co**' after the Complainant's trademark '**hugoboss**' is insufficient to avoid similarity with the Complainant's trademark and likelihood of confusion among internet users and the general public. The precedent as set down in the matter of *Lego Juris A/S v. Robert Martin, INDRP/125* can be said to be binding upon the present Panel as well.

In view of the aforesaid, the Arbitrator accepts that the Complainant's rights in its trademarks including **HUGO**, **BOSS** and **HUGO BOSS** under Paragraph 4(i) of the INDRP has been established.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)**

The disputed domain name incorporates in entirety the mark **HUGO BOSS** which is identical to the Complainant's trademark **HUGO BOSS** in which the Complainant has statutory rights by virtue of having valid and subsisting prior trademark registrations in India as well as several jurisdictions around the world, and having become popular across the world, including in India.

The Complainant has further contended, with substantiating arguments, that there is no credible or legitimate reason for the Respondent to have adopted a domain name identical/ deceptively similar to the Complainant's trademark **HUGO BOSS**, (seeing as the Respondent is also not commonly known by that name) other than to ride on the goodwill and reputation accumulated by the Complainant's mark by the time of the Respondent's registering the disputed domain name, and derive unjust enrichment therefrom by causing consumer confusion.

On the other hand, the Respondent has not submitted any registration certificates for the mark **HUGO BOSS**, or in fact any evidence of its rights to the aforesaid mark. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 7 of the INDRP.

The Complainant has established a prima facie case of its rights in the mark **HUGO BOSS**, and has referred to several decisions by adjudicating Panels under the INDRP, as has been

mentioned above, in favour of its contentions and arguments. Therefore, in accordance with the holding of previous panels, the evidentiary burden shifted to the Registrant (Respondent) to rebut the showing by providing evidence of its rights or interests in the domain name, which it has failed to do in the current proceedings.

Therefore the Arbitrator concludes that the Complainant has no relationship with the Respondent and has not permitted or licensed the Respondent to use or register the disputed domain name.

Use of such a confusingly and deceptively identical/similar domain name by the Respondent is likely to mislead and misrepresent to the general public and members of the trade as to the source, sponsorship, affiliation or association of the activity being carried on through the website.

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(ii) and 7 of the INDRP.

iii. **The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)**

The Respondent is not making any fair and non-commercial use of the disputed domain name as on date. The Respondent has in fact not even hosted an active website at the disputed domain, which must necessarily lead to a finding inter alia as (partially) satisfying the provisions as laid down under Paragraph 6(ii) of the INDRP, i.e. that the Registrant has registered the (disputed) domain name in order to prevent the rightful owner of the trademark from reflecting the same in a corresponding domain name. However, it is pertinent to mention here that it is not clear from the Complainant's submissions whether the present Respondent has engaged in similar behaviour previously.

In any case, the Respondent's use of the disputed domain name has not been defended as having been bona fide and the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use of the disputed domain name.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

8. **Decision**

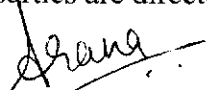
Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has statutory and proprietary rights over the trade mark **HUGO, BOSS, HUGO BOSS** and variations thereof. The Complainant has herein been able to prove conclusively that:

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;

- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**hugoboss-online.co.in**> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.


Lucy Rana, Sole Arbitrator

Date: May 13, 2019.

Place: New Delhi, India.