



पश्चिमबङ्ग पश्चिम बङ्गाल WEST BENGAL In INDRP case number 1186 of 2019
IN Registry National Internet Exchange of India

AC 603271

Patagonia Inc.,

California

786782

United States of America
(Complainant)

C/O

Tia Malik and Manas Upmanyu

Laii & Sethi

D-17 South Extension-II

New Delhi 110 049

Complainant

Doublefist Limited

No. 33 Tongji East Road

Chancheng District

FoShan City

Guangdong Province

China

Respondent

16 DEC 2019

71016
P. S. CHOWDHURY
Ayerar Bhawan
P. 7, Chatterjee Square
Kolkata - 90
Jalpaiguri State Vard

Arbitral Award
Disputed Domain Name: Patagonia.in
IN DRP case number 1186 of 2019
IN Registrar National Internet Exchange of India

United States of America
193702
California

Manas Company
193702
California

Changong Province
193702
California

The Parties

1. The Complainant is Patagonia Inc., 259 West Santa Clara Street, Ventura, California, 93001, USA represented by advocates Tia Malik and Manas Upmanyu, Lall & Sethi, D-17 South Extension-II, New Delhi, 110 049.
2. The Respondent is Doublefist Limited, No.33 Tongji East Road, Chancheng District, FoShan City, Guangdong Province, China who has been notified by email at ymgroup@msn.com.

Procedural History

3. I am the appointed sole arbitrator by the National Internet Exchange of India on 17 December 2019 under INDRP Rules of Procedure in above matter. The arbitration is deemed commenced on the same day. The seat of Arbitral Tribunal is Kolkata, India.
4. These are mandatory arbitration proceedings in accordance with the .IN Domain Name Dispute Resolution Policy ("INDRP") adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("the Rules") were approved by NIXI on 28th June 2005 in accordance with the Arbitration and Conciliation Act, 1996. By registered the disputed domain with the NIXI accredited Registrar, the Respondent gave its consent to the resolution of the domain name disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder. Similarly, by its complaint dated December 03, 2019, the Complainant gave its consent to the arbitration of this dispute.
5. On 2 November 2013 the domain Patagonia.in was registered by the Respondent. The Complainant by a petition dated 3 December 2019 filed this Complaint. On 17 December 2019 this Tribunal was constituted.
6. The Respondent has declined to participate in these proceedings. Both the parties had opportunity to place evidence in support of their case as chosen by them. The parties have not offered any further evidence, explanations or documents in support of their positions.
7. The documents and evidence placed before the Tribunal has been admitted and considered in the arbitral proceedings in accordance to

the Arbitration and Conciliation Act 1996 and other mandatory provisions of law.

Background

8. The Complainant Patagonia was founded in 1973 as a limited company in the United States and describes itself a world-renowned outdoor apparel company which has since become just as well known for its non-sports wear and its general clothing ranges.
9. The Complainant states that it has registered the trademark PATAGONIA and annexes an exhaustive list of its trademarks in India and all across the world.
10. The Complainant contends Patagonia is not a common word in India and the adoption of the same by the Respondent for a website only reeks of dishonesty in the first instance and is mala fide. The Respondent has no right whatsoever to use or adopt the well-known trademark Patagonia of the Complainant.
11. The Complainant contends that pursuant to INDRP Rule 3(b)(vi) the domain name PATAGONIA.IN is confusingly similar to the trademark PATAGONIA in which the Complainant has rights.
12. Complainant further strongly submits that that the Registrant has to demonstrate the use of or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or that the Registrant has been commonly known by the domain name. Respondent can satisfy neither criteria, and on the contrary the Respondent's behaviour demonstrates the existence of bad faith within the meaning of paragraph 6 of the INDRP Policy.

Findings

13. The Tribunal has examined each and every one of the Complainant's contentions but has considered it unnecessary to express a view on each of them. The Tribunal does not necessarily accept the contention that PATAGONIA.IN could not comprise a fair use of the Patagonia trademark. This is particularly so as Patagonia is a geographical indication (GI) and such geographical indications even when used as the name of a company or brand continue to persist. Patagonia is of course a remote and beautiful portion of South America that falls within Argentina, Chile. It is understood the name was adopted by the

company as a homage and also because it symbolizes the adventurous spirit with which it wishes to associate itself. Interestingly the name Patagonia comes from the word "Patagon" who were a mythical race of giant humans. Spanish explorers affixed this moniker to the indigenous natives because they tended to be taller than contemporary Europeans. It is hard to make the claim that a United States company, no matter how well-recognized, can have a superior claim to the name Patagonia than the inhabitants of that regions.

14. However the facts and circumstances of the present case are very different. The Respondent has not participated in these proceedings, and produced no evidence that it has any connection with the Patagonia region whatsoever. As such, the inference is overwhelming that it was simply engaged in cyber-squatting, well aware of the potential value of the domain name, and has decided to abandon the domain name in the face of this action.

15. I note further, for the avoidance of doubt, that even if such inference cannot legitimately be drawn, the Respondent has not identified any purpose, however remote or tangential, to justify its entitlement to the domain name. Since the Complainant has led ample and uncontroverted evidence that the Respondent has no connection or authorization with Patagonia, I would hold for this additional ground that the Respondent was in violation of the INDRP Policy.

Decision

16. In the Tribunal's view this is a case in which the registration in the name of the Respondent should be cancelled forthwith. The domain name should be transferred to the Complainant.

17. Costs follow the outcome. The Respondent is ordered to pay the cost of the proceedings at rupees 1 Lakh, Fifty thousand only. The Arbitrator also wishes to express his regret that the publication of this award has been delayed because of ill-health.



Harshavardhan Sancheti

Sole Arbitrator

14.06.2020