

Room 501, Building 4, Taoli Garden
Huaiyin District
Huai'an City, Jiangsu Province
China.
Huai'an
Wisconsin 223300, USA.

**THE RESPONDENT /
THE REGISTRANT**

IN THE MATTER OF DISPUTED DOMAIN NAME: - 'LOWES.IN'

**ARBITRATION PANEL: - MR.S.C.INAMDAR, B.Com. LL.B., F.C.S.
SOLE ARBITRATOR**

**DELIVERED ON THIS 14th DAY OF AUGUST TWO THOUSAND NINETEEN
AT PUNE, INDIA.**

I] SUMMARISED INFORMATION ABOUT THE DISPUTE: -

| SR. NO. | PARTY TO THE DISPUTE | NAME | ADDRESS |
|--------------------|--|-----------------------------------|--|
| 01 | COMPLAINANT | LF LLC | 1000 Lowe's Boulevard, Mooresville North Carolina 28117 United States of America |
| 02 | AUTHORISED REPRESENTA TIVE OF THE COMPLAINANT | Mr.Srijoy Das Mr.Bidyut Tamuly | Archer & Angel #5B, 5 th Floor, Commercial Towers, J W Marriott. Aerocity, New Delhi. 110037 India. |
| 03 | RESPONDENT / RESPONDENT | Lina | Doublefist Limited Room No.501, Building NO.4, Taoli Garden, Huaiyin District, Huai'an City, Jiangsu Province, China 223300 |
| 04 | DOMAIN NAME REGISTRAR | Dynadot LLC | 210 S Ellsworth Ave #345 San Mateo CA 94401 USA |

II] CALENDAR OF MAJOR EVENTS:-

| Sr. No. | Particulars | Date (All communications in electronic mode) |
|--------------------|---|---|
| 01 | Arbitration case referred to me by NIXI | 12.07.2019 |
| 02 | Acceptance given by me | 22.07.2019 |
| 03 | Hard copy of complaint received, Notice of Arbitration issued with the direction to Registrant to file say latest by 06.08.2019 | 26.07.2019 |

| | | |
|----|---|------------|
| 04 | Period to file say by Respondent extended with instruction to file his say if any, latest by 10.08.2019 | 06.08.2019 |
| 05 | Notice of Closure of Arbitration proceedings issued | 12.08.2019 |
| 06 | Award passed | 14.08.2019 |

III] PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:

1. Disputed domain name is 'LOWES.IN'.
2. Date of registration of disputed domain name by Respondent is 01.10.012
3. Registrar is Dynadot LLC, 210, S Esslworth AVE. #345, San Mateo, CA 94401, USA

IV] PROCEDURE FOLLOWED IN ARBITRATION PROCEEDINGS: -

- 1) Arbitration proceedings were carried out as per. .In Domain Name Dispute Resolution Policy (INDRP) read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 (including amendments thereto) and Code of Civil Procedure, wherever necessary.
- 2) The parties were requested to expedite their submissions so as to enable this panel to pass award within the prescribed time frame of 60 days.
- 3) Copies of all communications were marked to both the parties and NIXI.
- 4) No personal hearing was requested / granted / held.

V] BRIEF INFORMATION OF THE COMPLAINANT: -

The Complainant in these arbitration proceedings is LF LLC, a limited company incorporated under the laws of Delaware, United States of America. According to the Complainant it owns about 60 trademarks registered at different countries containing the word LOWES. Apart from these registered trademarks, it also owns 7 registered trademarks in India containing the word LOWES and its different formations. The Complainant also is the owner of 7 websites including lowes.co.in in India.

The Complainant is an old and established company selling goods and services under the LOWE'S trademark. It started its business as early as in 1946 and currently has more than 18 M customers each week. It is mainly engaged in the business of home improvement retail outlets. It has more than 2200 home improvement and hardware stores in U.S., Canada and Mexico. It was ranked at No.40 in the Fortune 500 companies in the year 2018 and has been consistently included in the said list every year. Its products are available for sale online as well as in stores around the world. Its parent company is Lowe's Companies Inc. and Indian subsidiary is Lowe's Services

India Pvt. Ltd, located in Bangalore. Lowe's India is comprised of over 2000 associates who focus on technology, analytics and shared services.

The Complainant claims that the Respondent has registered disputed domain name on 01.10.2012, infringing its legitimate rights and privileges in registered trademarks.

VI] SUMMARY OF THE COMPLAINT: -

The Complaint is, inter-alia, based on the following points, issues, representations or claims in brief:-

(A) CONTRAVENTION OF THE REGISTERED TRADEMARKS AND DOMAIN NAMES OF THE COMPLAINANT (CONTRAVENTION OF POLICY PARA 4(i) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY) (INDRP) : -

i. The Complainant states that the disputed domain name <www.lowes.in> contains the Complainant's complete trademark to the extent possible, omitting only the apostrophe as punctuation, since it is not allowed in domain names. Further, the disputed domain name is identical to numerous domain names registered by the Complainant. Thus the disputed domain name is conceptually, visually, structurally and phonetically identical to the trademark and numerous domain names registered in favor of the Complainant. Similarly the registration date of disputed domain name, i.e. 01.10.2012, is vastly subsequent to the Complainant's adoption, usage and statutory rights in the Lowe's trademark globally.

ii. The Complainant submits that it has built up a strong reputation worldwide and has invested significant resources in advertising its products and services offered under the trademark LOWE'S in television and print advertising as well as on internet and social media. The complainant has prominent presence on social media websites such as Facebook, Instagram and Twitter.

iii. Numerous Domain Name Dispute Arbitration Panels have held that the Complainant has established rights in the mark LOWE'S.

(Reliance is placed by the Complainant upon:

LF, LLC v Steve Marinich, FA 1612001710091,
LF LLC v Metro Concourse Limited / Domain Handler, FA 1202001430498,
LF LLC v None c/o Ion-Tudor Cinghita, FA 1202001430922,
LF LLC v N/a / Jondi Bagaturia, FA 1112001418598,
LF LLC v Ryan Bertalotto, FA 0706001000013,
LF LLC v Investment Services Corp c/o William Piontek, FA 0509000566653,
LF LLC v Lowes Construction, FA 0509000566618).

iv. It is well established that incorporating a trademark in its entirety, particularly if the mark is an internationally well known mark, is sufficient to

establish that the domain name is identical or confusingly similar to the Complainant's registered mark.

*(Reliance is placed by the Complainant upon –
Britannia Building Society v Britannia Fraud Prevention, WIPO-D2001-0505*

PepsiCo Inc. v Papsi SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a/ EMS) WIPO Case NO. D2003-0696

Hoffmann-La Roche AG v Andrei Kosko, WIPO Case No.D2010-0762

Farouk Systems Inc. v QYM, WIPO case No.D2009-1572).

v. The adoption and registration of disputed domain name by the Respondent is nothing but an attempt to deceive unsuspecting public.

(Reliance upon Philip Morris USA Inc. V Andy McMillan / Registration Private Domains by Proxy, LLC , WIPO case No. D2016-1278).

vi. The complainant states that the Respondent is offering to sell the disputed domain name. In support of this the Complainant has attached snapshot at Annexure K of the letter of offer for sale. It further states that the Respondent is a cyber squatter / ciber pirate and has registered the disputed domain name to illegally sell the same.

**(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME
(PARA 4(ii) OF INDRP): -**

i. The Respondent has not fulfilled any of the conditions stated under the Paragraph 7 of INDRP to establish its rights or legitimate interests in the Disputed Domain name. As against this, the Complainant has legitimate interests in the LOWE'S trademark in India. Similarly the Complainant has been continuously and extensively using the trademark since 1946 in numerous countries. Nothing in Respondent's WHOIS information demonstrates that the Respondent is commonly known by the disputed domain name. *(Reliance is placed on Alpha One Foundation Inc. v Alexander Morozov NAF case No. 766380).*

ii. The web page hosted by the Respondent at the Disputed Domain name does not have any genuine content, which shows an absence of rights or legitimate interests. *(Reliance is placed on Six Contents Hotels INC. v Patrick Ory, WIPO case No.D2003-0098).*

iii. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorised the Respondent to register or use the marks. *(Reliance is placed on Marriot International Inc. v Thomas Burstein and Miller WIPO case No. D2000-0610).*

iv. The Respondent has not used, nor made any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of

services or goods. (*Reliance is placed on William Grant & Sons Ltd v Ageesen Sri, Locksbit Corp / WhoisGuard Protected, WhoisGuard Inc. WIPO case no .D 2016-1049*).

(C) REGISTRATION AND USE IN BAD FAITH (PARA 4(iii)) OF INDRP: -

- i. Because the Complainant's adoption of the trademark LOWE'S precedes the registration of the disputed Domain Name, it is clear that the Respondent intended to trade on the reputation of the Complainant and its rights in the LOWE'S trademark. (*Reliance is placed on Cmpagnie Generale des Etablissements Michelin v Terramonte Corp, Domain Manager (WIPO case No. D2011-1951)*).
- ii By registering the disputed domain name, the Respondent has intentionally attempted to attract for commercial gain, internet users to the disputed domain website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.
- iii. Since the Registrant had previous knowledge of the Complainant's legitimate interests in the disputed domain name, established by registration of trademarks in its favour, it is obvious that the Registrant registered the disputed domain name in opportunistic bad faith.
- iv. It is evident that the Registrant has registered the disputed domain name for the purpose of selling it. Therefore it is neither registered in a bona fide manner nor for bona fide purposes. Thus it is clearly established that it is registered in bad faith as per Para 6(i) of the INDRP. (*Reliance is placed on Tetra Laval Holdings & Finance S.A. v Whois Agent, Whois Privacy Protection Service Inc. / Marquerite Gordon WIPO Case No. D2018-1354*).

(D) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the above background of the Complaint and reasons described therein the Complainant has requested for TRANSFER OF DISPUTED DOMAIN to the Complainant and costs of the proceedings to the Complainant.

VII] RESPONDENT'S DEFENSE: -

The Respondent did not respond to the Notice of Arbitration even within the extended time.

VIII] REJOINDERS OF THE PARTIES: -

In view of no response by the Respondent, this panel did not call for rejoinders.

IX] EVIDENCE RELIED UPON: -

This panel has, *inter-alia*, placed reliance upon the following evidences / details thereof, submitted by the Complainant: -

1. Copies of trademarks registered in India and in other countries in the name of the Complainant
2. Copy of printout of the *whois* details
3. Copy of the letter by the Registrant / on behalf of the registrant to the Complainant offering for sale of the disputed domain name

X] FINDINGS: -

Based on the complaint, contentions and annexures attached to it, this panel finds as follows: -

01. The Complainant is an owner of registered trade / service marks incorporating the word LOWE'S in which it has legitimate interests and rights.
02. The registration of these marks is much prior to the registration of the disputed domain name by the Respondent.
03. The disputed domain name has been coined only with a small punctuation i.e. deleting apostrophe from the registered trade mark of the Complainant. Therefore the disputed domain name is visually as well as phonetically extremely close to the registered trademark of the Complainant. This similarity would create confusion among the internet users and that they might think it to be official website of the Complainant.
04. The Respondent is not known by the word LOWES or any improvised version thereof or any resembling word to it.
05. The Respondent is not making use of disputed domain name for non-commercial or charitable purposes.
06. The Respondent or somebody on his behalf (named Mark Chao) has offered to sell the disputed domain name to the Complainant itself. The wording used in the said email dated 10.05.2019 reads as '***This domain name is good tool to explore your market, if you are interested in it, please contact us domainhk@hotmail.com. We could do the transaction via Sedo.com (Germany) or Escrow.com (USA).***' He further also narrates ***the importance of India having very good business opportunities.***

This proves that the Registrant was fully aware of importance and relevance with the Complainant of the disputed domain name. Hence it can be inferred that the registration of disputed domain name was done mala fide and with the ulterior motive of selling it at higher price than actual expenses to make illegal, immoral and abnormal profits.

The *modus operandi* of the Registrant obviously seems to block by registering in its name, the disputed domain name which is important and relevant to the business of the Complainant and then to offer the same to him for exorbitant price. Unless the disputed domain name is transferred to him, this preemptive registration would compel the Complainant to pay to the Registrant, the price he asks for, to save damage to the goodwill and reputation built by the Complainant over the period of several years, . The Complainant has also cited similar attempts by the Registrant in similar registrations involving the word LOWES or its permutations or combinations.

07. This panel agrees with the Complainant that the Respondent has registered the domain name for mala fide intentions and purposes and that he must have been fully aware of the previous rights and legitimate interests of the Complainant.

08. The Registrant has not been making any use of the disputed domain name, much less for any bona fide business activity.

09. The Registrant is not known by the word LOWES or any variations in it or any word having close similarity to it.

10. The Registrant has not cared to respond to the Complaint and / or to the Notice of Arbitration. As natural reaction, any one having legitimate interests in the disputed domain name, would make all efforts to protect his interests in the same. This alone can prove that the Registrant has registered the disputed domain name mala fide for selling it at exorbitant price.

11. The Complainant has expressly stated that it never licensed, authorised, permitted the Registrant to register this domain name and that there is no connection of source, sponsorship, affiliation or endorsement by the Complainant for this purpose.

XIJ CONCLUSION: -

On the basis of the averments in the Complaint, citations, documentary evidence and other substantiating points, this Arbitration Panel has come to the following conclusions: -

a. the disputed domain name contains registered trade / service mark of the Complainant in its entirety and is totally identical or confusingly similar to a name, trademark in which the Complainant has legitimate rights and interests.

b. the Registrant has registered disputed domain name with the ultimate purpose of selling it at exorbitant price to anyone including the Complainant itself

c. the Respondent has no rights or legitimate interests in respect of the domain name. He has not been authorised, licensed / permitted to use the said domain name, nor has he been known individually or by his business by the name of disputed domain name or any closely resembling term to it.

said domain name, nor has he been known individually or by his business by the name of disputed domain name or any closely resembling term to it.

d. the disputed domain name is registered in bad faith by the Respondent and allowing him to continue to own the same would make injustice and loss to the Complainant.

XII] AWARD: -

On the basis of above findings on issues, foregoing discussion, conclusion and as per the remedies requested by the Complainant, this panel passes the following award: -

a. The disputed domain name 'LOWES.IN' be transferred to the Complainant.

b. The Registrant shall pay all documented expenses incurred by the Complainant in these arbitration proceedings.

Date: - 14.08.2019

Place: - Pune, India



**(S.C.INAMDAR)
SOLE ARBITRATOR
NATIONAL INTERNET
EXCHANGE OF INDIA**