



महाराष्ट्र MAHARASHTRA

© 2016 ©

AB 614473

अनु.क्र. ७५३ २०१७/२० मु.श.सकम. युवा २५८

दस्तावा प्रमाणित केवळ

दस्ता नोंदणी करणारे अधिकारी

मिळकतीचे वस्तू

मुद्रांक विभाग शाहीन चिंतामणी विलास

गता २००८ शनिवार पेठ, पुणे-४०

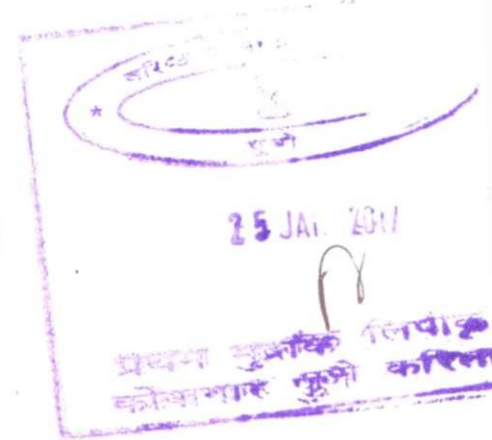
दस्तावा प्रमाणित केवळ

महाराष्ट्र शासनाच्या वतीने - विपक्षगुण जोड

मुद्रांक विभाग शाहीन चिंतामणी विलास

गता २००८ शनिवार पेठ, पुणे-४०

मुद्रांक विभाग शाहीन चिंतामणी विलास



**AWARD  
IN ARBITRATION**

**'CIMPRESS.IN'**

Cimpress Schweiz GmbH  
Technoparkstrasse 5  
CH-8406 Winterthur

THE COMPLAINANT

AND

Virginie Trottier  
4 rue Blaise Pascal, Strasbourg  
Cedex, 90032.  
France

THE RESPONDENT /  
THE REGISTRANT

-----  
**IN THE MATTER OF DISPUTED DOMAIN NAME: - 'CIMPRESS.IN'**  
**BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.**

**SOLE ARBITRATOR**

**DELIVERED ON THIS 27th DAY OF JANUARY TWO THOUSAND SEVENTEEN AT PUNE, INDIA.**

-----

**SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

- |  |   |
|--|---|
| <b>01. Names and addresses<br/>Of the Complainant: -</b> | <b>Cimpress Schweiz GmbH</b><br><b>Technoparkstrasse 5</b><br><b>CH - 8406, Winterthur</b>                  |
| <p>Through its authorized<br/>representatives</p>        | <p>SILKA Law AB, 114 56 Stockholm<br/>Sweden<br/>Strandvagen 7A</p>   |
| <b>02. Name and address of<br/>The Respondent: -</b>     | <b>Virginie Trottier</b><br><b>4 rue Blaise Pascal, Strasbourg</b><br><b>Cedex 90032.</b><br><b>France.</b> |

**03. Calendar of Major events:**

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	02.01.2017
02	Hard copy of complaint received	06.01.2017
03	Notice of Arbitration issued with the instructions to the Respondent to file reply latest by 16.01.2017	06.01.2017
04	No reply filed by the Registrant / Respondent and hence suo-motu extension of time granted by Arbitrator upto 21.01.2017	18.01.2017
05	No reply filed by Registrant / Respondent even within extended period and hence Notice of Closure of Arbitration was issued	24.01.2017
06	Award passed	27.01.2017

**II PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:**

1. Disputed domain name is 'CIMPRESS.IN'.
2. Date of registration is 20.09.2016
3. Registrar is 1APi GmbH (R98-AFIN)



## **II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -**

01. Arbitration proceedings were carried out as per INDRP read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 and Code of Civil Procedure, wherever necessary.
02. The parties were requested to expedite their submissions so as to enable this panel to pass award within the 60 days time frame prescribed.
03. Copies of all communications were marked to both the parties and NIXI.
04. No personal hearing was requested / granted / held.

## **III] SUMMARY OF THE COMPLAINT: -**

*The Complainant's Complaint is 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 PARA (3), (4) AND (6) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP) :-**

1. The Complainant states that the domain name registered by the Respondent CIMPRESS.IN is both similar and identical to the registered international trademark 'CIMPRESS', vide No.1255666 dated 05.12.2014 of which the Complainant is the registered owner. The Complainant has also registered German trademark No. 013147624. The first mentioned trademark has been registered by the Complainant more than two year before the disputed domain name was registered.
2. Apart from above, the Complainant owns various domain names, incorporating the word CIMPRESS including the suffix .com, .fr, .co.in etc. The disputed domain name therefore, is identical and / or confusingly similar to the trademark and trade name and several websites of the Complainant.
3. The disputed domain name CIMPRESS.IN includes the registered trademark in its entirety. It has been decided in several cases that mere addition of suffix like .in, .co.in etc. does not differentiate the main part of the domain name from the registered trademarks. The Complainant has cited the case Morgen Stanley U.S.A. v/s Bharat Jain, U.S.A., INDRP case No.158 in support of his contention.

### **(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME ( PARA 3(b)(vi)(2) OF INDRP RULES READ WITH PARA 7 :-**

The Complainant has not found that the Respondent is commonly known by the domain name. Based on search on internet, especially on google, the Registrant could have easily found that the trademarks are owned by the Complainant.

There is no evidence that the Registrant / Respondent has a history of using, or preparing to use, the domain name in connection with a bona fide offering of goods and services. It is clear that the Complainant has become a distinctive

identifier associated with the term CIMPRESS and that the intention (of the Registrant / Respondent) is to take advantage of an association with the business of the Complainant.

The website address initially directs to a parking page provided by the registrar which is permissible if the Respondent use the domain name for any lawful purpose. The domain name resolves to a website that provides links, of which some are directly referencing to the Complainant. It can be presumed that the Respondent receives pay-per-click revenue from these links. Therefore the use of a parked webpage with related links to the CIMPRESS brand causes confusion in the public.

In support of his contentions the Complainant has relied upon the decision in *Teradata Corporation V/s Virginia Cross*, INDRP Case No.670.

### **(C) REGISTRATION AND USE IN BAD FAITH: -**

Since the trademarks were registered much before the registration of disputed domain name, it is very unlikely that the Respondent was not aware of the unlawful registration of the domain name. Since the registration the domain name resolves to a parked website.

The Registrant via its official email address domainstorepro@gmail.com - has also registered various domain names including well-known brands with protected trademarks such as thegap.co.in (THE GAP), armanibeauty-usa.com (ARMANI), hewlettpackard.tv (HEWLETT PARKCARD). Thus it appears that the Registrant is habitual cyber squatter.

The Complainant states that arbitration panel in WIPO case No.D2000-0003 in the disputed domain name Telstra Corporation Limited V.s Nuclear Marshmellows, that the registration and passive holding of a domain name which has no other legitimate use and clearly references the Complainant's Trademark, may constitute registration and use in bad faith. In the current case, examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well known trademark, no response to the cease and desist has been sent.

### **(D) REMEDIES SOUGHT BY THE COMPLAINANT: -**

On the above background of the Complaint and reasons described therein the Complainant has requested for transfer of the disputed domain name to it.

### **V] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

In reply to the complaint, the Registrant / Respondent has NOT filed any reply / say, even within the extended period.

### **VII REJOINDERS OF THE PARTIES: -**

Since the Registrant / Respondent has failed / neglected to file any reply / say, no rejoinder was called for.



## VIII] MERITS OF THE COMPLAINT: -

*The Registrant / Respondent has not filed any say / reply to the complaint or Notice of Arbitration, even within the extended period. Presumably, she has accepted the contents / allegations of the Complaint because no person having lawful rights in the domain name, would keep mum and leave his case undefended.* The well known legal maxim 'silence amounts to acceptance' is applicable to this case. Based on this premise and on the basis of the Complaint and attachments to it, this Arbitration panel records the following observations: -

(a) The Complainant has registered trademark and websites which include the word 'CIMPRESS'. All of them have been in use for many years and much before the registration of disputed domain name by the Respondent.

Against this the Registrant does not have any registered trademark, other similar prior website or any business mark / identity containing the words or part thereof 'CIMPRESS.' She is also not commonly known by these words or any part thereof.

(b) The Respondent's domain name contains the word CIMPRESS. It is a well settled legal position in many decided cases so far that, the mere addition and difference in top level domain name '.in' does not differentiate the domain name from the registered trademarks or websites of the Complainant. The Respondent has not been using the registered domain name for legitimate business purposes. Apparently she is earning unlawfully with the use of pay-per-click methodology.

(c) It is the duty cast by law, on every person aspiring to register any domain name, to verify before registration of proposed domain name, whether any similar domain name exists, having backup of registered trademarks, whether there is any similarity with existing domain names of others, whether the same has been in prior use by others and also to check with INDRP with Rules made thereunder. If he fails, he has to face the consequences because ignorance of law is no excuse. In the present case the Registrant has failed / neglected to make any such verification and hence is liable for consequences.

(d) The disputed domain name is identical or confusingly similar to a trademark or service mark and also websites in which the Complainant has rights according to the requirement of para 4(a)(i) of the INDRP Rules

(g) The Registrant / Respondent has no rights or legitimate interests in respect of the domain name as required by Para 4(a)(ii) of the Rules.

(h) If use of disputed domain name by the Registrant / Respondent is allowed in future, the same would be offered for sale at unreasonable consideration to any other party including the competitors of the Complainant. This would lead to loss of business as well reputation of the Complainant.

Importantly, the Respondent has failed / neglected to establish her bona fides, legitimacy, legal rights, prior use of the domain name for lawful purpose or any type of nexus between her and the registered domain name. All this leads to only one conclusion that the Registrant has registered domain name with mala fides and with the ulterior motive of making profits at the disadvantage to the Complainant.

From all above findings, it can be concluded that the Complainant has proved its case for the entitlement to the disputed domain name.

On the basis of my findings on issues and foregoing discussion, I pass the following award: -

**[1] The Complainant is entitled to the disputed domain name – 'CIMPRESS.IN' and hence the same be transferred to the Complainant.**

**[2] No orders as to the costs.**

Dated: - 27.01.2017

Place: - Pune

  
**(S.C.INAMDAR)**  
**SOLE ARBITRATOR**