

Bond



**Indian-Non Judicial Stamp
Haryana Government**



Date :23/10/2019

Certificate No. G0W2019J1078

GRN No. 59196524



Stamp Duty Paid : ₹ 101
(Rs. Only)

Penalty : ₹ 0
(Rs. Zero Only)

Deponent

Name: Ranjan Narula

H.No/Floor : Na

City/Village : Gurugram

Phone : 0

Sector/Ward : Na

District : Gurugram

Landmark : Na

State : Haryana



Purpose : ALL PURPOSE to be submitted at All place

RANJAN NARULA

ARBITRATOR

Appointed by the .IN Registry – National Internet Exchange of India

Plus-Plus A/S

Borupvej 20

DK-4500 Holbæk

Denmark

..... Complainant

Toys Online India Pvt Ltd.

Radhika Gupta

Mumbai, 230543 Maharashtra

India

plusplus209@hotmail.com

+91 9898989898

..... Respondent

Disputed Domain Name: <www.plus-plus.co.in>

AWARD

1) **The Parties:**

The Complainant in this arbitration proceeding is Plus-Plus A/S, Borupvej 20 DK-4500 Holbæk, Denmark. The Complainant is represented by its authorized representatives, Otello Law Firm, Skt. Clemens Torv 9, 1st floor, DK-8000 Aarhus, Denmark.

The Respondent in this arbitration proceeding is Toys Online India Pvt Ltd., Radhika Gupta, Mumbai, 230543 Maharashtra, India, as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) **The Domain Name, Registrar & Registrant:**

The disputed domain name is <www.plus-plus.co.in>.

The Registrar is GoDaddy.com, LLC

The Registrant is Toys Online India Pvt Ltd., Radhika Gupta, Mumbai, 230543 Maharashtra, India, plusplus209@hotmail.com.

3) **Procedural History:**

This arbitration proceeding is 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 Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Mr. Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on March 19, 2020 and the hard copy of the Complaint sent by NIXI was received in the Arbitrator's office on March 23, 2020.

- The notice was issued to the Respondent on March 27, 2020 at his email address plusplus209@hotmail.com outlining that the Complainant had prayed for transfer of the disputed domain name "www.plus-plus.co.in" in its favour. The Respondent was called upon to submit their response within ten (10) days of receipt of the Arbitrator's email i.e. until April 6, 2020.
- As no response was received, the Arbitrator issued another notice to the Respondent on April 11, 2020 via email granting another opportunity to the Respondent to submit its reply on or before April 18, 2020.
- The Arbitrator received no response from the Respondent within the said timeline and the Arbitrator has not received delivery failure message from the email address. The Arbitrator thus informed the parties on April 24, 2020 that the Respondent has not filed its response and has been proceeded ex-parte.
- In view of the above, the Complaint is therefore being decided based on the submissions made by the complainant and documents placed on record.

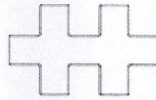
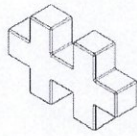
Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights; and is providing the nature of services identical with or confusingly similar to the services provided by the Complainant;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name; and
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions:

1. The Complainant submits that it is a Danish company, established in 2009 and now have distributors in more than 30 countries worldwide, including Europe, North America, Middle East and Asia. It is the creator of the PLUS PLUS brick; a building brick, which allows children of all ages to create mosaics and 3D designs manufactured at the Complainant's own factory. The brick is protected by both copyright and design patents.



2. The Complainant submits that it is the owner of trade mark registrations for the name PLUS PLUS in class 28 for "*Construction toys; Toy constructions sets; Toy building blocks*", in a number of countries i.e. Denmark, Japan, USA, Korea, Switzerland, Australia, Egypt, Norway, UAE, Qatar, Kuwait, Lebanon, Jordan, Saudi Arabia, Brazil, EU, Russia It also has an international trade mark registration no. 1436635 in Class 28, which designates India amongst other countries.
3. The Complainant submits that it is the owner of the name PLUS PLUS for toys in India and therefore has the sole right to use the name commercially. The Complainant further submits that further information about them or their products are provided on their website i.e. www.plus-plus.com.
4. The Complainant submits that the disputed domain contains the name PLUS-PLUS, which is identical to its trade mark. The Respondent's domain has no content and it cannot tell if the name is used in connection with toys, building blocks or construction sets, however, given that the Respondent's Company name contains "Toys Online", it can be assumed that the intended use of the domain is related to toys and therefore falls within the scope of protection of the Complainant's trade mark rights. It is further submitted that the use of the domain in any way by the Respondent will be a clear risk of confusion, which the Complainant cannot accept.
5. The Complainant submits that the Respondent is not in any way related to it. The Respondent is not a business partner, distributor, manufacturer or anything similar to the Complainant and therefore has no right to use the PLUS PLUS name.
6. It submits that the PLUS PLUS name is a registered trade mark and protected brand, which was protected before the disputed domain was registered and thus, the Respondent has no legitimate reasons for using this particular name.
7. It further submits that there is no content on the disputed domain and no information about the Respondent can be found. The Respondent does not appear to have an actual business and therefore has no legitimate interests in keeping the domain.

8. The Complainant submits that it has distributors all over the world, including in Asia and his products are highly popular thus, it enjoys a lot of goodwill.
9. It submits that the disputed domain name is registered by the Respondent very recently and they must have been fully aware of the Complainant's prior use and rights. It further submits that a simple Google search would show that the Complainant has been using the name for many years and that their products are sold all over the world under their trade mark name PLUS PLUS. The Respondent's choice of domain is clearly not a coincidence, but merely an attempt to take advantage of the goodwill of the Complainant.
10. The Complainant submits that it uses the domain "www.plus-plus.com" and the Respondent has chosen the domain "wwwplus-plus-co.in", which is almost identical to the existing domain. The disputed domain also uses a hyphen between PLUS-PLUS which shows that the domain was chosen with full intent to infringe the Complainant's rights and with the intent of misleading the customers into believing that the disputed domain, and thereby the Respondent, is somehow connected to the Complainant which is not the case.
11. It is submitted that the name PLUS PLUS is highly distinctive and is not a common name or word within the toy business used to describe certain products. This further underlines that the choice of domain was not coincidental, but that the Respondent acted in bad faith in an attempt to take advantage of the hard work of the Complainant.

5) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the Complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

6) Discussion and Findings:

The Complainant has produced IR extracts as **Annexure 2** evidencing that its trade mark name PLUS PLUS is registered in India prior to the registration of the disputed domain name.

Based on the submissions and documents filed in support, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not

contested the claims, therefore deemed to have admitted the contentions of the Complainant.

(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;

It has been established by the Complainant that it has statutory rights, common law rights, and rights on account of prior and longstanding use of the mark PLUS PLUS. The complainant also owns International Registration for the trade mark PLUS PLUS which has India as the designated country. Thus the mark is registered in India since August 28, 2018. The disputed domain name contains the Complainant's PLUS PLUS mark in its entirety. The disputed domain also uses a hyphen between PLUS-PLUS which shows that the domain was chosen with full intent to infringe the Complainant's rights and with the intent of misleading the customers into believing that the disputed domain, and thereby the Respondent, is somehow connected to the Complainant which is not the case. The trade mark PLUS PLUS is being used by the Complainant to identify its business. Thus the Respondent appears to have no plausible reason for adoption of an identical mark.

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

The Complainant has distributors all over the world, including in Asia and his products are highly popular thus, it enjoys a lot of goodwill. The Respondent is not in any way related to the Complainant. The Respondent is not a business partner, distributor, manufacturer or anything similar to the Complainant.

There are no contents on the disputed domain and no information have been provided about the Respondent. The Respondent does not appear to have an actual business and therefore in no manner constitutes a *bonafide* offering of services or goods.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. It has simply parked the domain.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.plus-plus.co.in' and has not come forward to explain its adoption.

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

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark PLUS PLUS is identified with the Complainant's name, mark and goods, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

Decision

In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.PLUS-PLUS.CO.IN> be transferred to the Complainant.

RANJAN
NARULA
Digitally signed
by RANJAN
NARULA
Date: 2020.05.14
11:16:19 +05'30'

RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

May 14, 2020