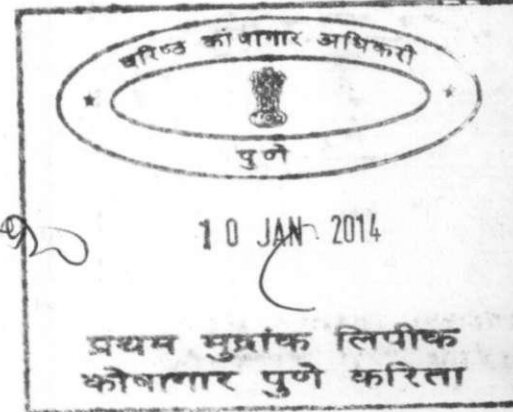




महाराष्ट्र MAHARASHTRA

KB 487268

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मुंबई मुद्रांक अधिनियम १९५८ चे अन्वयेत आहे.
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हस्ते व्यक्तीचे संपूर्ण नाव पुर्वी लवकर वरिष्ठ
पत्ता. २०४ २०४ २०४ २०४ २०४ २०४ २०४ २०४ २०४ २०४



मुद्रांक धारकाची/हस्ते व्यक्तीची सही

स्वाक्षरी (मुद्रांक विक्रेता)
(सौ. जयश्री मि. बेलसरे)
परवाना क्र. २२०९०९९/१९९५
परवानाची मुदत ३१/३/२०
पत्ता: ४२५ थ, शनिवार पेठ, पुणे-३८

AWARD
IN ARBITRATION
'OGILVY.IN'

Ogilvy & Mather Worldwide
636, 11th Avenue, New York NY 10036
U.S.A.

THE COMPLAINANT

AND

Domains Administrator
Bottega Veneta SA
Via Industria 19, Cadempino
Massachusetts 6814 CH, CH.

THE RESPONDENT /
THE REGISTRANT

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

SOLE ARBITRATOR

**DELIVERED ON THIS 15TH DAY OF JANUARY TWO THOUSAND
FOURTEEN AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

**01. Names and addresses
Of the Complainant: -**

Ogilvy & Mather Worldwide.
636, 11th Avenue, NY 10036,
USA

Through its authorized
representative

Ranjan Narula Associates
Vatika Towers, 10th Floor
Block-B, Sector -54,
Gurgaon 122002. NCR. HARYANA

**02. Name and address of
The Respondent: -**

Domains Administrator
Bottega Veneta SA
Via Industria 19, Cadempino
Massachusetts 6814 CH

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	12.12.2013
02	Acceptance given by me	12.12.2013
03	Hard copy of the complaint received	20.12.2013
03	Notice of Arbitration issued (with the instructions to file say / reply latest by 31.12.2013)	20.12.2013
04	Reminder notice sent (with instruction to file say latest by 05/01/2014)	02.01.2014
05	Notice of closure of arbitration	07/01/2014
06	Award passed	15/01.2014

I] PRELIMINARY: -

- 1) Ogilvy & Mather Worldwide, a corporation incorporated under the provisions of the laws of New York, U.S.A., having its principal office at 636, 11th Avenue, New York, U.S.A. (**The Complainant**) has filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name '**OGILVY.IN**' (**the disputed domain name / domain name**), through its authorised representative **M/s Ranjan Narula Associates, Vatika Towers, 10th Floor, Block-B, Sector-54, Gurgaon, National Capital Region, Haryana, India.**
- 2) The Complainant has disputed registration of domain name '**OGILVY.IN**' in the name of **Domains Administrator, Bottega Veneta SA, Via Industria 19, Cadempino, Massachusetts 6814 CH** (**The Respondent / Registrant**).
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRATION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 20th December, 2013 with the instructions to file his reply / say latest by 31st December, 2013.
02. Since no reply / say was filed by the Registrant within the prescribed period, this Arbitration Panel extended, *suo-motu*, the period to file say/ reply, if any, latest by 5th January, 2014. However no reply / say was filed by the Registrant / Respondent, even within the extended period.
03. In view of no reply by the Respondent no rejoinders were called for.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

The Complaint is based on the following points / issues in brief: - -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

-

1. The Complainant is the owner of various registered trademarks as per Exhibit B annexed to the Complaint. For the sake of brevity the same are not repeated here. In India the Complainant has following registered trademarks: -

Sr. No.	Trademark	Trademark Registration No. and date of Registration	Class	Renewed till
01	Ogilvy Activation	1471365	35	19.07.2016
02	Ogilvy & Mather	1246863	35	
03	Ogilvy & Mather	1246865	35	

The Complainant has several websites including www.ogilvy.com, www.ogilvy.us, www.ogilvy.net, www.ogilvy.co.in and www.ogilvy.mobi since last many years.

(B) IDENTITY OR CONFUSING SIMILARITY OF THE DOMAIN NAME WITH THE TRADEMARKS OF THE COMPLAINANT: -

1. The Registrant's domain name www.OGILVY.IN directly uses the trademark / trade name OGILVY as one of the operative words and this name is identical to that of the registered trademark of the Complainant. The impugned domain name is also extremely similar to the Complainant's international website www.OGILVY.com. Therefore ordinary internet users are likely to be confused by the presence of the impugned domain name on the internet, ostensibly offering goods and services similar / identical to those of the Complainant and thus cause loss of business and reputation to the Complainant.
2. The impugned domain name 'OGILVY.IN' is identical to the domain names registered in the name of the Complainant.
3. The Registrant has no affiliation, past or present, with the Complainant and hence has no rights or legitimate interests in respect of the domain name. By registering the impugned domain name the Registrant is blatantly seeking to cash in on the brand value and reputation of the Complainant's trademark OGILVY for his personal gain.
4. The disputed domain name was created on 15th August, 2013 as against the Complainant's domain 'OGILVY.com' created on 19th February, 2008. In India the Complainant registered its trade mark on 31st October 2003 and hence it is in use for more than 10 years. The Registrant is regular cyber squatter. The registration in dispute has been done for the Registrant's own business which causes loss of business and reputation to the Complainant.

Accordingly the registration of the impugned domain name by the Registrant is in bad faith.

5. The Registrant does not have rights to and legitimate interests in the domain name because: -
 - a. The Registrant does not offer any goods / services under the domain name 'OGILVY.IN'.
 - b. The Registrant is NOT commonly known by the said domain name.
 - c. The Registrant is not making any legitimate, non-commercial or fair use of the domain name. The Registrant's website is up for sale and carries only links to other domain names.
6. The Registrant has registered the disputed domain name in bad faith because: -
 - a. The Registrant has registered the disputed domain name with the sole purpose of blocking the Complainant from registering the said domain in its name and selling / transferring the same for excessive consideration. This is evident from the fact that the webpage clearly mentions that the same is up for sale.
 - b. The Registrant has registered disputed domain name even after having full knowledge of Complainant's goodwill / reputation and registrations vesting in the trademarks / domain names world over including India. The fact that the Registrant registered another domain name 'OGILVY.in' in his name without any fair use thereof further establishes the fact that it has engaged in a pattern of such conduct and intends to prevent the Complainant from registering the domain name in its name.
 - c. The sale of the domain name would result in diverting the internet users to the disputed domain name thereby creating confusion that the Complainant is either not present in Indian market or not disseminating information on the web.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the background of the Complaint and reasons described therein the Complainant has requested for transfer / cancellation of domain name to it. The Complainant has also requested for costs of the present proceedings to be granted to it.

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

As stated earlier the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period. Therefore other side of the dispute has not been brought before this panel. In view of no reply by the Respondent Registrant, this panel has assumed that he has nothing to say and by this act he has accepted all allegations / contents of the Complainant.

VI] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	No
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

VIII] BASIS OF FINDINGS: -

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant is the owner of various trademarks as stated in the table above. The Complainant also owns various domain names which include the words 'OGILVY'. The said trademarks have been registered in India since 2003 and have been renewed from time to time.

Therefore my finding on this issue is in affirmative.

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'OGILVY' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also WIPO cases that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its global presence, as also its strong presence on the internet, it is very hard to believe that the Registrant was not aware of the same. Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'OGILVY'.

Therefore my finding on the first issue is affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not filed any say or reply to the complaint and hence it is presumed that he does not have / he has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is Domains Administrator. As such, he is not commonly been known by the domain name or any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'OGILVY'. He is not commonly been known by that name or any

variation or combination thereof. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant to use the word 'OGILVY' in this behalf.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The Registrant's website has several links directing to other domain names offering goods / services. It is up for sale. Obviously the Registrant has registered it in bad faith for obtaining illegal monetary gains.

Therefore my finding on this issue is affirmative.

7. Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out various aspects of malafide registration of the disputed domain name, registration of domain name without any authority and for any bona fide business on the part of the Respondent. Therefore it is squarely established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The Registrant's website has only links to other websites offering various goods / services. This is not the business of the Complainant, nor do those websites have any business links with the Complainant. The disputed domain name is up for sale and hence internet users are being confused as to the disputed domain name. It is beyond doubt that the fact that the disputed domain name is up for sale creating confusion with the Complainant's identity, name or mark and presence in Indian market.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion this panel has reached the conclusion that: -

1. Since the Registrant has not replied to complaint or Notice of Arbitration at all, it leads to only conclusion that registration has been done with criminal and deceitful intentions and for the purposes of gaining illegally and immorally.

2. The disputed domain name includes the prominent part of the registered marks and registered domain names of the Complainant. It means the Complainant's rights, interests and reputation are at stake in the disputed domain name.
3. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'OGILVY' and hence does not have any legitimate interest in the disputed domain name. He has not been authorised by the Complainant to register the said domain name at any time.
4. The Registrant has **not** been commonly known by the disputed domain name.
5. The Respondent / Registrant has completely failed to establish his nexus, rights or interests in or with the disputed domain name in any way.
6. The Complainant has proved that the Registrant is guilty of infringing upon or otherwise violating its rights in terms of Paragraph 3(b) of INDRP AND the Registrant's domain name is identical or confusingly similar to the Complainant's Trade mark / name.
7. The Registrant has failed to establish / prove his rights to or legitimate interests in the disputed domain name as required by Paragraph 4(ii) of INDRP.
8. The Complainant has established that the registration of a disputed domain name by the Registrant has been done in bad faith in terms of Paragraph 4(iii) of INDRP.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

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

- 01. The Complainant is entitled to the disputed domain name – 'OGILVY.IN' and hence the same be transferred to the Complainant.**
02. The Registrant shall pay to the Complainant all the documented costs of these proceedings.

Dated: - 15.01.2014
Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR