



महाराष्ट्र MAHARASHTRA

सदरचा मुद्रांक लिक्व अण्ड लायसेन्ससाठी नाही

GG 738119

अनुक्रमांक... दिनांक... रुपये...
मुद्रांक कोणत्या कारणासाठी वापरावयाचा आहे...
मुंबई मुद्रांक अधिनियम १९५८ चे अनुच्छेद क्र...
मुद्रांक वापरणाराचे संपूर्ण नाव...
संपूर्ण पत्ता...
हस्ते व्यक्तीचे संपूर्ण नांव...
व्यक्तिगत...
मुद्रांक धारकाची/हस्ते व्यक्तीची सही

स्वाक्षरी (मुद्रांक विक्रेता)
(श्री. जलश्री मि. वेलसरे)
परवाना क्र. २२०१०११/१९२५
परवान्याची मुदत ३१/३/२०
पत्ता: ४२५ ब, शनिवार पेठ, पुणे-३०.



AWARD IN ARBITRATION

Mr. Pierre Hardy
20, rue de Saintonge, 75003, Paris, France

THE COMPLAINANT

AND

BharatDNS Pvt. Ltd.
92, Appar Street, Thiruvallieswarar Nagar, Thirumangalam
Chennai.
India. 600040.

THE RESPONDENT /
THE REGISTRANT

**IN THE MATTER OF DISPUTED DOMAIN NAME: - `pierrehardy.co.in`
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.**

SOLE ARBITRATOR

**DELIVERED ON THIS 1st DAY OF NOVEMBER TWO THOUSAND
TWELVE AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

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

**Mr.Pierre Hardy
20, rue de Saintonge, 75003, Paris,
France**

Through its authorized
representative

Mr.Hemant Singh
Intl Advocare
D-22, Panchsheel Enclave
New Delhi. 110017.
India

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

BharatDNS Pvt. Ltd.
92, Appar Street, Thiruvallieswarar Nagar
Thirumangalam
Chennai. 600040. Tamil Nadu. India

**03. Name and address of the
Registrar**

Directi Web Services P. Ltd.
Plot No.GJ-6, SEEPZ, Andheri (E)
Mumbai. 400096.

04. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me	08/10/2012
02	Acceptance given by me	08/10/2012
03	Hard copy of the complaint received	15/10/2012
04	Notice of Arbitration issued	16/10/2012
04	Reminder notice sent to the Respondent	29/10/2012
05	Notice of closure	01/11/2012
06	Award passed	01/11/2012

I] PRELIMINARY: -

- 1) Mr.Pierre Hardy, 20 rue de Saintonge, 75003, Paris, France (**The Complainant**) has filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name '**pierrehardy.co.in**' (**the disputed domain name / domain name**), through its authorised representative **Mr.Hemant Singh, Intl Advocare, D-22, Panchsheel Enclave, New Delhi, India. 110017.**
- 2) The Complainant has disputed registration of domain name '**pierrehardy.co.in**' in the name of **BharatDNS Pvt. Ltd., 92, Appar Street, Thiruvallieswarar Nagar, Thirumangalam, Chennai, Tamil Nadu, India, 600040. (The Respondent / Registrant).**
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 16th October 2012 with the instructions to file his reply / say latest by 27th October 2012.
02. The Respondent did not file any reply to the Complaint within the period stipulated for that purpose.
03. On the principles of natural justice and final opportunity to the Registrant, the period to file say / reply was extended by this Arbitration panel *suo-moto* till 31/10/2012.
04. The Registrant / Respondent failed to file any reply / say even within the extended period.
05. In view of no response from the Registrant / Respondent the arbitration proceedings were closed and notice to that effect was sent to the concerned parties on 01/11/2012.
06. In view of no reply by the Respondent no rejoinders were called for.
07. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
08. No personal hearing was requested / granted / held.

III] SUMMARY OF THE BACKGROUND OF THE COMPLAINANT: -

As per the Complainant the brief background of the Complainant, its history, its rights and interests in the marks and term 'pierrehardy' are as follows: -

- a) The Complainant is a French National and a well-known designer in the world of fashion. The business of the Complainant is of designing fashion accessories such as inventive jewellery, shoes and bags. The Complainant initially started his business in 1987 when he designed the Wmen Shoe Collections for Christian Dior. In 1999 the complainant launched his brand PIERRE HARDY. Some of the Complainant's customers are Hollywood stars like Nicole Kidman, Chris Cooper, Kylie Minogue etc.
- b) The Complainant holds the trade mark PIERRE HARDY under registration No.98 755 626 dated October 20, 1998. The Complainant also holds and has applied for registration for trade mark in various jurisdictions such as Brazil, Canada, Dominican Republic, European Union, Israel, Indonesia, Malaysia, Kuwait, Qatar, Saudi Arabia, Taiwan, Thailand, Tunisia, UAE etc. The Complainant has furnished a list of such 32 registered trade marks in various countries.
- c) The Complainant also has various domain name registrations to his credit, containing the word pierrehardy in various countries. The Complainant has furnished list of 10 such domain names registrations in the Complaint.
- d) In India foreign published magazines bearing advertisement of PIERRE HARDY merchandise are extensively circulated amongst fashion designers, hotels, airports, libraries, export houses, manufacturers of apparels and accessories. The said merchandise are also published in Indian magazines like Vogue India, Harper's Bazaar etc. This constitutes use of trade mark in India. Hence the trade mark has acquired formidable goodwill and trans-border reputation in India. It has become distinctive and indicative of source of fashion accessories originating from the Complainant and none else globally as well as in India. The popularity of the Complainant and its brand is also evident from the fact that Complainant's website namely pierrehardy.com has been extensively visited by 400793 worldwide web sers and surfers since 2005.
- e) The inextricable association of the trademark with the Complainant is also evident from the annual sales worldwide which have rose from 949.0 K Euros in the year 2002 to 8889.5 K Euros in the year 2011.
- f) The opposition by the Complainant to registration of an identical trade mark in Korea was successful.

- g) While taking random search of Whois database in January 2012 the Complainant came to know about the impugned domain name in blatant imitation of the Complainant's trade mark and domain names pierrehardy.com. The Complainant thereafter issued a legal notice dated 6th February 2012 to the Registrant which came back with a remark '**no such company exists.**' Search on Ministry of Company Affairs, India also it was found that no such company is registered in the name 'Bharat DNS Pvt. Ltd.' It therefore appears that the name and phone number of the Registrant are fictitious. The Notice sent on the registered email id of the Registrant has not been responded by the Registrant.

IV] SUMMARY OF THE COMPLAINT: -

The Complaint is based on the INDRP Rules and Policies on the following main contentions of the Complainant: -

1. The Respondent's domain name is fully identical and confusingly similar to the Complainant's personal name and domain names www.pierrehardy.com and registered trademarks consisting the word pierre hardy or its variations.
2. The Registrant has recently adopted the impugned domain name in November 2011 to derive benefit of the goodwill and reputation of the Complainant's brand and mislead members of the public.
3. The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent's conduct constitutes criminal offense of falsification and false trade description under the provisions of Sections 102 & 103 of the Trade Marks Act, 1999.
3. The registration of disputed domain name by the Registrant will lead to dilution and erosion of the uniqueness and exclusivity associated with the Complainant's trade mark.
4. The Respondent has no rights or legitimate interest in the impugned domain name because: -
 - a. The registration of domain name in 2011 by which time the Complainant had a very considerable trans-border reputation in the trademark in India as well as in the world.
 - b. The Respondent is not known by the name Pierre Hardy.
 - c. There is no legitimate reason even for any non-commercial or fair use of the disputed domain name by the Registrant.
 - d. The domain name is not operational in as much and it is not offering any goods or services and only provides certain other website links.
 - e. The impugned domain name is parked with Sedo GmbH, Germany for sale.

5. The Domain name was registered in bad faith for the following reasons: -

- a. The Respondent has registered the disputed domain name to prevent the Complainant from registering the same in India with cctld '.co.in'.
- b. The Respondent has registered the impugned domain name primarily for the purpose of selling, renting or otherwise transferring the domain name to the Complainant or to a competitor of the Complainant.
- c. The Respondent has attempted to attract internet users to the Respondent's website or other on-line location by creating a likelihood of confusion with the Complainant's name or mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website or service on the Respondent's website.
- d. The Complainant has not authorised, licensed, or consented to the Respondent's use of the impugned domain name.
- e. In view of substantial reputation and goodwill associated with the mark PIERRE HARDY the adoption of the said domain name by the Respondent has no justification.

8. On the basis of the Complaint and supporting documents, the Complainant has requested for transfer of disputed domain name in his favour with costs.

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

In response to the contentions of the Complainant, the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period.

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	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

02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	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
09	Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?	Yes

VIII] BASIS OF FINDINGS: -

1. 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 'pierre hardy' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant worldwide. It is personal name of the Complainant. Though in India the Complainant does not have any registered trade mark, it has been publicized through various magazines of good repute. The Complainant has several domain names registered with the words pierre hardy. Similarly in the world of fashion the name of the Complainant is very famous and it can not be assumed 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 'pierrehardy'.

Therefore my finding on the first issue is affirmative.



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

Yes. Already discussed in issue (A) above.

Therefore my finding on this issue is in 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 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 been commonly known by the domain name?

The name of the Registrant, as on the Whois records is BharatDNS Private Limited. As such he is not commonly been known by the domain name 'pierre hardy' 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 'pierre hardy'. He is not commonly known by that name. He has not established that he has taken all reasonable steps to use the registered domain name for bona fide business activities. He has not shown any other nexus of his business with the disputed domain name.

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 domain is parked at Sedo website for sale purposes. The Respondent has not replied to legal notice sent by the Complainant nor to the Notice of Arbitration sent by this panel. Any one having legitimate interests would not waste a single opportunity to defend his legal rights, interests in domain name.

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 any bona fide business on the part of the Respondent. Such registration 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?

At present the disputed domain name is parked at Sedo website and is available for sale. If the same is used by the Respondent the registered domain name will definitely create confusion in the minds of internet users about its nexus with the Complainant due to exact reproduction of the persona name and registered trademark in its entirety in the domain name.

Therefore my finding on this issue is affirmative.

9. Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?

When this panel tried to visit the disputed domain name it was found that it is parked with Sedo website and is available for sale. It is beyond doubt that the Respondent has registered domain name for the purpose of selling it for valuable consideration.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion I have reached the conclusion that: -

- a. The Respondent does not have any registered trade mark / service mark in his name containing the words 'pierre hardy' and hence does not have any legitimate interest in the same.
- b. The Registrant has not been commonly known by the disputed domain name.
- c. The Registrant is not making fair use of the disputed domain name for his bona fide business purposes, much less for non-commercial purpose.

- d. The Respondent / Registrant has completely failed to establish his nexus with the disputed domain name in any way.
- e. The Respondent has not bothered to respond / reply to legal notice of the Complainant or to the Notice of Arbitration. It is the primary principle of law that 'silence amounts to acceptance'. Thus all the allegations and contentions by the Complainant stand unchallenged and amount to have been accepted by the Respondent.

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 – www.pierrehardy.co.in and hence the same be transferred in the name of the Complainant.**
- 02. The Respondent shall pay costs of transfer of domain name and also the costs of these proceedings to the Complainant.

Dated: - 01.11.2012
Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR