



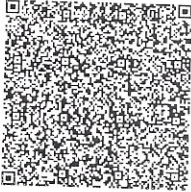
सत्यमेव जयते

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Purchased by	: AMARJIT AND ASSOCIATES
Description of Document	: Article 48(c) Power of attorney - GPA
Property Description	: Not Applicable
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First Party	: AMARJIT AND ASSOCIATES
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BEFORE THE SOLE ARBITRATOR

MR. AMARJIT SINGH

ARBITRAL AWARD

**IN THE MATTER OF ARBITRATION IN INDRP CASE
NO. 1087, UNDER THE INDRP POLICY**

AND

**RULES OF PROCEDURE OF .IN REGISTRY,
NATIONAL INTERNET EXCHANGE OF INDIA**

BETWEEN

BROOKS SPORTS, INC.,

at:

3400 Stone Way North, 5th Floor,
Seattle, Washington 98103,
United States of America

...COMPLAINANT

AND

DING RIGUO

at:

8F, No.199, Shifu Road,
Taizhou, Zhejiang,
China
Postal Code: 318000
E-mail : juc@qq.com

...RESPONDENT



1. THE PARTIES


- 1.1 The Complainant in this Administrative Proceeding is **Brooks Sports, Inc.**, a Company incorporated under the Laws of United States of America having its Registered Office at 3400 Stone Way North, 5th Floor, Seattle, Washington 98103, United States of America. The Complainant's Authorized Representative is Ms. Tanvi Kotwal, K & S Partners, 109, Sector 44, Gurgaon 122 003.
- 1.2 According to the WHOIS Database of the NATIONAL INTERNET EXCHANGE OF INDIA [*hereinafter* **NIXI**], the Respondent in this Administrative Proceeding is **Ding RiGuo** available at 8F, No. 199, Shifu Road, Taizhou, Zhejiang, China [Postal Code 318000]

2. THE DOMAIN NAME AND THE REGISTRAR

The dispute is regarding the domain name <<**www.brooksrunning.in**>>, registered by the Respondent on December 24, 2011 with the Registrar, ENDURANCE DOMAINS TECHNOLOGY LLP.

3. PROCEDURAL HISTORY

- 3.1 The Complaint was filed with NIXI, against the Respondent, in respect of the disputed domain **www.brooksrunning.in**. NIXI verified whether the Complaint and the Annexures thereto satisfied the formal requirements of the .IN DOMAIN NAME DISPUTE RESOLUTION POLICY, (*hereinafter, The INDRP Policy*) and the RULES OF PROCEDURE (*hereinafter, The Rules*)
- 3.2 In accordance with the Paragraph 2(a) and 4(a) of The Rules, NIXI formally notified the Respondent of the Complaint being



filed against him and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with The INDRP Policy and the Arbitration and Conciliation Act, 1996, along with the Rules framed there under. The Parties were first notified about my appointment as the Arbitrator on May 17, 2019.

3.3 The Panel had submitted the *Statement of Acceptance and Declaration of Impartiality and Independence*, in compliance with Paragraph 6 of The Rules, on May 17, 2019. Thereafter, the Arbitration Proceedings commenced on May 21, 2019. In accordance with Paragraph 5 (c) of The Rules, the Respondent was then notified about the commencement of Arbitration Proceedings and was duly sent, the Complaint, along with all the Annexures thereto, by NIXI on May 22, 2019.

3.4 The Respondent, via email dated May 21, 2019, was intimated by this Panel about the Arbitration Proceedings and was granted 10 days' time ending on May 30, 2019 to file his response/written statement. The aforesaid email, dated May 21, 2019 was duly delivered at the email address, <juc@qq.com>, furnished by the Respondent with the Registrar at the time of obtaining the disputed domain name, being <<**www.brooksrunning.in**>>.

3.5 The Panel did not receive any update or response from the Respondent to the emails dated May 21, 2019 and May 22, 2019. In the absence of any response by the Respondent to the complaint or any attempt to settle the matter amicably, the Panel had no other choice than to decide the present Complaint on merits and on the basis of the material available on record.



- 3.6 The Panel considers that according to Paragraph 9 of The Rules, the language of the proceedings should be in English. In the facts and circumstances, an in-person hearing was not considered necessary for deciding the Complaint. Consequently, based on the Complaint and the Documents submitted on record, the present Award is being passed within the period of 54 days from the date of commencement of Arbitration Proceedings; as per Paragraph 5 of The Rules.

4. FACTUAL BACKGROUND

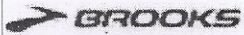
- 4.1 The Complainant was first established in Philadelphia, Pennsylvania in 1914 by Morris Goldenberg. It originally produced bathing shoes in 1917 before moving into manufacture of sports shoes in the 1930s. The Complainant has been using the trademark **BROOKS** as part of its corporate name in relation to its business for more than a century.
- 4.2 The Complainant is an American corporation that designs and markets high-performance men's and women's running shoes, apparel and accessories in more than 60 countries worldwide.
- 4.3 The Complainant owns trademark registrations for its **BROOKS** trademarks in several countries such as *Australia, Austria, Benelux, Bulgaria, Brazil, Canada, Chile, China, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Guatemala, Germany, Greece, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Latvia, Lithuania, Malaysia, Malta, Mexico, Morocco, New Zealand, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, South Africa, South Korea, Singapore, Sweden, Switzerland,*

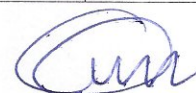
Taiwan, Thailand, Turkey, Ukraine, UAE, USA, UK, Uruguay
Venezuela, and Vietnam.

4.4 More particularly, the earliest registration owned by the Complainant for the trademark **BROOKS** in the United States of America dates to July 14, 1981. Details whereof are as under:

S.NO.	REF. NO./DATE	TRADE MARK	CLASS AND SPECIFICATION
1.	1161034 July 14, 1981	BROOKS	Class 25 <i>Athletic Shoes</i>

4.5 The Complainant holds a trademark registration and an application for its **BROOKS** trademark in India in Class 25. Details whereof are as under :

S.NO.	TRADEMARK	APP. NO.	APP. DATE	CLASS	STATUS
1.	BROOKS	2168813	June 30, 2011	25	Registered and valid up to June 30, 2021.
2.		2978975	June 3, 2015	25	Pending



4.6 The Complainant has also registered the **BROOKS** mark as part of its domain name <brooksrunning.com> since November 25, 1999. By virtue of its extensive and continuous use since November 1999, the domain name <brooksrunning.com> and/or the website www.brooksrunning.com to which the said domain resolves have come to be associated exclusively with the Complainant.

4.7 The Respondent in the present dispute has registered the impugned domain, <<www.brooksrunning.in>> on December 24, 2011.

5. PARTIES CONTENTIONS

A. COMPLAINANT

The Complainant has raised the following contentions:

- i. The Complainant submits that it has been using the Trade Mark **BROOKS** as part of its corporate name for more than a century. The Complainant being involved in the business of designing and marketing high-performance men and women's running shoes has been continuously and extensively using the Trade Mark **BROOKS** in respect of its products. Not only that, the Complainant has expanded its business in more than 50 countries worldwide.



- ii. The Complainant further submits that its registrations for the Trade Mark **BROOKS** in several countries, including USA, China and India, wherein the earliest registration dates back to July 14, 1981 in the United States of America.
- iii. The Complainant, in addition to its Trade Mark Registration has also registered the Trade Mark **BROOKS** as part of its Domain Name <www.brooksrunning.com> since November 25, 1999, which is much prior in time. The Complainant submits that by virtue of its extensive and continuous use since November 1999, the Domain Name comprising of its Trade Mark **BROOKS** being **www.brooksrunning.com** has come to be associated exclusively with the Complainant.
- iv. The Complainant submits that the Trade Mark **BROOKS** has secured iconic reputation in the minds of its customers and public worldwide. The Complainant submits that the reputation and popularity of the Complainant's Brand **BROOKS** is evident from the numerous awards that the Complainant has received in its years of working.
- v. The Complainant has invited attention of the Panel to its Social Media presence containing its wide and extensive following worldwide.



- vi. The Complainant submits that it has actively protected its well-known Mark **BROOKS** and has also succeeded in the several complaints filed by it before the WIPO Arbitration and Mediation Center against infringing parties using its Trade Mark **BROOKS**, or variations thereof.
- vii. The Complainant has also brought the panels attention to the decision of WIPO's Arbitration and Mediation Center in the case [Brooks Sports, Inc. v. Thuy Pham / Tamarawink Claim Number:FA1709001748640] wherein the Panel concluded in favour of the Complainant in protecting its Domain **www.brooksrunning.com**.
- viii. The Complainant contends that the Respondent has registered identical Domain Name being <www.brooksrunning.in> with an intent to re-direct the internet users to third party websites and cause intentional harm to the Complainant. The Complainant submits that the Respondent has registered the impugned Domain Name in bad faith which is evident from the fact that it is offering the same for sale for US\$ 9000.00.
- ix. The Complainant has brought the Panel's attention to the fact that the Complainant tried to resolve the matter with the Respondent amicably via e-mails before resorting to filing a Complaint with NIXI. However, the attempts of the



Complainant were futile, and the Respondent has remained unresponsive ever since.

- x. The Complainant urges the following as the Grounds of the Complaint:
- a. Identical and/or similar adoption and use of <www.brooksrunning.in> by the Respondent is a dishonest adoption and violates the statutory and common law rights of the Complainant.
 - b. The Respondent has no rights or legitimate interests with respect to the impugned Domain Name <www.brooksrunning.in>.
 - c. The Respondent is entirely located in Zhejiang in China and is in no way connected with the Complainant or authorized by the Complainant to use its Trade Mark **BROOKS** or adopt the identical Domain Name <www.brooksrunning.in>.
 - d. The Respondent has registered the impugned Domain Name to defraud the people, re-direct traffic and harass the Complainant, since the Respondent is not offering active website under the Domain Name <www.brooksrunning.in.>



- e. The Respondent has registered the impugned domain name in bad faith.

B. RESPONDENT

- (i) The Respondent, in the present dispute, got the impugned domain <www.brooksrunning.in> registered on December 24, 2011.
- (ii) The Respondent, as aforesaid, failed/neglected and omitted to file any response to the averments made in the Complaint and/or the documents filed in support thereof on merits; despite an opportunity having been granted by the Panel via email dated May 21, 2019.

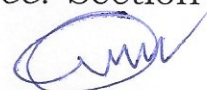
6. DISCUSSIONS AND FINDINGS

- (i) The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the. In Dispute Resolution Policy and the Rules framed thereunder in terms of Paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of Paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.
- (ii) Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and



documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- (iii) It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- (iv) Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to have been admitted.
- (v) The decision of Hon'ble Supreme Court of India in the matter of ***Jahuri Sah Vs. Dwarika Prasad***, AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof (See: Section 58 of



the Indian Evidence Act, 1872). The material facts stated in the complaint have neither been dealt with nor specifically disputed or denied by the Respondent and are therefore deemed to have been admitted.

- (vi) Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.
- (vii) Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled. I, therefore, proceed to deal with the three elements under the policy, irrespective of the deemed admissions made by the respondent to the averments made in the complaint and the documents filed on record.

A. IDENTICAL AND CONFUSINGLY SIMILAR

- i) A mere glance at the disputed domain name show that the domain name registered by the Respondent contain the entire Trade Mark/Trade Name **'BROOKS'** of the Complainant.



- ii) The Respondent has adopted the identical Domain Name of the Complainant as is evident from the below:

	COMPLAINANT	RESPONDENT
Domain Name	<u><www.brooksrunning.com></u>	<u><www.brooksrunning.in></u>

- iii) In the present case, it is very natural for an internet user, who wishes to visit the website of the Complainant to type its commercial name/brand name followed by the country specific Top-Level Domain <.in>. This will lead the Internet user to believe that the Complainant is associated with or owns the web site bearing the domain name <www.brooksrunning.in>.
- iv) The Complainant is therefore successful in establishing the First Element of INDRP Policy and the Panel finds that the disputed domain name is identical to the Trade Mark/Trade Name/Domain Name of the Complainant. Consequently, the First requirement of Paragraph 4 of the policy is satisfied.

B. ABSENCE OF LEGITIMATE INTEREST



- i) The Complainant has registered the Trade Mark **BROOKS** in various foreign jurisdictions including India and China. It is apparent that the Respondent knew of the Complainant's Mark, its business activities and its Domain Name being **www.brooksrunning.com**. It is thus highly improbable that the Respondent has any rights or legitimate interests in the impugned Domain Name. Moreover, the impugned Domain Name was registered by the Respondent in order to cash in on the reputation of the Complainant's Brand, which is evident from the fact that the Complainant's Domain Name was registered in the year 1999 while the Respondents registered the impugned Domain Name in the year 2011. The point to be noted here is that the Complainant's reputation is a century old.
- ii) It is pertinent to note that the Respondent has no connection with the Complainant, or any company licensed by the Complainant. Respondent is not commonly known by the disputed domain name or the Trade Mark '**BROOKS**'. Further, Respondent was not and is not authorized by Complainant to register, hold or use the disputed domain name.
- iii) The illegality in the registration of the disputed domain name arises from the fact that domain names today are a part and parcel of corporate identity. In this specific case, the Complainant is in the business of designing and



marketing high-performance men's and women's running shoes, apparel and accessories in more than 60 countries worldwide and their official website www.brooksrunning.com serves as an information portal for potential buyers and customers. Moreover, a domain name acts as the address of the company on the internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the internet address of a company.

- iv) Moreover, the Respondent cannot have any right or legitimate interest in the disputed domain name because the disputed domain name incorporates the Trade Mark/Trade Name '**BROOKS**' in its entirety, a mark in which the Complainant has sole and exclusive rights and that has become well-known owing to the Complainant's efforts.
- v) The absence of any functional website on the disputed domain name further indicates that the Respondent does not have any rights or legitimate interests either in the '**BROOKS**' mark or the impugned domain name.
- vi) The Respondent is not, either as an individual, business or other organization, commonly known by the name '**BROOKS**'. The Respondent has no active legitimate or bona-fide business in the name of '**BROOKS**'. The

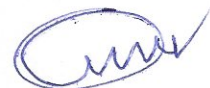


Respondent is not a licensee of the Complainant, nor has the Respondent ever been authorized by the Complainant to use the Complainant's trademarks or register the disputed domain name. The Complainant has no relationship with the Respondent.

- vii) The Panel finds that the Respondent has never been commonly identified with the disputed domain name or any variation thereof prior to Respondent's registration of the disputed domain name. Furthermore, the burden is on the Respondent to prove that it has rights and legitimate interests in the disputed Domain Name.
- viii) From the above circumstances, it is apparently clear that the Respondent has failed to comply with Para 7 of INDRP wherein the onus is on the Registrant to prove that he has a right and legitimate interest in the Disputed Domain Name.

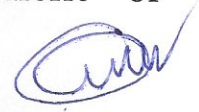
C. DOMAIN NAME WAS REGISTERED IN BAD FAITH

- i) For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.



ii) For the purposes of establishing registration and use of Domain Name in bad faith by the Complainant, any of the following circumstances should be present:

- a. Circumstances indicating that the Registrant has registered or acquired the Domain Name primarily for the purpose of selling, running or otherwise transferring the Domain Name registration to the Complainant, who bears the name or is the owner of the trade mark or service mark, or be a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the Domain Name; or
- b. The Registrant has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged any pattern of such conduct; or
- c. By using the Domain Name, the Registrant has intentionally admitted to attract Internet users to the Registrant's Website or other online location, by creating a likelihood of confusion that the Complaint's name or mark as to the source, sponsorship, affiliation or endorsement of the



Registrant's Website or location or of a product or service on Registrant's Website or location.

- iii) It is inconceivable that the Respondent did not know of the Complainant's well-known mark '**BROOKS**'. It is inconceivable that the Respondent while registering the disputed domain in the year **2011** was unaware of the well-known mark '**BROOKS**' which has been actively and continuously used over internet since **1999**.
- iv) Moreover, a basic internet search of the terms '**BROOKS**' would have alerted the Respondent of the Complainant's extensive ownership and rights over the '**BROOKS**' mark as well as its business activities under the said mark.
- v) At present, the impugned domain name <www.brooksrunning.in> is being held by the Respondent. This is in bad faith and a clear attempt to take advantage of the Complainant's goodwill and reputation. This is an attempt to misuse the domain name by registering the word '**BROOKS**' with a country specific domain name extension variant. The mark '**BROOKS**' as well as the official website <www.brooksrunning.com> having been extensively used is understood and associated by consumers as the mark of the Complainant denoting their services and business. On account of the high degree of inherent and acquired distinctiveness, which the mark '**BROOKS**' is possessed of, the use of this mark or any



other identical or deceptively similar mark, by any other person would result in immense confusion and deception in the trade, leading to passing off.

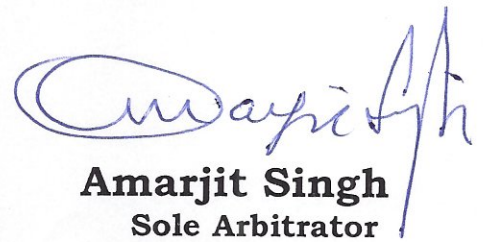
- vi) In light of the Respondent's presumed knowledge of the Complainant's rights, it is reasonable to infer that the Respondent registered the disputed domain name without any intention of using it for genuine business or commercial activities. The Respondent must have the intention to sell it for financial gain or misuse the disputed domain name, as the impugned domain name has no functional website.
- vii) Such passive holding of the domain name by the Respondent amounts to bad faith under the present circumstances.
- viii) Furthermore, it would be extremely difficult, if not impossible, for the Respondent to use the disputed domain name as the name of any business, product or service for which it would be commercially useful without violating the Complainant's rights. Thus, the disputed domain name was registered in bad faith
- ix) In the above circumstances, the Panel concludes that the registration of impugned Domain Name was obtained in bad faith.



7. DECISION

The Complainant has succeeded in establishing all three elements of the policy.

In view of the above discussions, the Panel directs the transfer of impugned domain name <www.brooksrunning.in> to the Complainant.


Amarjit Singh
Sole Arbitrator



Dated: July 13, 2019