महाराष्ट्र MAHARASHTRA ◐ 2019 ◐ AU 960602

अनु.क्र. ७५१ दि. ९/१२/१९ मु.शु.रक्कम. ५००/-

दस्ताचा प्रकार आर्बीट्रेशन अवॉर्ड

दस्त नोंदणीकरणार आहेत का ? होय/नाही.

मिळकतीचे वर्णन

मुद्रांक विक्त घेणाऱ्याचे नांव शिरीन चिंतामण बेलसरे

पत्ता ४२५ शनिवार पे. पुणे २.

तुमचा [illegible] नांव जे.डी.जी. स्पोर्ट्स फॅशन पी.एल.सी. - यूके चेंज नेम टू [illegible]

इतर [illegible] नांव व पत्ता प्रसाद चिंचाळकर - यूके

मुद्रांक [illegible] वेगळ्यावरी सही

ली. अयक्षी शिरीन बेलसरे
परवाना क्र. २२०१०११
४२५ ब, शनिवार पेठ पुणे- ३

वरिष्ठ कोषागार अधिकारी पुणे

09 DEC 2019

प्रथम मुद्रांक लिपीक
कोषागार पुणे करिता

ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केल्यापासुन ६ महिन्यात वापरणे बंधनकारक आहे.

AWARD

IN ARBITRATION IN INDRP CASE NO.1167

`WWW.JDSPORTS.CO.IN

JD SPORTS FASHION PLC
Hollinsbrook Way, Playworth, Bury
Lancashire BL9 8RR
UNITED KINGDOM

THE COMPLAINANT

V/S

Doublefist Limited
Wisconsin
US

THE REGISTRANT /
THE RESPONDENT

IN THE MATTER OF DISPUTED DOMAIN NAME: - `JDSPORTS.CO.IN'

ARBITRATION PANEL: - MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR

DELIVERED ON THIS 9th DAY OF DECEMBER TWO THOUSAND NINETEEN AT PUNE, INDIA.

I] SUMMARISED INFORMATION ABOUT THE DISPUTE: -

SR. NO.	PARTY TO THE DISPUTE	NAME	ADDRESS
01	COMPLAINANT	JD SPORTS FASHION PLC	Hollinsbrook Way, Playworth, Bury Lancashire BL9 8RR UNITED KINGDOM
02	AUTHORISED REPRESENTATIVE OF THE COMPLAINANT	Ms. Malavika T Vikram Of M/s DePenning & DePenning	120 Velachery Main Road, Guindy, Chennai. 600032. India
03	RESPONDENT / REGISTRANT	Doublefist Limited	Wisconsin, US
04	DOMAIN NAME REGISTRAR	Dynadot LLC	210 S Ellsworth Ave #345 San Mateo CA 94410, US

II] CALENDER OF MAJOR EVENTS:-

Sr. No.	Particulars	Date (All communications in electronic mode)
01	Arbitration case referred to me by NIXI	15.11.2019
02	Acceptance given by me	15.11.2019
03	Soft copy of complaint received	22.11.2019
04	Notice of Arbitration issued, with the period to file reply, if any, latest by 02.12.2019	22.11.2019
05	Period to file say by Respondent extended with instruction to file his say if any, latest by 06.12.2019	03.12.2019
06	Notice of closure of arbitration issued	07.12.2019
07	Award passed	09.12.2019

III] PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:

1. Disputed domain name is `JDSPORTS.CO.IN'.
2. Date of registration of disputed domain name by Respondent is 16.11.2017
3. Registrar is Dynadot LLC

IV] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

1) Arbitration proceedings were carried out as per *.In* Domain Name Dispute Resolution Policy (INDRP) read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 (including amendments thereto) and Code of Civil Procedure, wherever necessary.
2) The parties were requested to expedite their submissions so as to enable this panel to pass award within the prescribed time frame of 60 days.
3) Copies of all communications were marked to both the parties and NIXI.
4) No personal hearing was requested / granted / held.

V] BRIEF INFORMATION OF THE COMPLAINANT: -

The Complainant in these arbitration proceedings is JD Sports Fashion PLC, which is situated in United Kingdom. According to the Complainant it owns JD/ JD Sports brands, which have been derived from the initials of the founders – David Makin and John Wardell. At present the Complainant and its group of companies operate more than 200 stores spread over 16 countries. In August 2018 the Complainant opened its technology development center in Hyderabad, India, to offer retail experience by developing and testing various software applications and systems using web-applications, digital marketing tools, e-commerce applications etc. The Complainant has two websites viz. www.jdsports.co.uk and www.jdsports.com.

The Complainant claims that it is the owner of trademarks `JD / JDSPORTS' in various countries including India, the exhaustive list of which has been provided by the Complainant. In India it has registered trade mark `JD' under registration No.2969783 in class 35.

Apart from registered trademarks it also owns domain names like jdsports.com, jdsports.in, jdsports.co.uk.

VI] SUMMARY OF GROUNDS OF THE COMPLAINT: -

The Complaint, inter-alia, 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 POLICY PARA 4(i) OF THE *.IN* DOMAIN NAME DISPUTE RESOLUTION POLICY) (INDRP) : -

i. The Complainant has furnished copy of registered mark in India which was registered on 21.05.2015 under number 2969783. This was much prior to the registration of disputed domain name which

was registered on 16.11.2017. Due to trademarks registrations, the words JD/ JD SPORTS have been exclusively associated with the Complainant.

ii. The disputed domain name `JDSPORTS.CO.IN' is bound to induce members of public and trade to believe that the Respondent has a trade connection, association, relationship or approval of the complainant, when it is not so.

iii. The distinctive and domain element in the Respondent's domain is the word JD / JD Sports and hence the disputed domain is confusingly similar to the trade / service mark in which the Complainant has statutory and common law rights.

iv. The disputed domain name clearly incorporates the famous trademarks JD / JD Sports of the Complainant in entirety which is considered evidence of bad faith registration and use under INDRP.

(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME (PARA 4(ii) OF INDRP): -

i. The Complainant has not authorized or licensed or otherwise permitted the Respondent to apply for, register, use or offer for sale of the disputed domain name or any trademarks forming part thereof.

ii. The Respondent is not making any legitimate business under the disputed domain name.

iii. The Respondent's registration of the disputed domain name is with the sole purpose to misappropriate and usurp the reputation and goodwill of the Complainant's trademarks JD / JD Sports.

(C) REGISTRATION AND USE IN BAD FAITH (PARA 4(iii)) OF INDRP: -

i. The Respondent has fraudulently provided links to various third party e-commerce sites under the disputed domain name. It is obvious that the Respondent is making monetary gains by attracting unwary customers by misrepresenting association with the Complainant.

ii. The very use of a domain name by someone with no connection with the Complainant suggests bad faith. (**INDRP Case No.792** – TV Sundram Iyengar and Sons Pvt. Ltd. V/s Mr.Rohit Kumar, Kumar Enterprise).

(D) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the above background of the Complaint and reasons described therein the Complainant has requested for TRANSFER OF DISPUTED DOMAIN to the Complainant.

VII] RESPONDENT'S DEFENSE: -

The Respondent did not respond to the Notice of Arbitration even within the extended time.

VIII] REJOINDERS OF THE PARTIES: -

In view of non-filing of any say / reply by the Respondent, no rejoinder was called for.

IX] EVIDENCE RELIED UPON: -

This panel has, *inter-alia*, placed reliance upon the following evidences / details thereof, submitted by the Complainant: -

1. Copies of trademarks registered in India and in other countries in the name of the Complainant
2. Copy of printout of the *whois* details
3. Copies of other documents submitted with the Complaint

X] FINDINGS: -

Based on the complaint, contentions of it and annexures attached to it, this panel makes following observations: -

1. The Complainant is an owner of registered trade / service marks incorporating the word JD/ JD SPORTS in which it has legitimate interests and rights.

2. The registration of these marks is prior to the registration of the disputed domain name by the Respondent.

3. The Complainant has not authorised / licensed to the Respondent to use the word `JD/ JD SPORTS ' in any manner, nor the Respondent has claimed such authority having issued by the Complainant in his say.

4. The Respondent is not known by the word JD/ JD SPORTS or any resembling word to it.

5. The Respondent is not making use of disputed domain name for non-commercial or charitable purposes. On the contrary it is evident that by providing links to third party websites, the Registrant is making monetary gains by trading on the goodwill and reputation of the Complainant.

6. The Respondent has not responded / replied to Notice of Arbitration, even the period extended suo-motu by this arbitration panel. Based on the legal maxim `silence amounts to acceptance', this panel concludes that all the

submissions, allegations, statements and claims made by the Complainant, have been accepted by the Respondent.

XI] CONCLUSION: -

On the basis of the averments in the Complaint, citations, documentary evidence and other substantiating points, this Arbitration Panel has come to the following conclusions: -

a. the disputed domain name contains registered trade / service mark of the Complainant in its entirety and is totally identical or confusingly similar to a name, trademark in which the Complainant has legitimate rights and interests.

b. the Respondent has no rights or legitimate interests in respect of the domain name. He has not been authorised, licensed / permitted to use the said domain name, nor has he been known individually or by his business by the name of disputed domain name or any closely resembling term to it.

c. the disputed domain name is registered in bad faith by the Respondent and allowing him to continue to own the same would make injustice and loss to the Complainant as also it may pose serious threats to innocent people anywhere in the world.

d. Allowing a stranger to trade on someone else's goodwill or reputation is injustice on legitimate person having spent efforts and money in building his brand, goodwill and reputation, because it results in allowing unscrupulous persons to gain monetarily to the disadvantage of the person who is legitimately entitled to it.

XII] AWARD: -

On the basis of above findings on issues, foregoing discussion, conclusion and as per the remedies requested by the Complainant, this panel passes the following award: -

a. The disputed domain name `JDSPORTS.CO.IN' be transferred to the Complainant.

Date: - 09.12.2019
Place: - Pune, India

(S.C.INAMDAR)
SOLE ARBITRATOR
NATIONAL INTERNET
EXCHANGE OF INDIA