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RANJAN NARULA

ARBITRATOR

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

In the matter of:

Canadelle Limited Partnership
4405 Metropoliton Blvd East
Montreal, Quebec
Canada

.....Complainant

Mr. Zeng Wei
Shanghai Welhai Road 1888 (HD)
Shanghai
China

.....Respondent

Disputed Domain Name: www.wonderbra.co.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is **Canadelle Limited Partnership** of 4405 Metropolitan Blvd East, Motreal, Quebec, Canada. The Complainant is represented by its authorized representatives Malavika T.V. of DePenning & DePenning, 120 Velachery Main Road, Guidy, Chennai – 600032, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Mr. Zeng Wei of Shanghai Weihai Rd 1888 (HD), Shanghai 20001, China 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.wonderbra.co.in The Registrar is Directi Web Services Pvt Ltd.

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 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 January 10, 2012 and the notice was issued to the Respondent on January 16, 2012 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. On February 09, 2012 the Arbitrator notified the Respondent that in the absence of any response filed by the them within the stipulated time, the matter will be decided based on submission of the Complainant and documents filed by them in support of their complaint. At this time, the Arbitrator noticed that the email send to the Respondent has been returned undelivered. The Arbitrator



thereafter wrote to NIXI to confirm if the Complaint was served on the Respondent via Courier. The NIXI on 13th March, 2012 telephonically provided POD no. 876322847937, date of dispatch – 10th Jan, 2012 and confirmed that the Complaint was sent via FedEx. The details provided by NIXI were checked through FedEx website which showed that the courier was not delivered as the address was incorrect. Thus it seems that the Respondent has provided incorrect contact details at the time of domain Registration. In any case adequate steps have been taken to notify the Respondent on the address details provided. Therefore, it is deemed to be an effective service within the meaning of Rule 2 e of the INDRP Rules of Procedure

In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

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;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- 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

- a) The contested domain name is identical to the Complainant's well known registered trademark Wonderbra under Registration no. 347325B, in class 25 in India and also registered world-wide. It is submitted that the contested domain name WONDERBRA.CO.IN was registered without any authorization/ approval from the Complainant and is highly similar to the Complainant's domain name. The contested domain name was created on 12th February 2005. The Complainant has provided proof and details of Complainant's domain name and Indian Trademarks (registered). The details of registrations in India are also set out below

Trademark	Country	Applications no.	Registrations no.	Goods/Services
WONDERBRA	INDIA	347325B	347325B	Class 25: Girdles, Corselets and Brassieres, Slips, Panties and Bra Slips, and Swimwear
W WONDERBRA by	India	1160126	1160126	Class 25: Underwear Lingerie, Brassieres and Panties.

- b) The Complainant claims that it is predominantly in the business of Production and Sale of Girdles, Corselets an Brassieres, Slips, Panties and Bra Slips and Swimwear as well. The business was started by its predecessor in title. The Complainant has trade mark registration for the trademark WONDERBRA. The complainant is a world renowned company engaged in the production and sale of Girdles, Corselets and Brassieres, Slips, Panties and Bra Slips and Swimwear under different classes of International Classification. Found in the year 1941 the Complainant has established an effective global network inter alia, through our group companies and owe our competitive edge from the success in developing new products. The Complainant employed around 1000 people in some 20 locations. The mark WONDERBRA has been extensively used in commerce worldwide since 70 years. The Complainant manufactures and markets (through licensees) various products in the nature of Girdles, Corselets and Brassieres, Slips, Panties and Bra Slips and Swimwear. The websites www.wonderbra.ca proclaim and advertise about the goods manufactured and marketed on behalf of the Complainant. The Complainant has filed its corporate profile and the long history associated with the brand Wonderbra.
- c) Headquartered in Canada, the Complainant claims that it is a leading renowned company engaged in the production and sales of Brassieres, Girdles, Swimwear, Panties and Bra slips and Corselets under different classes of the International Classification. The Complainant promotes the goods online, using the Internet and worldwide web through their well known domain names www.wonderbra.ca as well as through various other country level domains (ccTLDs). The said domain names were registered on 13th October 1995 and the associated websites were launched in subsequent years. The websites also provide elaborate information about the Complainant and their products. The Complainant combines global expertise and operation with knowledge in each of their markets and the goods are marketed world wide.
- d) The Complainant owns the intellectual property of all worldwide trademark applications and registrations and domain name registrations of the brand name "WONDERBRA".
- e) There are a large number of visitors to the Complainant's various websites one being www.wonderbra.ca thus generating business and efficient service, goodwill and repute. Every month the Complainant's website www.wonderbra.ca is heavily visited.
- f) In 2009 the Complainant had an annual revenue of \$79,053,710 and in 2010 the Complainant had an annual revenue of \$85,617,097 – The Complainant has also spent a considerable amount of money promoting its brand WONDERBRA worldwide.
- g) The Complainant has also generated a substantial reputation and goodwill in the name of Wonderbra. This has been possible through extensive promotion of the Wonderbra range of products through widespread advertisement which has appeared in a number of publications. Copies of the same are attached hereto as Exhibit "F". The international distributors and licensees of the Complainants also undertake their own marketing and promotional activities in support of the Wonderbra brand.
- h) The Complainant is the first to conceive, adopt, use and promote the mark Wonderbra in respect Brassieres, Swimwear, Bra-Slips, Panties. The Complainant is also the first to conceive, adopt, use and promote www.wonderbra.ca. On account of



extensive usage of the mark WONDERBRA, the said mark is identified solely and exclusively only with the Complainant and none other. Further, the Wonderbra brand, has gained a huge customer base internationally and is identified, associated and recognized only with the Complainant. Therefore, adoption and/or usage of the mark WONDERBRA by others would amount to not only dilution of the Complainant's rights over the distinct mark but also would result in confusion and deception by any unauthorized usages by others. Such unauthorized usages of the Complainant's mark WONDERRA and domain names comprising of WONDERBRA by others would also amount to infringement and passing off actions and is liable to be prevented in courts of law. Their activity is nothing but Cyber Squatting.

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 3 of the policy.

6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'WONDERBRA' leads to the conclusion that the Complainant has superior and prior rights in the mark Wonderbra. Thus it can be said a) the web users associate the word Wonderbra with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the www.wonderbra.co.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further the Respondent has not contested the claim.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'WONDERBRA'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'WONDERBRA' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;



The Complainant has not authorised the Respondent to register or use the 'WONDERBRA' trademark. Further, the Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration of the disputed domain name in favour of the Complainant.

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 right 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. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'Wonderbra'

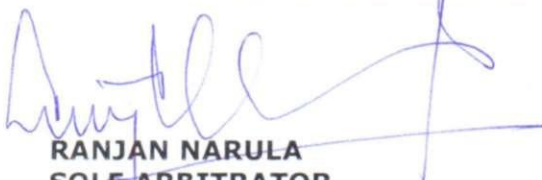
(3) the domain name has been registered in bad faith.

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. Further, the Respondent failed to provide correct address at the time of domain registration which leads to the conclusion that they wanted to hide their identity.

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

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.wonderbra.co.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.wonderbra.co.in be transferred from the Respondent to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

15 March, 2012