



हरियाणा HARYANA

P 612048

RACHNA BAKHRU

ARBITRATOR

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

In the matter of:

Breitling SA  
PO Box 1132,  
Schlachthausstrasse 2,  
Grenchen, CH-2540,  
Switzerland

.....Complainant

Lokesh Morada,  
210 City Blvd West, 32  
Orange California 92868,  
USA

.....Respondent

Disputed Domain Name: [www.breitling.in](http://www.breitling.in)

## **AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is Breitling SA, PO Box 1132, Schlachthausstrasse 2, Grenchen, CH-2540, Switzerland. The Complainant is represented by its authorized representatives Ambalika Banerjee, Anand & Anand, First Channel, Plot no. 17A, Sector 16A, Film City, Noida who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Lokesh Morada, 210 City Blvd West, 32, Orange, California 92868, USA 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 [www.breitling.in](http://www.breitling.in). The Registrar is Name.com LLC (R65-AFIN).

The Registrant is Lokesh Morada, 210 City Blvd West, 32, Orange, California 92868, USA

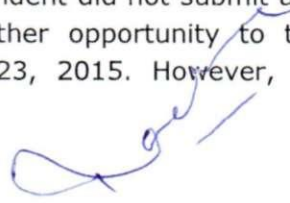
### **3) Procedural History:**

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 28<sup>th</sup> 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 Rachna Bakhru 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 March 31, 2015 and the notice was issued to the Respondent on April 1, 2015 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 April 13, 2015 the Arbitrator granted further opportunity to the Respondent to submit its response on or before April 23, 2015. However, no





response was submitted by the Respondent within the stipulated time of thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

It may be apt to mention that vide email dated 17<sup>th</sup> April 2015, NIXI informed the Arbitrator that they could not serve the Complaint upon the Respondent and provided an email from Blue Dart Courier Service dated 17<sup>th</sup> April, 2015 informing that the address of the Respondent is incomplete or incorrect.

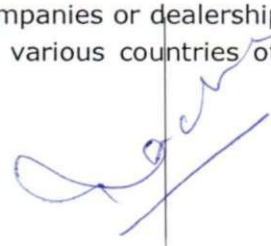
**Grounds for administrative proceedings:**

- 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.

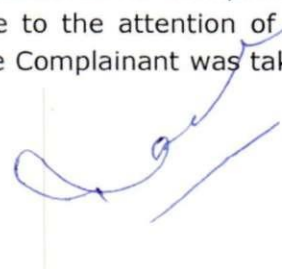
**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions:**

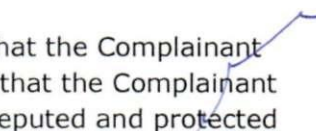
- a) The Complainant is a company based in Switzerland which manufactures specialized chronographs and watches, as well as related accessories under the trademark BREITLING.
- b) Breitling is a privately owned company in Grenchen, Canton of Solothurn, Switzerland. Breitling SA was founded in Saint-Imier, Bernese Jura by Leon Breitling in 1884. Breitling watches are made in Switzerland using Swiss components. The Complainant, designs, engineers, manufactures and distributes chronometer watches.
- c) The Complainant submits that the trade mark and the trade name BREITLING is used worldwide by the Complainant in respect of manufacture and sale of watches and clocks precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons), jewellery, precious, stones, all horological products and their parts and other chronometric instruments, clothing and footwear, headgear, games and playthings, gymnastic and sporting articles not included in other classes, decorations for Christmas trees.
- d) The Complainant further submits that the goods under the trade name and the trademarks BREITLING are extensively sold and marketed directly by the Complainant themselves or through its related/group companies or dealerships or authorized importers worldwide and has sales units in various countries of the world including India.



- e) The Complainant has expended a great amount of time, money and effort in the promotion and advertisement of the trademark BREITLING and the products there under. Besides, the Complainant is known as BREITLING SA due to which the Complainant has established an impeccable reputation and goodwill for the trademark BREITLING worldwide including India.
- f) The Complainant's trademark BREITLING has been widely publicized through magazines, journals and newspapers, exposure via the Internet, word of mouth publicity and articles appearing in various trade publications, newspapers, etc. due to which this trademark has come to be associated with the Complainant and none else.
- g) The Complainant further submitted that Breitling branded goods have been very popular among celebrities. A few of the ambassadors of the brand are : a) Ami James, Miami Ink, Super Avenger, b) Andy Schleck, Cyclist, B-1, c) Ariel Sharon, Former Israeli PM, d) Boomer Esiason, Former NFL Football Player e) Brad Pitt, Actor etc.
- h) The products under the trademark BREITLING of the Complainant have won several awards around the world since its inception. A recent award pertaining to India is when the Complainant received the 'Watch of the Year' at the 4<sup>th</sup> Watch World Awards. In conclusion, it is submitted that by virtue of prior adoption of the trademark and the trade name BREITLING coupled with the wide publicity, recognition, and the remarkable sale volume garnered by the Complainant's business operations, an iron-cast exclusivity has come to vest in the Complainant qua the use of the name and brand BREITLING.
- i) The Complainant has an online presence in about 142 countries. The Complainant is the owner of the top level domain names [www.breitling.com](http://www.breitling.com), [www.breitling.org](http://www.breitling.org), [www.breitling.info](http://www.breitling.info) amongst others as well as several other country code top level domain names such as [www.breitling.at](http://www.breitling.at), [www.breitling.ch](http://www.breitling.ch), [www.breitling.asia](http://www.breitling.asia), [www.breitling.sg](http://www.breitling.sg) etc.
- j) The Complainant submits that they owns several registrations worldwide for its reputed and well known trademark BREITLING across classes for a vide range of goods and services. The Complainant also has statutory rights in the trademark BREITLING by way of prior registrations in various countries to name a few as India, United States, Germany, Belgium, China, Korea, Romania, Spain etc.
- k) The Complainant further submits that the Respondent in the present instance has registered the domain name BREITLING.IN on July 25, 2007, which is identical to the Complainant's reputed trademark and trade name BREITLING. Complainant further submits that the impugned domain name came to the attention of the Complainant in or around January, 2015. Thereafter, the Complainant was taking appropriate steps towards filing the present complaint.





- l) It is also submitted that the Respondent is a habitual offender. The following cases already decided against the Respondent shall substantiate the said claim:
- i. In the past, the Respondent had blocked the domain www.disneystore.in and the learned Arbitrator appointed under the National Internet Exchange of India, was pleased to pass an award against the Respondent in case of the domain www.disneystore.in and the domain was restored to Disney Enterprises Inc.
  - ii. Further, the Respondent had blocked the domain www.tupperware.in and the learned Arbitrator appointed under the National Internet Exchange of India, was pleased to pass an award against the Respondent in case of the domain, www.tupperware.in and the domain was restored to Dart Industries Inc., a wholly owned subsidiary of Tupperware Brands Corporation.
- m) It is submitted that the Respondent's domain name wholly contains the Complainant's trade mark and tradename BREITLING and is identical to the trademark in which the Complainant has statutory rights as well as common law rights.
- n) It is further submitted that the Complainant has several country code top level domain name registrations that incorporate its reputed trademark BREITLING as also the trading style BREITLING and thus the consumers and the members of the trade would invariably get confused that the impugned domain name belongs to the Complainant.
- o) The Complainant further submits that the impugned domain name attempts to associate itself to the Complainant's business under the trademark BREITLING by incorporating the name of the business in full, thereby causing loss of the Complainant's prime domain name. It is most respectfully submitted that the Complainant has spent several decades building up "search engine trust" in a domain. The malicious and fraudulent intention of the Respondent is evident from the blatant misappropriation of the Complainant's trademark BREITLING. It is submitted that in the present instance, any Indian user searching for the Complainant's business online as BREITLING could come across the impugned domain name, which enhances the possibility of confusion and/or deception particularly since the user would associate the .IN domain extension to belong to the Complainant as the Complaint is the proprietor of the domains www.breitling.com, along others. Consuming public will associate the impugned domain to be the Indian domain of the Complainant.
- p) The internet user or the general public who do not know that the Complainant and the Respondent have no affiliation with each other or that the Complainant has not licensed or authorized or endorsed the use of its reputed and protected
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mark BREITLING, will thus confuse the Respondent's activities as those authorized or affiliated with the Complainant which would lead to the dilution of the Complainant's trademarks and trade name.

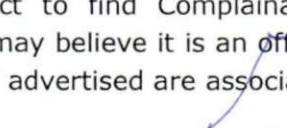
- q) Further, the Respondent's choice of the Complainant's reputed trademarks BREITLING as part of its domain name is totally unnecessary and unwarranted and the Complainant submits that the sole purpose of carrying on business through the use of the disputed domain name incorporating the Complainant's reputed trademarks is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website.
- r) The Respondent is not making a legitimate non-commercial use of the domain name. The Complainant submits that the Respondent has not been engaged in any such activity to show that it has legitimate rights or interest in the impugned domain name. The Respondent is merely blocking the website of the Complainant as the same remains inactive, thereby not making a legitimate non-commercial or fair use of the impugned domain name.
- s) The Complainant has not licensed or otherwise permitted the Respondent to use its trade name and/or trademark BREITLING or to apply for any domain name incorporating the said trademark.
- t) The Complainant further submits that BREITLING is not the Respondent's personal name, neither is the Respondent commonly known by the impugned domain name and Respondent is not known to the public under the impugned domain name.

## **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 'BREITLING.IN' leads to the conclusion that the Complainant has superior and prior rights in the mark 'BREITLING.IN'. Thus it can be said a) the web users associate the word 'BREITLING.IN' 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.breitling.in](http://www.breitling.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 claims therefore deemed to have admitted the contentions of the Complainant. In addition, the Respondent by providing incomplete/incorrect address of Respondent at the time of registration, which is evidence from non-delivery of courier containing the Complaint (as per the report provided by NIXI dated April 17, 2015 from Blue Dart Express), violated clause 3 (a) of .IN Domain Dispute Resolution policy.

- (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 common law rights, and rights on account of prior and longstanding use of the mark 'BREITLING.IN'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'BREITLING.IN' mark 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;

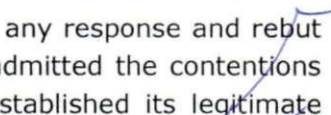
The Complainant has not authorised the Respondent to register or use the 'BREITLING.IN' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain.

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 rights 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.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.breitling.in'.

- (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.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'BREITLING.IN' 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.breitling.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.breitling.in be transferred from the Respondent to the Complainant.



**RACHNA BAKHRU  
SOLE ARBITRATOR  
NIXI  
INDIA**

**April 29, 2015**