



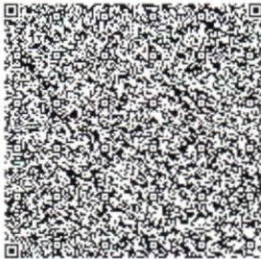
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL31990514245360L  
 Certificate Issued Date : 04-Jul-2013 12:06 PM  
 Account Reference : IMPACC (IV)/ dl871703/ DELHI/ DL-DLH  
 Unique Doc. Reference : SUBIN-DL87170363025317574107L  
 Purchased by : SANJAY KUMAR SINGH  
 Description of Document : Article 12 Award  
 Property Description : Not Applicable  
 Consideration Price (Rs.) : 0  
 (Zero)  
 First Party : SANJAY KUMAR SINGH  
 Second Party : Not Applicable  
 Stamp Duty Paid By : SANJAY KUMAR SINGH  
 Stamp Duty Amount(Rs.) : 100  
 (One Hundred only)



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BEFORE SHRI SANJAY KUMAR SINGH, ARBITRATOR.  
 IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)  
 IN MATTER OF:

CALLIGARIS SPA, ——— Complainant.

vs.

CHRISTINE K. HOYER ——— RESPONDENT.

DOMAIN NAME IN DISPUTE: www.calligeris.in

Sanjay K. Singh

#### Statutory Alert:

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**BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR**

**IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

**IN THE MATTER OF:**

Calligaris S.p.A,  
Viale Trieste 12  
Manzano CUD) 33044  
Italy

**Through its representative**

Ranjan Narula Associates,  
Intellectual Property Attorneys;  
Vatika Towers 10<sup>th</sup> Floor, Block B,  
Sector 54, Gurgaon-122002  
National Capital Region  
Haryana  
Email: [rnarula@indiaiprights.com](mailto:rnarula@indiaiprights.com)

... complainant

**Versus**

Christine K. Hoyer  
Four Leaf Inc.  
Massachusetts Hall,  
Massachusetts 02138,  
U.S.A.  
Email: [kpmving@gmail.com](mailto:kpmving@gmail.com)

... Respondent

**THE PARTIES:**

1. The complainant is Calligaris S.p.A, having its office at Viale Trieste 12 Manzano CUD) 33044 Italy.
2. The respondent is Christine K. Hoyer of Four Leaf Inc. Massachusetts Hall, Massachusetts 02138, U.s.A.
3. The complaint has been filed by Mr. Ranjan Narula of Ranjan Narula Associates, Intellectual Property Attorneys; at Vatika Towers 10<sup>th</sup> Floor, Block B, Sector 54, Gurgaon - 122002; under authorization from the Complainant.

**Domain name in Dispute:** [www.calligaris.in](http://www.calligaris.in)

**CONTENTION:**

1. The complainant has invoked .IN Domain Name Dispute Resolution Policy for the transfer of the domain name [www.calligaris.in](http://www.calligaris.in) currently registered

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in the name of respondent.

2. The complainant has submitted that present complaint has been instituted in order to protect the Complainant's rights in the corporate name / trade mark and domain name CALLIGARIS which has been copied without authorization by the Respondent and has registered an identical domain name www.calligaris.in with the .IN registry. The complainant has annexed a copy of WHOIS report as **Exhibit-A** for contact details of the Respondent and the aforesaid domain name registration.

#### **AWARD**

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The present dispute pertains to the domain name "www.calligaris.in" in favour of the respondent.
3. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "www.calligaris.in".
4. The complainant herein has filed the instant complaint challenging the registration of the domain name "www.calligaris.in" in favour of the respondent.
5. I was appointed as Sole Arbitrator in the matter by NIXI.
6. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
7. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
8. On 03-06-2013 I issued notice to the respondent and informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within seven days of receipt of notice.

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9. On 17-06-2013 I again issued notice to the respondent and further directed the respective parties to the complaint, to file their counter/ reply and rejoinder with the supportive document/evidence failing which the complaint would be decided on its merit.
10. The complainant has submitted that it was founded in 1923 by Antonio Calligaris and now directed by **Alessandro Calligaris**, the Complainant went from producing furniture for third parties to leading the home furnishing sector. The Complainant manufactures and distributes chairs, tables, beds, sofas, storage units and furnishing accessories.
11. The complainant has submitted that in the 1960s, the Complainant evolved into a highly structured industrial set-up, branching out into exports in the following decade. The 1980s saw a boom in "Made in Italy" design and in the 1990s, the CALLIGARIS products were being distributed worldwide via the Complainant's new foreign branches.
12. The complainant has submitted that Today, the Complainant comprises of four different companies the headquarters based in Manzano, North Italy, CALLIGARIS D.O.O. in Croatia responsible for the supply and processing of wood, Calligaris U.S.A. and Calligaris Japan, manage the North American and Japan market, respectively.
13. The complainant has submitted that the Complainant employs 600 employees worldwide and distributes its products in 90 countries worldwide. It produces 120 thousand units per month with over 7000 product variations for the kitchen, living room and bedroom. Every day, the Complainant delivers over 1,000 cubic metres of goods comprising over 800 catalogue products.
14. The complainant has submitted that in the 1990's, the Complainant expended its range of products with complete furnishing solutions: chairs, tables, furniture, beds, sofas, furnishing and decorative accessories. In 1997, the Complainant became one of the first Italian furnishing companies to obtain ISO 9001 quality certification for its

*Sangeeta Singh*

entire organization and production system.

15.The complainant has submitted that in 2006, the Complainant obtained prestigious Forest certification from the Forest Stewardship Council (FSC), the international no-profit NGO promoting the ecologically and economically responsible management of the world's wood heritage. The Complainant's products with FSC certification use wood only from forests that are monitored and safeguarded.

16.The complainant has submitted that in 2008, the Complainant opened its first Flagship Store in Milan (Italy) and at present has monobrand stores in Shanghai (China), Lyon (France), New York (USA), Toronto (Canada), Seoul (South Korea) and Rome (Italy). In April 2012 a new store was opened in Paris (France). In **India**, the omplainant's goods are sold through retail stores located in Gurgaon, Bangalore and Chennai. The complainant has annexed the Extracts from the Complainant's website [www.calliqaris.com](http://www.calliqaris.com) mentioning its corporate history, product range, retail outlets in India as **Exhibit B**.

17.The complainant has submitted that it is the owner of a number of domain names comprising of the mark CALLI GARIS which support the Complainant's several dedicated and official websites for its consumers and other visitors from different countries and jurisdictions. Some of these domain names are:

Domain name	Registration Date
calligaris.com	19 <sup>th</sup> November 1996
calligaris.it	25 <sup>th</sup> October 1996
calligaris.us	2 <sup>nd</sup> November 2002
calligaris.biz	9 <sup>th</sup> February 2004
calligaris.info	9 <sup>th</sup> February 2004

18. The complainant has annexed the a copy of WHOIS report mentioning the above domain names in the name of the Complainant as **Exhibit-C**

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**19. INTELLECTUAL PROPERTY RIGHTS IN THE MARK CALLIGARIS:**

1. The complainant has submitted that in India, the Complainant has obtained registration of the trade mark CALLI GARIS in classes 11, 20 and 35 as detailed below:

Trade Mark	Registration No.	Registration Date	Class	Validity
CALLIGARIS	1806634	15/04/2009	11,20 and 35	15/04/2019

The complainant has annexed online status of Complainant's CALLIGARIS mark from Trade Mark Registry's website <http://www.ipindia.nic.in/> and has marked it as **Exhibit-D**.

2. Additionally, the Complainant is the owner of several worldwide registrations of the CALLIGARIS trademark. The complainant has annexed a list of worldwide trademark registrations and pending applications for CALLI GARIS mark as **Exhibit-E**. The complainant in particular has drawn attention to the following registrations of CALLIGARIS mark:

- a. International trademark registration no. 1005683 for CALLIGARIS mark in classes 8, 11, 20, 21, 24, 27 and 35, granted on April 20, 2009 and valid until April 20, 2019.
- b. Community trade mark (CTM) registration no. 24323 for CALLIGARIS mark in class 20, filed on April 1, 1996, granted on April 20, 1998 and duly renewed until April 1, 2016,

The complainant has annexed copy of few worldwide registration certificates of CALLIGARIS mark as **Exhibit-F**.

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20. The Complainant has further submitted that the overwhelming success of the Complainant's mark/name CALLIGARIS as being synonymous with home furnishing sector has resulted in Complainant gaining extensive goodwill and reputation in the CALLIGARIS mark/name worldwide including in India. On account of its extensive use since 1923 and popularity of the domain name/trade mark/trade name CALLIGARIS across the world, it is well recognized by different strata of society. The members of the trade and public exclusively associate the mark/name CALLIGARIS with the business of the Complainant and none else.

21. The Complainant has further submitted that as mentioned in the preceding paragraphs, the Complainant owns the intellectual property in the trade mark and domain name CALLIGARIS including its trade mark registrations and domain names registrations. The Complainant is the registrant and user of several domain names containing the CALLI GARIS mark.

22. The Complainant has submitted that the Respondent has registered the identical domain name [www.calligaris.in](http://www.calligaris.in) with the .in Registry. It has been submitted by the complainant that the aforesaid domain name incorporates the Complainant's well-known, prior used mark/ name CALLI GARIS and prior registered domain [www.calligaris.com](http://www.calligaris.com). The Complainant has further submitted that the Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known trademark in any manner.

23. The Complainant has submitted that on account of extensive use and popularity of the domain name / trade mark / trade name CALLIGARIS across the world, the CALLI GARIS mark / name is well recognized. Its use has been popularized by the Complainant, therefore the Respondent can have no plausible reason for adoption of a domain name phonetically, visually and conceptually identical to the Complainant's well-known trade mark / trade name and domain name

*Sanjay K. Singh*

CALLIGARIS. The complainant has contended that the Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant in its trade mark / trade name / domain name CALLIGARIS.

24. The Complainant has further submitted that the disputed domain name resolves to a parked website which features 'sponsored links' pertaining to various goods and services including products from Complainant's core area of business i.e. furniture. The complainant has further submitted that it is obvious that apart from confusing internet users looking for the Complainant's website and diverting traffic to such unrelated websites, the respondent has acquired the domain name www.calligaris.in purely to make illegal profit. The Respondent has made no use of the domain name in connection with a bona-fide offering of goods or services, and is holding on to the domain name in bad faith to derive monetary gains. The complainant has further submitted that the Respondent has registered the domain name www.calligaris.in for the purpose of reselling and not for carrying out any business and respondent should not be allowed to continue with the aforesaid illegal activities and the said domain name registration should be transferred to the Complainant. The complainant has annexed a printout from the Respondent's website www.calligaris.in as **Exhibit-G**.

25. The complainant has submitted that the disputed domain name is identical to the Complainant's corporate name/ registered trademark and domain name. There is strong likelihood that a web browser looking for Complainant's goods/services in India would mistake the Respondent's website www.calligaris.in for the Complainant's India specific website, and once there, would be directed to the other links on this website in search of service offerings of the Complainant.

26. The complainant has further submitted that that it will suffer incalculable harm and injury to its goodwill, reputation and business in general if the Respondent is allowed to maintain its domain name www.calligaris.in. The loss and damage will not only be to the Complainant's reputation but also result in confusion and deception

*Langar Singh*

among the trade and public who would subscribe to the Respondent's goods/services assuming it to be sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant. The complainant has further submitted that the web users are likely to visit the Respondent's website assuming it to be sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant. The trade and public may also assume that there exists connection between the Complainant and the Respondent which is likely to further harm the reputation enjoyed by the Complainant.

27. The complainant has further submitted that it is a settled proposition of law that where there is copying, dishonesty ought to be presumed. In the present case, copying by the Respondent is evident from its subsequent adoption of an identical domain name.

28. The complainant has further submitted that the intention of the Respondent is primarily to encash the goodwill and reputation enjoyed by the Complainant in its prior used domain name/ corporate name/ mark CALLIGARIS. The complainant has further submitted that the Respondent was clearly aware of the existence of prior trade mark rights in favour of the Complainant when it registered the domain name www.calligaris.in. Thus, subsequent registration of an identical domain name by the Respondent cannot be a coincidence. The complainant has further submitted that the registration of the identical domain name by the Respondent is in bad faith and intended to derive monetary and commercial gain. In the circumstances, the present case is clearly that of cyber-squatting. The complainant has further submitted that use of an identical domain name by the Respondent is likely to mislead/divert consumers and also tarnish the reputation of the corporate name and CALLI GARIS trade mark of the Complainant.

#### **29. Efforts to Resolve This Matter :**

The complainant has submitted that it has exchanged following communication with the Respondent in an effort to resolve the issue in

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question:

- (i) On December 27, 2012, the Complainant sent a cease and desist notice to the Respondent's e-mail [address kpmving@gmail.com](mailto:kpmving@gmail.com). Whereby the Respondent was called upon to immediately stop use of the disputed domain name [www.calligaris.in](http://www.calligaris.in) and transfer the disputed domain name to the Complainant. The complainant has annexed a copy of the cease and desist notice dated December 27, 2012 addressed to the Respondent as **Exhibit H**. The complainant has further submitted that as no reply was received within stipulated time frame, the Complainant addressed reminder emails dated 22<sup>nd</sup> January 2013 and 25<sup>th</sup> February 2013 to the Respondent urging her to respond. The complainant has annexed a copy of the reminder emails dated 22<sup>nd</sup> January 2013 and 25<sup>th</sup> February 2013 addressed to the Respondent as **Exhibit I**.
- (ii) The Respondent vide reply email dated 25<sup>th</sup> February 2013, sought compensation of 6000 Euros for selling the disputed domain name [www.calligaris.in](http://www.calligaris.in). The complainant has annexed a copy of the email dated 25<sup>th</sup> February 2013 addressed to the Complainant as **Exhibit J**.
- (iii) The complainant has submitted that it is evident that the Respondent has registered the domain name [www.calligaris.in](http://www.calligaris.in) for the purpose for reselling and making quick money.

**30. The Complainant has submitted that it has satisfied all three conditions in paragraph 4 of the Policy and is therefore entitled to transfer of the domain name in its favour.**

- A) **The domain name [www.calligaris.in](http://www.calligaris.in) is identical or confusingly similar to the corporate name, trade mark and domain name in which the Complainant has rights.**

The complainant has submitted that the respondent has applied for the domain name that is identical to Complainant's prior used corporate name, prior registered domain name and prior registered trade mark CALLIGARIS. The complainant has further

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submitted that it has established its prior rights in the trade name /domain name / trade mark CALLIGARIS. The Complainant has filed sufficient evidence to show that it has trademark rights in the CALLI GARIS mark. The complainant has submitted that the first condition is clearly satisfied.

B) **The Respondent has no rights or legitimate interest in the domain name www.calliqaris.in for the following reasons:**

- a. The complainant has submitted that the domain name www.calliqaris.in was registered by the Respondent on 27th November 2012. The complainant has further submitted that at this time, the Complainant had already made use of the CALLI GARIS as a trade mark in several parts of the world. The Complainant had also registered the domain name www.calligaris.com on 19<sup>th</sup> November 1996 and enjoyed considerable reputation in the CALLIGARIS mark and domain name. Further, the Complainant's corporate name comprises of the word CALLIGARIS. The complainant has submitted that it is obvious that the Respondent was aware of the Complainant's prior trade mark rights in the CALLIGARIS mark/name and its adoption of an identical domain www.calliqaris.in is in bad faith.
- b. The complainant has submitted that the respondent is not and has never been known by the CALLIGARIS name or by any similar name. The Respondent did not have any active business in the name of CALLIGARIS. The registration of the disputed domain name by the Respondent is thus a typical example of "cybersquatting". The complainant has further submitted that the fact that the Respondent's website carries nothing but sponsored links of different products including Complainant's field of business (furniture) further proves that the Respondent is just a cyber squatter.

*Sangar Singh*

**C) The Complainant submits that the domain name was registered and being used by the Respondent in bad faith due to following:**

- i.) The complainant has submitted that at the time of registration of the domain name by the Respondent i.e., on 27th November 2012, the Complainant's mark CALLIGARIS and domain name www.calligaris.com was well-known. The Complainant is prior user / prior registered proprietor of the mark CALLIGARIS and prior owner of the registration of domain name www.calligaris.com. The complainant has further submitted that the popularity and registration of CALLIGARIS mark and domain name was a constructive notice to the Respondent of Complainant's rights in the CALLIGARIS mark and domain name. Thus, the adoption of an identical mark/domain name by the Respondent is in bad faith.
- ii.) The complainant has submitted that the Complainant's mark and domain name CALLIGARIS is not an English language word/expression and is highly distinctive in nature; particularly in relation to the goods that it represents www.calligaris.com. The complainant has further submitted that there cannot be any plausible reason for subsequent adoption of an identical mark/domain name by the Respondent. The Complainant has further submitted that the adoption and use of an identical mark/domain name www.calligaris.in by the Respondent cannot be a co-incidence and is in 'bad faith'.
- iii) The Complainant has further submitted that Respondent is not carrying out any legitimate business activities through the domain name www.calligaris.in and is only to divert internet traffic by using a well known and established domain name. The Complainant has further submitted that the registration of the domain name www.calligaris.in by the Respondent is in bad faith.

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iv) The Complainant has further submitted that the Respondent is not carrying out any business activities through the domain name www.calligaris.in and as mentioned in the previous paragraph has merely blocked/registered the said domain name for the purpose of reselling for a considerable amount. The Complainant has further submitted that the Respondent's has offered to sell the domain name www.calligaris.in through www.Sedo.com that deals in domain name sale/purchase and auction. The Complainant has annexed the printout from www.sedo.com offering the domain name www.calligaris.in for sale as **Exhibit K**. The Complainant has submitted that it is obvious that the registration of the domain name www.calligaris.in by the Respondent is in bad faith.

31. I have perused the records and have gone through the contents of the complaint. Since respondent has not filed any reply hence the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.

32. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has not provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

33. It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & "Sify" were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. It is held in above case that in modern times domain name

*Satyam Infoway*

is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

34. Thus the conclusion is that the domain name "**www.calligaris.in**" is identical and confusingly similar to the trademark of complainant "**CALLIGARIS**" and the complainant has established that he has right in the trademark and further the respondent has got registered his domain name "**www.calligaris.in**" in bad faith.


**RELIEF:**

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "**www.calligaris.in**" to him, as it has established its bonafide rights in trademark in facts and circumstances and as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry.

No order as to costs.

**Delhi**

**Date: 04-07-2013.**

  
**(Sanjay Kumar Singh)**  
**Arbitrator**