

महाराष्ट्र MAHARASHTRA

2015

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इस्तादा प्रकार  
दस्त नोंदणी

मिळकतीचे  
मुद्रांक विभाग

पत्ता २०२ शनिवार पेठ पुणे

दुसऱ्या पक्षा  
हस्ते व्यवहारी

मुद्रांक विभाग येथील सही

पत्राचा क्र. २३०९०९९  
४२५ ब, शनिवार पेठ, पुणे-३०



AWARD  
IN ARBITRATION

'CALVINKLEIN.IN'

CALVIN KLEIN INC.  
205, West 39th Street  
New York.  
NY 10018. USA.

THE COMPLAINANT

AND

**M/S HANGZHOU GOUGOU INTERNET CO. LTD. THE RESPONDENT /**  
No.400, 8th Floor, Shaoxing RD.  
Hangzhou, Zhejiang  
China. 310005.  
**THE REGISTRANT**

**IN THE MATTER OF DISPUTED DOMAIN NAME: - 'CALVINKLEIN.IN'**  
**BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.**

**SOLE ARBITRATOR**

**DELIVERED ON THIS 28th DAY OF AUGUST TWO THOUSAND FIFTEEN**  
**AT PUNE, INDIA.**

**SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

**01. Names and addresses**  
**Of the Complainant: -**

**Calvin Klein Inc.**  
**205, West 39th Street**  
**New York. NY 10018**  
**USA.**

Through its authorized  
representative

Mrs.Sangeeta Bansal / Meena Bansal  
96, Sukhdv Vihar, Mathura Road  
New Delhi. 110025. India.

**02. Name and address of**  
**The Respondent: -**

**M/s Hangzhou Gougou Internet**  
**Co. Ltd.**  
No.400, 8th Floor, Shaoxing RD  
Hangzhou, Zhejiang  
China. 310005.

**03. Calendar of Major events:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date (Communications in electronic mode)</b>
01	Arbitration case referred to me & acceptance given by me	03.08.2015
02	Hard copy of complaint received & Notice of Arbitration issued with the instructions to file reply latest by 18.08.2015	08.08.2015
03	Period to file reply extended suo-moto	21.08.2015
04	(i) NIXI requested for directions from Arbitration Panel since postal address registered by the Registrant / Respondent was incorrect	



	(ii) NIXI directed to send soft copy to the Registrant (iii) Registrant directed to submit its correct postal address (iv) Date for submission of reply extended to 24.08.2015	
05	Notice of closure of arbitration	24.08.2015
06	Award passed	28.08.2015

#### I] PRELIMINARY: -

1. Calvin Klein Inc. is a company organised and incorporated under the laws of USA having its principal place of business at 205, West 39th Street, New York, NY 10018, USA. (**The Complainant**). The Complainant is engaged in the business of manufacture, distribution and sale of wide range of clothing, fragrances, cosmetics, eyewear, watches, home furnishings and other allied / related products.

**2. The Complainant** has filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name **CALVINKLEIN.IN** (**the disputed domain name / domain name**), through its authorized representative **Mrs.Sangeeta Bansal / Meena Bansal, 96, Sukhdev Vihar, Mathura Road, New Delhi, 110025. India.**

**3. The Complainant** has disputed registration of domain name 'CALVINKLEIN.IN' in the name of **M/s Hangzhou Gougou Internet Co. Ltd., No.400, 8th Floor, Shaoxin RD, Hangzhou, Zhejiang, China 310005. (The Respondent / Registrant).**

1) Major events took place as enumerated in the above table.

#### III] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 8<sup>th</sup> August, 2015 with the instructions to file his reply / say latest by 18th August, 2015.

02. The Notice of Arbitration was sent to The Registrant's postal address was returned undelivered by courier. Accordingly NIXI was directed to send the same by email on his registered email id. The Registrant was also directed to intimate NIXI his correct postal address. However there was no response from the Registrant / Respondent.

03. Due to above events and in view of no response by the Registrant / Respondent, this panel extended the period to submit his reply / say till

24.08.2015. However no reply / say was filed by the Registrant even within the extended period.

04. On 24th August 2015 notice of closure of arbitration procedures was issued.

05. No personal hearing was requested / granted / held.

### **III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -**

The Complaint is based on the following points / issues in brief: - -

#### **(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:**

1. The Complainant states that the domain name registered by the Respondent includes the word CALVINKLEIN which is both similar and identical to 'CALVIN KLEIN MARKS', of which it is the registered owner. A list of such trademarks registered in many countries is provided in Annexure to the Complaint, by the Complainant. Among other registered trademarks, the Complainant also holds Indian Trademark under Registration No.692775 for CALVIN KLEIN since December 2005 which has been renewed from time to time. It also has another trademarks No.678782 (1997), 1296354 (2004) registered in its name, in India.
2. The Complainant is one of the renowned and leading manufacturers of clothing, fragrances, cosmetics, eyewear, watches, home furnishings and other allied / related products.

#### **(B) GROUNDS OF COMPLAINT ACCORDING TO INDRP RULES: -**

1. The Registrant's domain name contains the word CALVIN KLEIN which is an integral part of the brand and trade / service mark of the Complainant and also identical to that of the Complainant's name in which the Complainant has right and it would confuse the customers in India due to this similarity. The Trademark 'CALVIN KLEIN' has acquired tremendous fame, recognition and goodwill worldwide and is exclusively associated with the Complainant only. The use of these words in disputed domain name is without any authorization or express leave and license arrangement.
2. The Respondent has dishonestly, wrongfully, illegally, and fraudulently obtained the registration of the impugned domain name, in violation of IPR of the Complainant.
3. The Respondent registered the disputed domain name, much after the Complainant's registration of trademarks in India, having full knowledge of the Complainant's rights, in the disputed domain name without Complainant's authorization.



4. The disputed domain name is identical to the domain name 'www.calvinklein.com' under which the Complainant operates its official website for the promotion of the CALVIN KLEIN brand.
5. The Respondent has committed the offence of cyber squatting / domain squatting, infringement and passing off and rendered itself liable to be prosecuted under applicable laws.
6. A legal notice dated 10th July 2015 was served by the Complainant to the Respondent to which it has never replied.
7. The domain name was registered and is being used in bad faith.

**(C) REMEDIES SOUGHT BY THE COMPLAINANT: -**

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of the Registrant's domain name to it and also to award costs of the present proceedings to the Complainant.

**V] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

No reply has been filed by the Respondent even within the extended period granted suo-moto to him.

**VI] REJOINDERS OF THE PARTIES: -**

In view non-filing of any reply by the Registrant no rejoinders were called for.

**VIII] ISSUES & FINDINGS: -**

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

S. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	No

06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

#### **IX] BASIS OF FINDINGS: -**

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant owns the brand CALVIN KLEIN in India vide registered Trade Mark No. No.692775, No.678782 (1997), 1296354 (2004) which have been renewed from time to time and is in force on the date of the filing of the complaint. The Complainant also owns trade marks in other countries.

*Therefore my finding on this issue is in affirmative.*

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'CALVIN KLEIN' is an integral / prominent component of disputed domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also vide various WIPO decisions that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its international presence as also its strong presence on the internet it is very hard to believe that the Registrant was not aware of the same at the time of registering the disputed domain name.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'CALVIN KLEIN'.

*Therefore my finding on the first issue is affirmative.*

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

*Therefore my finding on this issue is in negative.*



4. Whether the Registrant has commonly been known by the domain name?

The name of the Present Registrant, as on the Whois records is M/s Hangzhou Gougou Internet Co. Ltd. which is neither similar to the disputed domain name, nor has any nexus to the word CALVIN KLEIN in any manner. As such the Registrant is NOT commonly known by the domain name or any variation thereof.

*Therefore my finding on this issue is in negative.*

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'CALVIN KLEIN'. He is not commonly known by that name or any variation or combination thereof. He has not established that he has been using the registered domain name for bona fide business activities or for non-commercial purpose. He is not authorised / permitted by the Complainant to use the said name. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant in this behalf.

*Therefore my finding on this issue is negative.*

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The domain name is registered without any authority, agreement or arrangement between the Complainant and the Registrant. The webpage included several links to the third parties in respect of various products including those of the Complainant. Thus the Registrant has been making money illegally by using the name and fame, of the Complainant.

*Therefore my finding on this issue is affirmative.*

7. Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?

The act of the Registrant of registering the disputed domain name in his name, has prevented the Complainant and also deprived him from using the disputed domain name for his legitimate business purposes. This is done without any authority of or agreement with the Complainant. This act has resulted into business loss to the Complainant as also damaging its reputation since the webpage included links to third party products also. Therefore it is established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

*Therefore my finding on this issue is in affirmative.*

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The website included links to various products including those of the Complainant and therefore there was all probability of confusion being created among the internet surfers as to why reputed company like the Complainant had also links to third parties products. This is obvious act of intentionally attempting to attract internet users by creating likelihood of confusion with the Complainant's name / mark.

*Therefore my finding on this issue is affirmative.*

#### **IX] CONCLUSION AND BASIS OF AWARD: -**

From above discussion this panel has reached the conclusion that: -

1. The disputed domain name includes the word CALVIN KLEIN which is an integral part of the registered marks and other registered domain names of the Complainant.
2. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'CALVIN KLEIN' and hence does not have any legitimate interest in the same and resultantly in the disputed domain name. He has not been authorised by the Complainant to register the said domain name.
3. The Registrant is not commonly known by the disputed domain name.
4. The Registrant is not making bona fide and fair use of the disputed domain name, much less for non-commercial purpose.
5. The Respondent / Registrant has failed to establish any nexus, rights or interests in or with the disputed domain name in any way.
6. Very importantly the Registrant has registered the disputed domain name for the purpose of making money illegally by trading on the reputation and goodwill of the Complainant.


From all findings on the issues framed, it can be concluded that the Registrant(s) has / have registered domain name without any legitimate interests in it.



On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name – 'CALVINKLEIN.IN' and hence the same be transferred to the Complainant.
02. The Registrant / Respondent shall pay to the Complainant the costs of these proceedings.

Dated: - 28.08.2015  
Place: - Pune

  
(S.C.INAMDAR)  
SOLE ARBITRATOR