

தமிழ்நாடு தமில்நாடு TAMILNADU

D. SARAVANAN

Advocate, Arbitrator & Mediator
- "Orient Chambers" No. 90 (Old No. 73)
4th & 5th Floor, Armenian Street,
Chennai - 600 001.

AP 769500

P.S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L No B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104 (TAMIL NADU)

5 JUL 2013

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: <CARTONNEWPORTCIGARETTES.IN>

LORILLARD LICENSING COMPANY, LLC
1601, Wachovia Tower,
300 North Greene Street,
Greensboro, North Carolina 27401 USA

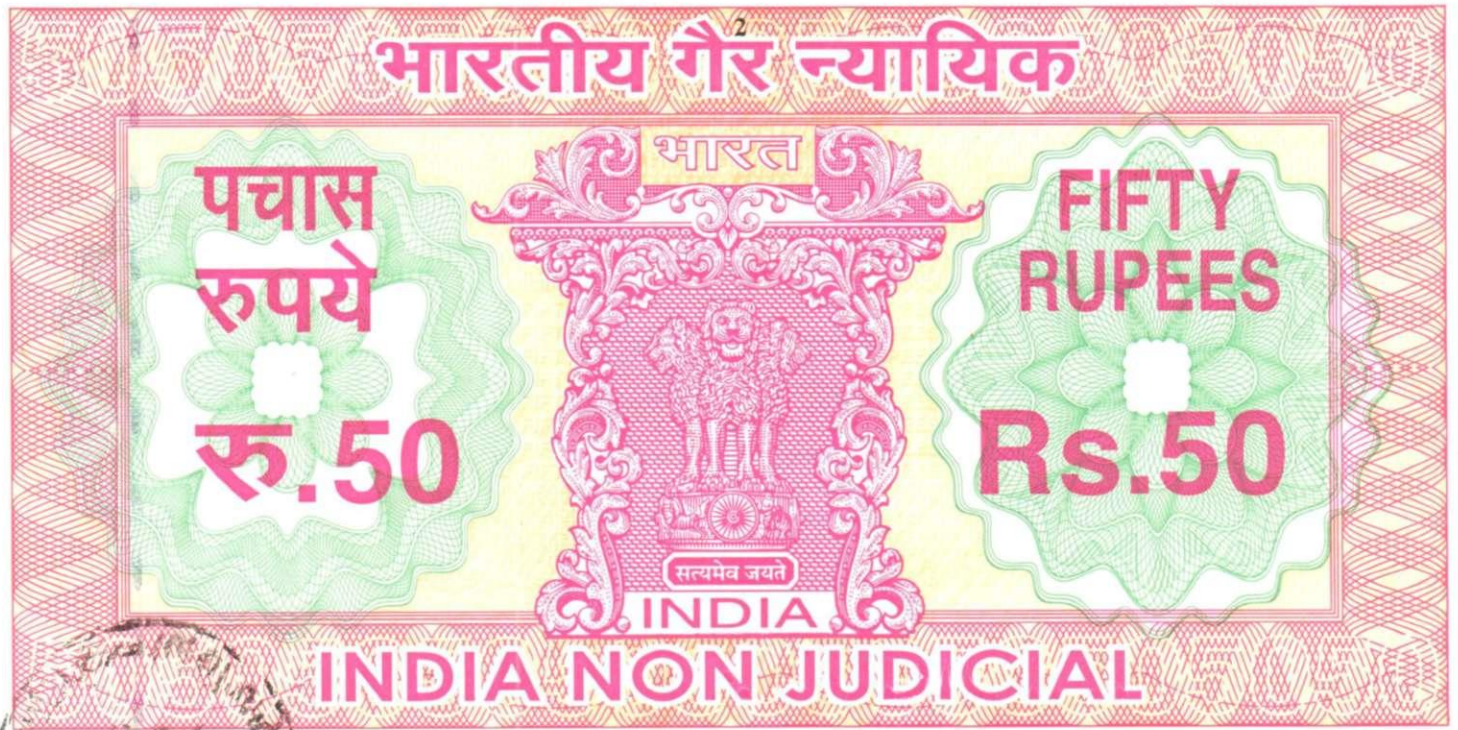
..Complainant

-VERSUS-

Kevin Korho
CigaMarket
Kirova 35, 17
Syktyvkar, Komi 18756
Ru

..Respondent





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29/23
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1. The Parties:

The complainant is a company registered under the laws of USA having its place of business at 1601, Wachovia Tower, 300 North Greene Street, Greensboro, North Carolina 27401 USA.

The respondent is Kevin Korho having place of business at CigaMarket, Kirova 35, 17, Syktyvkar, Komi 18756, Ru.

2. The Domain Name and Registrar:

The dispute domain name : < CARTONNEWPORTCIGARETTES.IN >

The disputed domain name is registered with National Internet Exchange of India (NIXI).

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3. Procedural History:

28.06.2013	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
28.06.2013	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
08.07.2013	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
18.07.2013	Due date for filing response.
06.08.2013	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background

The complainant is a company registered under the laws of USA having its place of business at 1601, Wachovia Tower, 300 North Greene Street, Greensboro, North Carolina 27401, USA.

4.1 The Complainant:

4.2 Complainant's Activities:

The complainant is the third largest manufacturer of cigarettes in the United States. The complainant uses its trademark NEWPORT in connection with its famous cigarettes and related goods and services. The complainant first began using the NEWPORT marks and predecessor NEWPORT marks in 1956 in connection with cigarettes and related goods and services and has since that time continuously used NEWPORT Marks. Newport cigarettes are the number one selling menthol cigarettes in United States. The complainant has actively promoted Newport cigarettes. The complainant owns numerous United States registrations for trademark NEWPORT.



The NEWPORT Marks have acquired global reputation and goodwill and are well known marks.

4.3 Complainant's Trading Name:

The complainant has been using the trade mark NEWPORT since its origin. The Complainant owns common law rights as well as several United States, one Austrain, and one Norwegian trademark registration. The complainant owns numerous United States registrations for trademark NEWPORT. Following are the trademarks owned and registered by the complainant:-

Sr.No.	Trademarks
1.	Newport Pleasure
2.	Newport
3.	Newport Medium Menthol Blue
4.	Newport Medium Menthol Blue
5.	Newport Menthol Box
6.	Newport Menthol Box
7.	Newport Lights Menthol Gold
8.	Newport Lights Menthol Gold
9.	Newport Pleasure Draw
10.	Newport Pleasure Play
11.	Newport Pleasure Play
12.	M Newport Blend
13.	Newport Pleasure Payday
14.	Newport Pleasure Elite
15.	Newport M Blend
16.	Newport Pleasure Rewards
17.	The World of Newport Pleasure



18.	Newport's Pleasure Elite Club
19.	Newport's Pleasure Elite Club
20.	Newport Pleasure Takes
21.	Newport Pleasure Takes
22.	Newport Pleasure
23.	Newport Medium
24.	Newport
25.	Newport Pleasure Goods
26.	Newport
27.	Newport
28.	Newport Menthol Gold Cigarettes
29.	Newport Non- Menthol Cigarettes
30.	Newport Non- Menthol Cigarettes
31.	Newport Non- Menthol Cigarettes
32.	Newport Non- Menthol Cigarettes
33.	Newport Cigarettes
34.	Newport Non- Menthol
35.	Newport Non- Menthol
36.	Medium Menthol Blue Cigarettes

The complainant also owns and operates a website at www.newport-pleasure.com which features additional information about its goods and services.

5. Respondent's Identity and activities:

According to DYNADOT WHOIS database, the respondent is Kevin Korho having place of business at CigaMarket, Kirova 35, 17, Syktyvkar, Komi 18756, Russia.



6. Dispute

The dispute arose when upon DYNADOT WHOIS database, the complainant discovered about unauthorised registration and use of the Disputed Domain name **CARTONNEWPORTCIGARETTES.IN** by the respondent.

7. Parties contentions:

A. Complainant:

- (i) The Complainant is the owner of Newport Marks.
- (ii) The disputed domain name is identical to the Complainant's Newport Marks, as it reproduces the Newport Mark in its entirety.
- (iii) The respondent has no rights or legitimate interest in the disputed domain name as the respondent is neither in any way affiliated with the Complainant nor has the complainant authorized the respondent to use the complainants Newport Marks or register the mark.
- (iv) The respondent registered and is currently using the disputed domain name in bad faith to conduct unauthorized sales of cigarettes.

B. Respondent:

The respondent did not submit any response.

8. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on 06.08.2013.



Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The respondent's domain name is identical and confusingly similar with the trademark NEWPORT;
- (ii) Respondent has no rights or legitimate interests in respect of the domain name NEWPORT; and
- (iii) The registration and usage of domain name NEWPORT by the respondent is in bad faith.

(a) Identical or confusing similarity:

i. The Arbitral Tribunal finds that the trade mark **NEWPORT** and the disputed domain name **CARTONNEWPORTCIGARETTES.IN** are Complainant's famous and distinctive trade mark and the Tribunal is satisfied that the Complainant Lorillard is the owner of NEWPORT Marks. The Complainant uses NEWPORT Marks in connection with cigarettes and their related services since 1956. The Complainant owns numerous United States registrations for trademark NEWPORT. Hence, it is not disputed that the Complainant is owner of NEWPORT Marks.

ii. The Arbitral Tribunal finds that the disputed domain name is simply a combination of the Complainant's NEWPORT, the descriptive word "carton" and the goods sold by the complainant i.e. cigarettes.

iii. The Arbitral Tribunal concludes that the mere addition of descriptive term "carton" is insufficient to distinguish the disputed domain name from the complainant's trademark.

iv. The Arbitral Tribunal also refers to the judgements cited by the Complainant in **M/s Satyam Infoway Ltd Versus M/s Siffynet Solutions (P) Ltd; JT2004 (5) SC 41** and in **Lego Juris A/S Versus Robert Martin, INDRP/125** wherein it was held that when a disputed domain name contains the trademark in its entirety, the domain name is identical and confusingly similar.



The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the trademark NEWPORT or the disputed domain name as the respondent is not connected with the Complainant in any way. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests. The Complainant has established that he is true owner of the NEWPORT Marks and it is not disputed.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal find that there is no evidence on record to show that Respondent is known by the disputed domain name or that he has used the disputed



domain name in connection with a bona fide offering of goods or has any rights in the disputed domain name. The respondent has not attempted to file any trademark applications for the mark NEWPORT in connection with any goods or services.

iv) The respondent has failed to show any justification for the adoption, usage or registration of disputed domain name. The Tribunal also finds that the respondent is not commonly known by the disputed domain name and that the respondent does not engage in business under the name NEWPORT.

v) The Arbitral Tribunal thus holds that the circumstances listed above demonstrate rights or legitimate rights of the complainant in the domain name and holds that the respondent has infringed the rights of the complainant by registering the trademarks of the complainant.

vi) The Arbitral Tribunal also refers to the judgements cited by the Complainant in **Ronson Plc Versus Unimetal Sanayi, D2000- 0011** and **Brookfield Commc'ns Inc Versus W.Coast Entm't Corp** wherein it was held that mere registration of a domain name does not confer legitimate rights on the registrant.

vii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered



CARTONNEWPORTCIGARETTES.IN mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) The Arbitral Tribunal finds that the domain name **CARTONNEWPORTCIGARETTES.IN** resolves to a website where the respondent operates an unauthorized online store for Internet users to purchase products identical to the products offered by the complainant

iv) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.



9. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <CARTONNEWPORTCIGARETTES.IN > be transferred to the Complainant.

Dated at Chennai (India) on this 23rd August, 2013



(D.SARAVANAN)
Sole Arbitrator