



महाराष्ट्र MAHARASHTRA

मुद्रांक लिह अण्ड लायसेन्ससाठी नाही

GN 784425

अनुक्रमांक १९८८ दिनांक २०/१२/१२
मुद्रांक कोणत्या कायद्यासाठी वापरावयाचा आहे. कोणत्या कायद्यासाठी
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26 DEC 2012

उप कोषागार अधिकारी
कोषागार पुरो करिता

नरेश भा. सुते
मुद्रांक भा. सुते/रु. १००/१२

व्याख्या (पुढांक विवेचनी)
(अ. १००/१२, को. १००/१२)
पुढांक क्र. २२०१०११/१९९५
पुढांक क्र. ११/१/१०
पुढांक क्र. ११/१, को. ११/१, पुणे-३०५

AWARD IN ARBITRATION

Christian Louboutin
C/o Christian Louboutin S.A.
19, rue Jean-Jacques Rousseau, Paris, France. 75001

THE COMPLAINANT

AND

GaoGou
C/o Yerect Internatinoal Limited
Suite 1100, South Tower, 175, Bloor Street East
Toronto, M4W 3R8, CANADA.

THE RESPONDENT /
THE REGISTRANT

**IN THE MATTER OF DISPUTED DOMAIN NAME: -
'christianlouboutin.co.in'
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR**

**DELIVERED ON THIS 29th DAY OF DECEMBER TWO THOUSAND
TWELVE AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

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

**Christian Louboutin
C/o Christian Louboutin S.A.
19, rue Jean-Jacques Rousseau
Paris 75001, France.**

Through its authorized
representative

IP Gurus
A-45, Sector 63, NOIDA
Uttar Pradesh, India.

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

**GaoGou.
C/o Yerect International
Suite 1100, South Tower,
175, Bloor Street East
Toronto M4W 3R8
Canada.**

**03. Name and address of the
Registrar**

#1 Indian Domains dba Mitsu.in (R74-
AFIN)

04. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me	22/11/2012
02	Acceptance given by me	22/11/2012
03	Hard copy of the complaint received	28/11/2012
04	Notice of Arbitration issued (with the instructions to file say / reply latest by 23.12.2012)	13/12/2012
04	Reminder notice sent to the Respondent (with the instructions to file say / reply latest by 27.12.2012)	24/12/2012

05	Notice of closure	28/12/2012
06	Award passed	29/12/2012

I] PRELIMINARY: -

- 1) Christian Louboutin, 19 rue Jean-Jacques Rousseau, Paris, France (**The Complainant**) has filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name '**christianlouboutin.co.in**' (the disputed domain name / domain name), through its authorised representative **IP Gurus, A-45, Sector 63, NOIDA, Uttar Pradesh, India.**
- 2) The Complainant has disputed registration of domain name '**christianlouboutin.co.in**' in the name of **GaoGou, C/o Yerec International Limited, Suite 1100, South Tower, 175, Bloor Street East, Toronto, M4W 3R8, Canada. (The Respondent / Registrant).**
- 3) Major events took place as enumerated in the above table.

II] 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 13th December 2012 with the instructions to file his reply / say latest by 23rd December 2012.
02. The Respondent did not file any reply to the Complaint within the period stipulated for that purpose.
03. On the principles of natural justice and final opportunity to the Registrant, the period to file say / reply was extended by this Arbitration panel *suo-moto* till 27/12/2012.
04. The Registrant / Respondent failed to file any reply / say even within the extended period.
05. In view of no response from the Registrant / Respondent the arbitration proceedings were closed and notice to that effect was sent to the concerned parties on 28/12/2012.
06. In view of no reply by the Respondent no rejoinders were called for.
07. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.

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

III] SUMMARY OF THE BACKGROUND OF THE COMPLAINANT: -

As per the Complainant the brief background of the Complainant, its history, its rights and interests in the marks and term 'christianlouboutin' are as follows: -

- a) Christian Louboutin is one of the world's best known fashion designers. He has been best known for marking virtually all of his high fashion women's shoes with a bright red-lacquered outsole. These shoes are sold under the name CHRISTIAN LOUBOUTIN.
- b) The Complainant is one of the world's most exclusive designers of ladies shoes. In 1991 he opened the first boutique shop in Paris in 1992. Today his shoes and bags are available in 58 countries worldwide, including India (Delhi).
- c) The Complainant has successfully established his brand CHRISTIAN LOUBOUTIN which is reflected in his revenues which are growing every year. In 2009 his revenue was EURO 89.2 M which rose to EURO 110.2 M in 2010.
- d) Christian Louboutin products have been used by many celebrities all around the world including Princess Caroline of Monaco, Cameron Diaz, Nicole Kidman, Diane von Furstenberg, Oprah Winfrey, Kate Moss, Angelina Jolie, Sarah Jessica Parker and Jennifer Lopez.
- e) Christian Louboutin products have been displayed in runway shows in Paris, London and New York, among other places.
- f) Due to wide spread popularity of the products of the Complainant, the Mattel Inc. – maker of the BARBIE doll - made collaboration to commemorate the 50th anniversary of the doll in 2009.
- g) In 2012 the Complainant set up a free standing CHRISTIAN LOUBOUTIN store at the Emporio Mall in Delhi. Similarly in 2011 company in the name of Christian Louboutin Private Limited in India for promotion of the Complainant's products. However the Complainant's products have been made available in India much before that and Bollywood celebrities like Bipasha Basu, Amy Jackson and Angela Johnsson have been using these products.
- h) The Complainant is the owner of various registered marks and trademarks around the world including France, United States of America, United Kingdom, European Union and Canada. In India the Complainant owns registrations of marks since 2008 vide registration Nos. 1644051, 1839047 and 1931553. The Complainant has furnished copies of these registration certificates.

- i) The Complainant is the owner of the generic top level domain name 'christianlouboutin.com' which is accessible to users all over the world including India. The Complainant is also the owner of numerous country-code level domain names, including the domain name 'christianlouboutin.in'.
- j) The Complainant has actively policed domain names registered by third parties and prevailed upon cyber squatters. For instance Christian Louboutin V/s Zhangyong (WIPO 2009) and Christian Louboutin S.A. V/s Christian Louboutin, Liu Fang, Liujie, Lockhart LvXiuli and Wangfang (DIPO 2010).
- k) Currently the disputed domain name resolves to a website that features links to third party sites, including sites on which footwear is sold.
- l) The Complainant received on 16th August 2012 an email from someone called Song offering to sell the disputed domain name. On 11th September 2012 another email from Song was received by the Complainant offering to sell the domain name. It clearly establishes that either the Registrant himself through a dummy name or someone authorised by him is attempting to sell the disputed domain name for valuable consideration.

IV] LEGAL GROUNDS OF COMPLAINT: -

1. The Registrant's domain name is identical and / or confusingly similar to a mark in which the Complainant has rights. The Complainant has demonstrated statutory and common law rights in the Complainant's marks. It owns registrations for marks in countries and jurisdictions around the world, including India. These marks have been used by the Complainant extensively and continuously since 1992 and continues to do so. (Consorzio del Prosciutto di Parma V/s Jim Muller (INDRP/218).
2. The disputed domain name incorporates the Complainant's mark in its entirety.
3. The Registrant cannot have any right or legitimate interest in the disputed domain name since it incorporates the registered mark of the Complainant in which the Complainant has sole and exclusive rights and that has become well known owing to the Complainant's efforts.
4. Christian Louboutin is not the Registrant's personal name and he is not known by that name. The Registrant is not Licensee nor has been authorised by the Complainant to use the Complainant's marks or register the disputed domain name.
5. The Registrant is not making any legitimate, non-commercial or fair use of the disputed domain name because there is no website associated with the disputed domain name.

6. It is well settled that registration of a domain name that incorporates a well known mark in entirety that has no relationship to the mark is evidence of bad faith.
7. There can be no doubt that the Registrant was aware of the Complainant's marks when he chose and registered the disputed domain name and in fact chose the domain name because it was confusingly similar to the Complainant's marks and intended to capitalize on that confusion. This constitutes evidence of bad faith.
8. The Registrant registered the domain name just after the Complainant opened its free standing Christian Louboutin store in Delhi and announced its Bollywood-inspired collection. Clearly this timing of registration cannot be a coincidence.
9. The Registrant registered the domain name with the purpose of selling it to the Complainant, which is evident from the emails sent to the Complainant.

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

In response to the contentions of the Complainant, the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period.

VI] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VII] 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.

SR. NO.	ISSUE	FINDING
01	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
02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	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
09	Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?	Yes

VIII] BASIS OF FINDINGS: -

1. 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 'CHRISTIAN LOUBOUTIN' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant worldwide. It is personal name of the founder of the Complainant. In India the Complainant does have registered trademarks Nos. 1644051, 1839047 and 1931553 of 2008. Apart from this the Complainant has numerous trademarks registered worldwide. Moreover the Complainant has several country code top level domain names registered with the words CHRISTIAN LOUBOUTIN. Therefore it cannot be assumed that the Registrant was not aware of the same.

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

Therefore my finding on the first issue is affirmative.

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

Yes. Already discussed in issue (A) above.

Therefore my finding on this issue is in affirmative.

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

The Registrant has not filed any say or reply to the complaint and hence it is presumed that he does not have / he 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 been commonly known by the domain name?

The name of the Registrant, as on the Whois records is GaoGou. As such he is not commonly been known by the domain name 'Christian Louboutin' 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 'CHRISTIAN LOUBOUTIN'. He is not commonly known by that name. He has not established that he has been using the registered domain name for bona fide business activities or for non-commercial purpose. He has not shown any other nexus of his business with the disputed domain name. Moreover the Registrant or his authorised representative under the name Song has sent two emails offering to sell the disputed domain name for valuable consideration.

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 resolves into a webpage offering several links especially to sale of shoes. This use of disputed domain name cannot be said to be bona fide use. Simply putting or adding links to other websites by using or capitalizing on the reputation of the Complainant or its registered marks / trademarks in itself is complete proof of domain name being used in bad faith by the Registrant. The Respondent has not even replied to the Notice of Arbitration sent by this panel. Anyone having legitimate interests would not waste a single opportunity to defend his legal rights, interests in domain name.

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 Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out various aspects of malafide registration of the disputed domain name, registration of domain name without any authority and any bona fide business on the part of the Respondent. Had the Registrant not registered the disputed domain name, it would have been available for use by the Complainant for its bona fide business purposes. Therefore it is squarely 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?

At present the disputed domain name resolves into a website having several links to other websites offering sale of shoes etc. This has been done by the Registrant by using the registered mark / trademark of the Complainant. Anyone surfing through internet and searching for the Complainant's products is likely to land on this webpage and might assume that it is in fact the website of the Complainant. He may further go ahead to do business transactions relying upon the domain name which has close nexus to the reputation of the Complainant.

This misuse by the Respondent of the registered domain name definitely creates confusion in the minds of internet users about its nexus with the Complainant due to exact reproduction of the personal name and registered trademark in its entirety in the domain name.

Therefore my finding on this issue is affirmative.

9. Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?

One Song has sent two emails to the Complainant offering to sell the disputed domain name for valuable consideration. Who is Song is not very clear but it can be inferred that he might have interests or authority to offer the same for sale. Alternatively it is very likely that the Registrant himself is sending these mails in dummy name.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion I have reached the conclusion that: -

- a. The disputed domain name includes the personal name of the founder of the Complainant and also registered mark / trademarks in entirety. It means the Complainant's rights; interests and reputation are at stake in the disputed domain name.
- b. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'Christian louboutin' and hence does not have any legitimate interest in the same and resultantly in the disputed domain name.
- c. The Registrant has not been commonly known by the disputed domain name.
- d. The Registrant is not making bona fide and fair use of the disputed domain name for his bona fide business purposes, much less for non-commercial purpose.
- e. The Respondent / Registrant has completely failed to establish his nexus with the disputed domain name in any way.
- f. The Respondent has not bothered to respond / reply to the Notice of Arbitration. It is the primary principle of law that 'silence amounts to acceptance'. Thus all the allegations and contentions by the Complainant stand unchallenged and amount to have been accepted by the Respondent.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

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 – 'christianlouboutin.co.in' and hence the same be transferred to the Complainant.**
02. The Registrant shall also to pay Rs.50000/- as the costs to the Complainant.

Dated: - 29.12.2012
Place: - Pune


(S.C.INAMDAR)
SOLE ARBITRATOR