



महाराष्ट्र MAHARASHTRA

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NS 203165

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

Clarins

...Complainant

v/s

Liheng

...Respondent

In the matter of Disputed Domain Name 'CLARINS.CO.IN'.

1 The Parties

The Complainant is Clarins, Neuilly Sur Seine, France, represented by L. S. Davar & Co., India.

The Respondent is Liheng, Just Traffic Supervision Consulting, Hongkong.

D. Parmar

2 Procedural History

- 2.1 A Complaint dated November 6, 2015 has been filed with the National Internet Exchange of India (hereinafter referred to as the 'Exchange'). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the 'INDRP') and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On December 1, 2015, the Arbitrator had emailed to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint on or before December 11, 2015. On December 14, 2015, the Arbitrator had emailed the final reminder to the Respondent with direction to file reply on or before December 16, 2015. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed ex-parte.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

From the Complaint and its annexures, the Arbitrator has found the following facts:

- 3.1 Clarins is a privately held French cosmetics company established in 1954. The Complainant is engaged in manufacturing premium skincare, makeup and fragrances products, which are sold in retail stores in 150 countries.
- 3.2 The Complainant adopted the trademark 'Clarins' in 1970 and using it since then continuously. The trademark 'Clarins' is an invented word. The Complainant's trademark 'Clarins' is a registered trademark in India and several other countries around the world.
- 3.3 The Complainant is the registrant of the domain name <Clarins.com> and other generic and country code top level domain names which, inter alia, includes <Clarins.biz>, <Clarins.fr>, <Clarins.eu> and <Clarins.asia>.



3.4 The Complainant has expended a great amount of time, money and effort to promote and advertise the trademark 'Clarins' in offline, online (through its website www.clarins.com) and social media. Over the years the Complainant has been the recipient of several awards for their beauty products.

3.5 The Disputed Domain Name <Clarins.co.in> was registered by Respondent on November 13, 2013.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical to its trademark 'Clarins', the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Disputed Domain Name has been registered and is being used in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant is using the trademark 'Clarins' since 1970 and holds worldwide trademark registration for the trademark 'Clarins'. The Complainant is also the registrant of various domain names which, inter alia, includes <Clarins.com>, <Clarins.biz>, <Clarins.fr>, <Clarins.eu> and



<Clarins.asia>. The Disputed Domain Name <Clarins.co.in> incorporated the Complainant's trademark 'Clarins' in its entirety without any other word or letter. It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as '.com', '.us', '.co.in' etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The '.co.in' suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Therefore, the Arbitrator finds that the Disputed Domain Name <Clarins.co.in> is identical to the Complaint's trademark 'Clarins'.

5.4 **Rights or Legitimate Interests**

The Complainant asserts that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name nor the trademark 'Clarins', in which the Complainant has sole and exclusive interest, is the personal or surname, trademark, trading name of the Respondent. Based on the evidence adduced by the Complainant, it is concluded that the Respondent chose the Disputed Domain Name to cause confusion as to the source, sponsorship, affiliation, or endorsement. The Arbitrator has found that the Disputed Domain Name resolves to a web page containing advertising links, from which the Respondent likely to benefits through the Registrar's 'Cash Parking' monetization program. Thus, the Respondent is not using, nor demonstrated any preparation to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. In line with the previous UDRP and INDRP decisions, the Arbitrator concludes that the Complainant has made out a *prima facie* case that of the Respondent has no right or legitimate interest in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent. The Respondent chose not to challenge the Complainant's allegations. There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <Clarins.co.in>.

5.5 **Registered and Used in Bad Faith**

The Disputed Domain Name was registered by the Respondent on November 13, 2013 and incorporated the Complainant's trademark 'Clarins', which is being used by the Complainant since 1970. The Respondent, vide email dated August 4, 2015 from luomahuge@gmail.com, had offered to transfer the Disputed Domain Name to the Complainant. The Arbitrator found



that the Respondent was apparently involved in at least another three UDRP cases as respondent¹. Such circumstances indicate that the Respondent had registered the disputed domain names in order to prevent the owners of the trademark from reflecting their trademarks in a corresponding domain name and demonstrate that the Respondent is engaged in a pattern of such conduct. Such fact constitutes bad faith under paragraph 6(ii) of the INDRP. Further, the Respondent did not put forward any justification for choosing and using the Complainant's trademark 'Clarins' in the Disputed Domain Name. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. Decision

In light of the foregoing findings, namely, that the Disputed Domain Name is identical to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and that the Disputed Domain Name has been registered and is being used in bad faith, in accordance with the INDRP; the Arbitrator orders that the Disputed Domain Name <Clarins.co.in> be transferred to the Complainant.



Dipak G. Parmar
Sole Arbitrator

Date: December 31, 2015

¹ See Emerson Electric Co. v. Liheng / Just Traffic Supervision Consulting, NAF Claim No. 1586640, CollegeNET, Inc. v. Liheng / Just Traffic Supervision Consulting, NAF Claim No. 1534444 and MWARE, INC. v. Liheng / Just Traffic Supervision Consulting WIPO Case No. D2015-1450.