



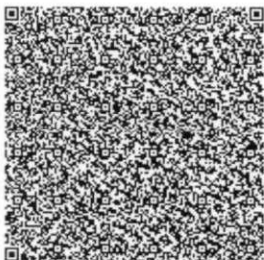
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL09939036405108K
Certificate Issued Date : 31-Jul-2012 06:48 PM
Account Reference : IMPACC (IV)/ dl722803/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL72280319921569833695K
Purchased by : Dr V K Agarwal
Description of Document : Article 12 Award
Property Description : M- 104 Dharma Apts, Patparganj Delhi
Consideration Price (Rs.) : 0
(Zero)
First Party : Dr V K Agarwal
Second Party : Dr V K Agarwal
Stamp Duty Paid By : Dr V K Agarwal
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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Columbia Sportswear Company

vs.

Mr. Guan Rui

Disputed domain name <www.columbiasportswear.co.in>

AWARD

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NATIONAL INTERNET EXCHANGE OF INDIA
Incube Business Centre, 5th Floor,
18, Nehru Place,
NEW DELHI – 110 019

Columbia Sportswear Company v. Mr. Guan Rui

AWARD

1. The Parties

The Complainant is Columbia Sportswear Company, 14375, NW Science Park Drive, Portland, Oregon 97229. United States of America.

The Respondent is Mr. Guan Rui, No. 23 Floor 5th, Hong Kong 999077. The other address given is No 23 Floor 5th, Guangdong, Singapore – 238883.

2. The Domain Name and Registrar

The disputed domain name is <www.columbiasportswear.co.in>. The said domain name is registered with NS2 BODIS.COM.

3. Procedural History

- (a) A Complaint dated August 16, 2012 has been filed with the National Internet Exchange of India, New Delhi. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are annexed as Exhibit 1 with the Complaint. It is confirmed that the Respondent is listed as the Registrant of the disputed domain name and provided the contact details for the administrative, billing, and technical contact. The National Internet Exchange of India verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.

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- (b) The National Internet Exchange of India appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on August 30, 2012. The arbitrator received the Complaint on September 6, 2012. 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.
- (c) In accordance with the Rules, on September 8, 2012 the Sole Arbitrator through e mail domaincorp@live.com formally notified the Registrant /Respondent of the Complaint. The Registrant/Respondent was required to submit his defence within 15 days from the date of receipt of the e mail, that is, by September 24, 2012. The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will proceed ex-parte. No reply has been received from the Respondent. Accordingly, the Respondent's default has been notified.

4. Factual Background

From the Complaint and the various annexure to it, the Sole Arbitrator has found the following facts:

Complainant's activities

The Complainant Columbia Sportswear Company was founded in the year 1938. According to the Complainant, it manufactures and sells outerwear apparel, sportswears, brands and skiwears. The Complainant distributes and sells products through more than 10,000 retailers in more than 100 countries around the world. The Complainant has received a large number of awards worldwide including The Skin Cancer Foundation's Seal of Recommendation for safe and effective sun-protective clothing with a minimum Ultraviolet Protection Factor (UPF) 30; Vendor Partner Award from Recreational Equipment, Inc (REI); etc.

The Complainant has stated that it has used the trademark and trade name COLUMBIA extensively, exclusively and continuously all over the world and by virtue of such extensive sales and publicity, COLUMBIA has acquired an enviable reputation and goodwill amongst customers and members of trade.

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Respondent's Identity and Activities

The Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

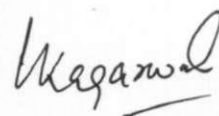
In relation to element (i), the Complainant contends that its name is Columbia Sportswear Company. The disputed domain name is <www.columbiasportswear.co.in>. Thus, the disputed domain name contains the complete name of the Complainant. The deletion of the words "Company" or addition of the words "co" and "in" is insignificant.

The Complainant's trademark COLUMBIA is registered in various jurisdictions including Argentina, Australia, Bolivia, Bhutan, Canada, China, Ecuador, European Union, France, Germany, Hungary, India, Republic of Korea, Philippines, Portugal, Pakistan, Sri Lanka, Switzerland, Taiwan, Turkey, United States of America, etc. under various Classes. A detailed list of registered trademark COLUMBIA is given in Exhibit 3 to the Complaint. Further, applications are pending for the registration of the mark COLUMBIA in many other countries including Chile, Japan, Mexico, etc. The traders all around the world exclusively associate the marks COLUMBIA/COLUMBIA SPORTSWEAR with the goods of the Complainant.

Further, the Complainant has 176 COLUMBIA related websites (domain names) worldwide. A list of such domain names is given in Exhibit 5. Some such domain names with various combinations are <columbia.asia>; <columbia.com>; <columbiasportswear.com>; <columbia-sportswear.net>; <columbiasportswear.org>; <columbiasportswearcompany.com>; etc. The said websites were used and applied for registration long before the Respondent's registration of the disputed domain name.

The mark COLUMBIA/COLUMBIA SPORTSWEAR has also been used with various local vernacular transliterations in various jurisdictions of the world including India.

In relation to element (ii), the Complainant contends that the



Registrant/Respondent (as an individual, business, or other organization) has not been commonly known by the mark or name "Columbia Sportswear". Further, the Registrant/Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.columbiasportswear.co.in> by the Registrant/Respondent is to mislead the general public and the customers of the Complainant.

The Complainant has further contended that on July 05, 2012 the Complainant received an e-mail offering the impugned domain name for sale. The Complainant received another e-mail on July 28, 2012 also for the sale of the impugned domain name. Thus, the registrant/Respondent registered the disputed domain name in bad faith and for making profit out of the same by selling it to the Complainant or his competitors.

The Complainant has stated that the use of a domain name that appropriates a well known name to promote competing or infringing products or for making profit by offering to sell it cannot be considered a "*bona fide offering of goods and services*".

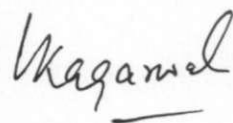
B. Registrant/Respondent

The Registrant/Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.columbiasportswear.co.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this Arbitrator as to the principles to be applied in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the IN Domain Name Dispute Resolution Policy (INDRP), the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to paragraph 4 of the said Policy, the Complainant must prove that:



- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered and is being used in bad faith;

A. Identical or Confusingly Similar

As per the whois information, the Registrant/Respondent has created the disputed domain name <www.columbiasportswear.co.in> on April 23, 2012. The expiration date is April 23, 2013.

The disputed domain name <www.columbiasportswear.co.in> contains the entire name of the Complainant, which is Columbia Sportswear Company. Merely by deleting the words "Company" or by creating a domain name with "co" and "in" is not sufficient to make the domain name distinct.

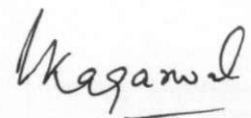
The Complainant has used the COLUMBIA SPORTSWEAR COMPANY mark since at least 1958. The Complainant is the registered owner of the trademark "COLUMBIASPORTSWEAR" and COLUMBIASPORTSWEARCOMPANY" in many countries, as indicated above. Further, the Complainant also owns a large number of domain names with the words "columbia" and "columbiasportswear". The Registrant/Respondent has also used the same words. Thus, the Respondent's domain name is phonetically, visually and conceptually identical as that of the Complainant.

In the case of *Farouk Systems Inc., v. Yishi*, WIPO Case No. D2010-0006 it has been held that the domain name wholly incorporating a complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the addition or deletion of other words to such marks.

Therefore, I hold that the domain name <www.columbiasportswear.co.in> is confusingly similar to the Complainant's marks.

B. Rights or Legitimate Interests

According to paragraph 7 of the INDRP, the Registrant may demonstrate its



rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Registrant's response is not available in this case. There is no evidence to suggest that the Registrant/Respondent has become known by the disputed domain name anywhere in the world. There does not exist any relationship between the Respondent and the words "Columbia Sportswear" used in the disputed domain name. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Registrant/Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not licensed or otherwise permitted the Registrant/Respondent to use its name or to apply for or use the domain name incorporating the said name. The Registrant/Respondent is not offering any goods or services under the disputed domain name.

Therefore, the Registrant is not using the disputed domain name for bona fide offering of goods or services.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain name.

C. Registered and Used in Bad Faith

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Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) The Registrant has 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, provided that it has engaged in a pattern of such conduct; or
- (iii) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Registrant has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, 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 its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Registrant/Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's name. The Registrant's/Respondent's registration of the domain name <columbiasportswear.co.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

There is evidence that the Registrant/Respondent offered the disputed domain

