

सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

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Certificate Issued Date	: 29-May-2019 12:40 PM
Account Reference	: IMPACC (IV)/ dl981903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL98190396397170059408R
Purchased by	: JAYANT KUMAR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: JAYANT KUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: JAYANT KUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

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IN THE MATTER BETWEEN

Brooks Sports, Inc.

v.

Bestsun Corporation

Complainant

Respondent

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
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ARBITRATION AWARD

1. The Complainant is Brooks Sports, Inc. which is a company incorporated and existing under the laws of USA having its office at 3400 Stone Way North, 5th Floor, Seattle, Washington 98103, USA. The Respondent is Bestsun Corporation having its office at 138#, Feilong Sanjia, Taizhou, Zhejiang, China.
2. The Arbitration pertains to the disputed domain name <brooksrnning.co.in> registered by the Respondent. The registrar for the disputed domain name is Endurance Domains Technology LLP.
3. The Sole Arbitrator appointed in this complaint by NIXI is Jayant Kumar. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI.
4. The Complaint was handed over to the Arbitrator by NIXI on May 20, 2019. The Respondent was served with a copy of the complaint along with annexures electronically vide email dated May 22, 2019 by NIXI. A physical copy of the complaint was also sent to the Respondent by courier but the same could not be delivered for the reason "incorrect details/contact number". No other address of the Respondent was available in the public domain and hence, the physical copy of the complaint could not be delivered. The Respondent vide email dated May 29, 2019 was granted liberty to furnish correct address for service of physical copy but no response was received from the Respondent. The Respondent was thus granted two weeks time to file its Reply viz. by June 12, 2019. No Reply was filed by the Respondent by June 12, 2019. The last and final opportunity was granted to the Respondent vide email dated June 14, 2019 to file its Reply by June 19, 2019. The Respondent, however, did not file any Reply and is thus proceeded ex-parte.

Complainant's Submissions

5. The Complainant submits that it was incorporated in 1914 and has been using the trademark BROOKS as a part of its corporate name since then. The Complainant owns trademark registration for the mark BROOKS in more than 50 countries. In USA, it owns trademark Registration No. 1161034 for the mark BROOKS in Class 25 as of July 14, 1981. In India, it owns trademark Registration No. 2168813 for the mark BROOKS in class 25 as of June 30, 2011. The Complainant also owns domain name registration for <brooksrunning.com> since November 25, 1999 and is hosting an active business website thereat.
6. The Complainant submits that it is using the mark BROOKS in connection with shoes and has received numerous awards for the same. The details of the awards are given in para 5.7 of the Complaint.
7. The Complainant further submits that the Respondent is hosting a parking page at the disputed domain name and is offering the disputed domain name for sale at US\$ 900. The Complainant, on December 17, 2018, sent an email to the Respondent asking it to disable and transfer the disputed domain name to the Complainant but no response was received from the Respondent.
8. The Complainant also states that the Respondent has no rights or legitimate interest in the disputed domain name. When a user visits the webpage hosted at the disputed domain name, it displays a page with a link 'Brooks Women' which in turn leads to, inter alia, third party portals/websites. One of the said third party third-party websites is www.made-in-china which displays shoes that bear the trademark of the Complainant for sale by two suppliers, namely, Fstlex Co., Ltd. and Quanzhou Xuanfeng Trading Co. Ltd. The website of the Respondent is thus misleading and a tool for the Respondent's fraudulent activities.

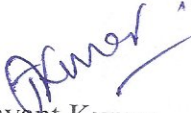
Discussion and Finding

9. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:
- a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
 - b. The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c. The Respondent's domain name has been registered and is being used in bad faith.
10. The Arbitrator finds that the Complainant has established its ownership in the mark BROOKS. It has trademark registration for the mark BROOKS in India and USA and in more than 50 countries. The trademark registration certificates has also been filed by the Complainant. Moreover, the WIPO Panels in Brooks Sports, Inc. v. Thuy Pham/Tamarawink, FA1709001748640 and Brooks Sports, Inc. v. Tai Luong/manuelaestada, FA 1709001747998 have found the mark BROOKS being owned by the Complainant. The Complainant's website is also www.brooksrunning.com and the Respondent has chosen to register an identical domain name viz. <brooksrunning.co.in>. The disputed domain name is therefore held to be confusingly similar with the Complainant's mark BROOKS.
11. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain.

12. The Respondent is not known by the mark BROOKS. The Respondent has also not been authorized by the Complainant to use the mark BROOKS. The Respondent is also not using the disputed domain name in connection with bonafide offering of goods or services. Whereas it is hosting a parking webpage with misleading links. The Respondent's use of the disputed domain name is not bonafide and the Respondent does not have legitimate rights and interest in the disputed domain name.
13. The Respondent is offering the disputed domain name for sale for US\$ 900 which is a conclusive evidence of bad faith registration and use. The Arbitrator accordingly finds bad faith registration and use of the disputed domain name by the Respondent.

Decision

14. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <brooksrrunning.co.in> be transferred to the Complainant.


Jayant Kumar
(Sole Arbitrator)

Dated: July 3, 2019