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Certificate Issued Date	: 05-Nov-2019 11:29 AM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1764953369820794R
Purchased by	: POOJA DOOD
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: POOJA DOOD
Second Party	: Not Applicable
Stamp Duty Paid By	: POOJA DOOD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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### ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

#### 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.
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**Disputed Domain Name: nallisarees.in**

**Decision of Ms. Pooja Dodd, Sole Arbitrator**

**INDRP Case No. 1156**

IN THE MATTER OF:

Nalli Chinnasami Chetty  
9 Nageswaran Road  
T Nagar, Chennai 600017  
Tamil Nadu, India.

...Complainant

Versus

Carl Anderson  
C/o KALS BURGGS  
New Kals Burgs,  
Scothom, Mumbai - 230532  
Maharashtra, India

...Respondent

**1. The Parties:**

1.1. The Complainant in this arbitration proceeding is Nalli Chinnasami Chetty, a registered partnership firm with its office at 9, Nageswaran Road, T Nagar, Chennai 600017, Tamil Nadu, India. The Complainant is represented by Mr. Julick Isaiah of De Penning & De Penning with office at 120 Velachery Main Road, Guindy, Chennai - 600 032, India.

1.2. The Respondent is Carl Anderson, a resident of Kals Burgs, New Karls Burgs, Scothom, Mumbai 230502, India. The email address connected with



the Respondent is [womencrafts.online@gmail.com](mailto:womencrafts.online@gmail.com) and the phone number connected with the Respondent is +91 9316327174.

2. **Domain Name and Registrar:**

2.1. The Disputed Domain Name is <nallisarees.in> which was registered on September 15, 2019.

2.2. The accredited Registrar with whom the Disputed Domain Name is registered is GoDaddy.com, LLC situated at 14455 N. Hayden Rd., Ste. 226, Scottsdale, Arizona 85260 - 6993, United States of America.

3. **Procedural History:**

3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:



- 3.2. The Complaint was filed with NIXI by the Complainant, against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- 3.3. On October 4, 2019, I submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with Paragraph 6 of the Rules.
- 3.4. NIXI notified the Parties of my appointment as the Arbitrator *via* email on October 9, 2019 and served an electronic of the Complaint on the Respondent. I informed the Parties about the commencement of arbitration proceedings on October 9, 2019 and the Respondent was directed to submit a Response within 10 days.
- 3.5. On October 21, 2019, I informed the Parties that as no response was received from the Respondent within the time period granted, the award would be passed on merits.

#### **Grounds for Arbitration Proceedings**

- A. The Disputed Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interest in respect of the domain name; and
- C. The Disputed Domain Name was registered and is being used in bad faith.

#### **4. Summary of the Complainant's Contentions:**





In support of its case, the Complainant has made the following submissions:

- 4.1. The Complainant is a leading manufacturer and retailer dealing in clothes and jewellery from its base in Chennai, India for more than 90 years. It owns various showrooms in cities in India and across the world, including in UK, USA, Canada, Australia, Singapore and Mauritius. The Complainant asserts that it is first adopter and original proprietor of the NALLI mark since at least the year 1928. The NALLI mark is strong trademark because it is coined word which has no denotive meaning, consequently, it is entirely distinctive of and solely associated with the Complainant. Complainant owns numerous trademark registrations of its NALLI mark, in India and around the world. A perusal of Annexures 8 and 9 substantiates the above.
- 4.2 The Complainant further submits that enormous amount of money has been spent in popularizing the trade mark NALLI by way of advertisement campaigns in various media including website, radio, T.V., magazines, newspapers, pamphlets, brochures, hoardings, banners, diaries, card boards, etc. Further, the Complainant asserts that several articles have been published about the Complainant in various newspapers and magazines recognizing the goodwill established by the NALLI brand.
- 4.3 The Complainant has asserted that it owns numerous domains bearing it's NALLI mark. The Complainant's primary domain name <www.nalli.com> was registered on April 28, 1998, and is used extensively in connection with its business to make its products accessible the world over. The Complainant's rights in the domain name have already been recognised by a previous UDRP

panel in *M/s Nalli Chinniasami Chetty vs. James H Park Centre* (WIPO Case D2017-1373). A perusal of Annexures 5, 11 and 12 substantiates the above.

- 4.4 The Complainant's domain name and associated websites offer online sales of the goods bearing the Complainant's NALLI mark. The Complainant spends considerable time and effort to develop its Internet presence, so much so, that a simple Internet search on any search engine, reveals web pages of the Complainant among the leading hits. A perusal of Annexures 4 and 7 substantiates the above.
- 4.5. The Complainant alleges that the Disputed Domain Name is being used with a fraudulent intention to exploit, misappropriate and usurp the stellar reputation and goodwill of the Complainant's NALLI mark and trading name, to sell goods identical to those of the Complainant. A perusal of Annexure 2 substantiates the above.
- 4.6. In view of the popularity and the well-known status of the Complainant's NALLI mark, the Disputed Domain Name [www.nallisarees.in](http://www.nallisarees.in) is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship or approval with/of the Complainant. The Respondent is running an active website under the Disputed Domain Name selling clothing, sarees etc. hence, an undiscerning customer who visits the Respondent's website at the Disputed Domain Name will assume that the same belongs to the Complainant, when it is not so. A perusal of Annexure 12 substantiates the above submissions.



- 4.7. Considering the blatant imitation of the Respondent, it is obvious that the sole purpose of the Respondent maintaining the registration of the Disputed Domain Name and running the website is to misappropriate and usurp the reputation and goodwill of the Complainant's NALLI mark.
- 4.8. The Complainant asserts that the Disputed Domain Name is confusingly similar to the Complainant's NALLI mark and trading name and is bound to induce members of the public and trade to believe that the Respondent has a trade connections, association, relationship or approval of the Complainant.
- 4.9. The Respondent has no rights or legitimate interests in the Disputed Domain Name as the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the NALLI mark in any manner. By registering the Disputed Domain Name, the Respondent has sought to sabotage the reputation of the Complainant's NALLI mark and also dilute the distinctiveness of the mark and will have a deleterious effect on the Complainant's overall brand image.
- 4.10. Bad faith in the registration of the Disputed Domain Name is evident considering the obvious similarities and the identical nature of the goods being offered by the Disputed Domain Name and the Complainant's Domain Name. The Complainant has further relied on the INDRP decision in *TV Sundaram and Sons Private Limited vs. Mr. Rohit Kumar, Kumar Enterprise* [INDRP 792] to assert that the very use of domain name by someone with no connection with the Complainant suggests opportunistic bad faith.

4.11. In support of the contentions, the Complainant has furnished copies of the following documents:

Annexure 1	Copy of the print out of the WhoIS search result for the Disputed Domain Name found in the records of 'GODADDY.COM'.
Annexure 2	Printout of the web link pertaining to the disputed domain.
Annexure 3	True and correct copy of the domain name dispute resolutions policy and Rules of procedure that applies to the domain name
Annexure 4	The registration details of the Complainant's domain name and a screenshot of the website
Annexure 5	List of domain registrations owned by the Complainant
Annexure 6	Copies of messages given by various Ministries of the Government of India recognizing the well-known status of the mark <b>NALLI</b> on the occasion of opening of the Complainant's showroom at Mumbai.
Annexure 7	Printouts of the search results procured from the famous search engine Google.com
Annexure 8	Copies of trademark registration certificates and extracts from the online records of the Trade Marks Registry
Annexure 9	Copies of relevant extracts from the USPTO and EU
Annexure 10	Few Internet articles about the Complainant
Annexure 11	Copy of the decision in Nalli Chinnasami Chetty Vs James H Park Centre (Case No. D 2017-1373)
Annexure 12	Copy of the Respondent's webpages
Annexure 13	Decision in TV Sundram Iyengar and Sons Private Limited Vs. Mr. Rohit Kumar, Kumar Enterprise

A duly executed Power of Attorney has also been granted in favor of Mr. Julick  
Isaiah of De Penning & De Penning.





5. **Discussions and findings:**

- 5.1. As per paragraph 4(i) of the Policy, the Complainant merely needs to show that it “has rights in a name, trademark or service”. The submissions and documents provided by Complainant lead to the conclusion that the NALLI mark forms an integral part of the Complainant’s business. Not only does NALLI form part of the Complainant’s trading name but the Complainant registered the domain name <nalli.com> on April 28, 1998, which is more than 2 decades ago. In fact, the Complainant has been using the NALLI mark for over 9 decades.
- 5.2. The Respondent does not have any legitimate interests in the Disputed Domain Name. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the NALLI mark in any manner. As such, the Respondent does not have any relationship with the business of, or authorization from of the Complainant. From the averments made on behalf of the Complainant, the Respondent is neither the licensee of the Complainant nor has it otherwise obtained authorization of any kind whatsoever to use the NALLI mark and therefore the Respondent does not have any legitimate interest in the Disputed Domain Name. It seems that the Respondent has registered the Disputed Domain Name to unjustly enrich itself by riding on the goodwill of the Complainant and to exploit the reputation of the Complainant.
- 5.3. It is a well-established principle that that once a Complainant makes a *prima facie* case showing that a Respondent lacks rights to the domain name at issue,



the Respondent must come forward with the proof that he has some legitimate interest in the Disputed Domain Name, to rebut this presumption. The Respondent has not filed any Response to the Complaint. Paragraph 8(b) of the Rules requires that the Arbitrator must ensure that each party is given a fair opportunity to present its case. Even though sufficient time was granted, the Respondent chose to refrain from submitting any Response to the Complaint.

5.4. Paragraph 11(a) of the Rules empowers the Arbitrator to proceed with an *ex parte* decision in case any party does not comply with the timelines set or fails to submit a Response to the Complaint filed against it. As stated above, I gave the Respondent 10 days to file a response but the Respondent failed to file any Response to the Complaint and has sought not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend himself. Thus, this *ex parte* award.

5.5. Paragraph 12(a) of the Rules provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996 and any law that the Arbitrator deems fit to be applicable. In accordance with Paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to respond to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, my decision is based upon the Complainant's assertions, evidence presented and inferences drawn

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from the Respondent's failure to submit a Response, despite having been given sufficient opportunity and time to do so.

**6. The issues involved in the Dispute:**

6.1. The Complainant invokes Paragraph 3 of the Rules to initiate an arbitration proceeding by submitting a Complaint to NIXI. The Respondent in registering a .in domain name submitted to the mandatory arbitration proceeding in terms of Paragraph 4 of the Policy, which determines the elements for a domain name dispute, which are:

- 1) whether the domain name in question is identical or confusingly similar to a trade mark;
- 2) why the Respondent cannot claim any legitimate interest in the trade mark; and
- 3) why the domain name in question should be considered as having been registered and being used in bad faith.

These elements are discussed below in tandem with the facts and circumstances of this case.

Element 1- The Respondent's domain name is identical/confusingly similar to a name, trade mark or service mark in which the Complainant has rights:

6.2. The Complainant has submitted sufficient documentary evidence to prove its rights in and to the ownership of the NALLI mark arising out of prolonged use and several registrations around the world, including in India. The Disputed Domain Name incorporates the Complainant's NALLI mark in its entirety, with



the addition of the word 'sarees' bearing reference to the Complainant's primary business and the goods that it is well known to deal in. Previous UDRP and INDRP panels have found the fact that a disputed domain name wholly incorporates a complainant's trademark, sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks. [Reliance is placed on *Viacom International Inc. v. Frank F. Jackson and Nancy Miller*, WIPO Case No. D2003-0755; *Caterpillar Inc. v. Roam the Planet Ltd.*, WIPO Case No. D2000-0275; *Société Air France v. RBlue*, WIPO Case No. D2005-0290.]

6.3. In this case, the NALLI mark, the trading name and the domain name nalli.com, all belong to the Complainant and any use by a third party, including the Respondent, is likely to lead to confusion. Adoption of the NALLI mark by the Complainant and domain name registration of the Complainant's website predate the registration of the Disputed Domain Name, which is identical to the Complainant's NALLI mark. Moreover, as noted above, the addition of a term such as "saree" does not serve to distinguish the Disputed Domain Name from the NALLI mark, but in fact, reinforces the association of the Complainant's NALLI mark with the Disputed Domain Name and leads to further confusion. Therefore, I am convinced beyond doubt that the Disputed Domain Name is confusingly similar to the Complainant's NALLI mark and related domains owned by the Complainant. The use of the Complainant's trading name and the NALLI mark in its entirety in the Disputed Domain Name will inevitably lead consumers to believe that the Disputed Domain Name is affiliated in some way to the Complainant. Hence, the first element is satisfied.





Element 2 - The Respondent has no rights or legitimate interests in respect of the

Disputed Domain Name:

- 6.4. Through its submissions, the Complainant has established that it has never assigned, granted, licensed, sold or transferred or in any way authorized the Respondent to use its NALLI mark. The Respondent does not have any relationship with the business of the Complainant which would entitle the Respondent to the NALLI mark. The Respondent registered the Disputed Domain Name on September 15, 2019 which is more than 9 decades after the Complainant's first use of the NALLI mark. The Respondent clearly has no legitimate interest in the Disputed Domain Name.
- 6.5. Moreover, the name and address provided to the Domain Name Registrar seem dubious. Anyone who has a legitimate interest would not try and conceal their identity in such a manner. Further, the burden of proof to establish any legitimate interests over the Disputed Domain Name falls on the Respondent, and by not responding to the Complaint, within the timeline set, the Respondent failed to establish legitimacy in registering the Disputed Domain Name. [Decisions relied upon: *Orange Brand Services Limited vs. P.R.S. Reddy* <orangesms.in> - INDRP /644; *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc.*, INDRP/250; *William Grant & Sons Limited v. Ageesen Sri, Locksbit Corp./ WhoisGuard Protected, WhoisGuard, Inc.* WIPO Case No. D2016-1049].
- 6.6. The Disputed Domain Name is not being used to in connection with *bona fide* offering of goods and services, the Respondent is not commonly known as "Nalli" and has in fact used the Disputed Domain Name to sell goods that are identical in nature to those of the

Complainant and all of the above leaves no room for the Respondent to claim legitimate interest.

- 6.7. Therefore, in light of the Complaint, accompanying documents and cited case law, I am of the opinion that the Respondent does not have any right or legitimate interest in respect of the Disputed Domain Name. Hence, the second element is satisfied.

Element 3 - why the domain name in question should be considered as having been registered and being used in bad faith.

- 6.8. Given the reputation and fame of the Complainant's NALLI mark, the adoption of an identical domain name by the Respondent who is unaffiliated to the Complainant, does create a *prima facie* presumption of bad faith. The adoption of the Disputed Domain Name is without any justification by the Respondent and clearly intended to mislead and divert consumers. A cursory Internet search would have made it clear to the Respondent that the Complainant owns the NALLI mark which is well known and is used extensively. Being aware of the commercial value of the NALLI mark, the Respondent seems to have adopted the Disputed Domain Name to derive revenue from it.

- 6.9. The Respondent could have used any domain name to sell sarees but the fact that he adopted a domain name which is identical to a trade mark which is well known and that too in relation to identical goods, weighs heavily in favor of bad faith. Thus, in my view, the above is sufficient evidence to show bad faith in the registration of the Disputed Domain Name for the purposes of the INDRP. [Decisions relied upon: *Xylem IP Management S.A.R.L. v. Evgeniya, IWT*, WIPO



Case No. D2018-2055, *Dell Inc. v. Rajesh Sahani*, NAF Claim No. FA1910001867163;].

6.10. In view of the above, it is evident beyond reasonable doubt that the Respondent has adopted the Disputed Domain Name in bad faith. Thus, the third element is satisfied.

7. **Decision:**

7.1. I am convinced that the Disputed Domain Name is confusingly similar to the Complainant's well-known NALLI mark, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith. In accordance with the Policy and Rules, I direct that the Disputed Domain Name be transferred to the Complainant, with a request to NIXI to monitor the transfer.

7.2. In the facts and circumstances as discussed above, I deem it appropriate to order the Respondent to pay cost of ₹ 2 lakh for present proceedings to the Complainant.

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Pooja Dodd  
Sole Arbitrator

Dated: November 13, 2019