



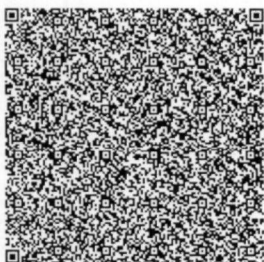
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL38316685486730M
Certificate Issued Date	: 27-Mar-2014 10:59 AM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SHCIL73887606975282M
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: NA
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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.....Please write or type below this line.....

NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6 B, 6th Floor, Uppals M 6 Plaza,
6, Jasola District Centre,
NEW DELHI – 110 025

The HuffingtonPost.com, Inc v. Mr. Jess

AWARD

V K Agarwal

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.
3. In case of any discrepancy please inform the Competent Authority.

1. The Parties

The Complainant is The HuffingtonPost.com, Inc 22000 AOL Way, Dulles, Virginia, United States of America.

The Respondent is Mr. Jeff, No. 1558 Beijing Road, Qingdao, Shandong Province - 266100, China.

2. The Domain Name and Registrar

The disputed domain name is <www.huffingtonpost.co.in>.

The particulars of registration of the disputed domain name are as follows:

- | | |
|----------------------------|---------------------------|
| (a) Domain ID | : D7144673-AFIN |
| (b) Name of the Registrant | : Mr. Jeff, China |
| (c) Created on | : 14 March 2013 |
| (d) Expiration date | : 14 March 2014 |
| (e) Registrar | : dynadot.LLC (R117-AFIN) |

3. Procedural History

- (a) A Complaint dated February 21, 2014 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that 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 (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he was properly appointed. The

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Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

- (c) In accordance with the Rules, the Sole Arbitrator on 06th March 2014 formally notified the Respondent of the Complaint through post. The Respondent was required to submit his defence within a period of 15 days from the date of receipt of copy of the Complaint. The Respondent was informed that if his response was not received within that period, he would be considered in default and the matter will proceed ex-parte. No response has been received from the Respondent.

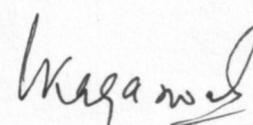
4. Factual Background

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

Complainant's activities

In these proceedings the Complainant HuffingtonPost.com is a wholly-owned subsidiary of AOL, Inc and the producer of digital content and a seller of premium display advertising. The Complainant is also online news provider. The principal place of business of the Complainant is at Dulles, Virginia, United States of America.

The Complainant maintains a website at the domain <www.huffingtonpost.com> and the associated domain name "huffingtonpost.com". The said domains contain exclusive information about the Complainant and the services provided under the trademark THE HUFFINGTON POST. Therefore, the Complainant is well known to its customers as well as in business circles as THE HUFFINGTON POST all around the world.



Respondent's Identity and Activities

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

5. Parties Contentions

A. Complainant

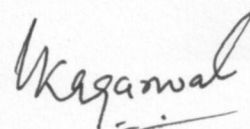
The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that its name is THEHUFFINGTONPOST.COM, INC. The disputed domain name is <www.huffingtonpost.co.in>. Thus, the disputed domain name contains the complete name of the Complainant. The addition of the words "co" or "in" is insignificant.

Further that, the complainant is the owner of the trademark THE HUFFINGTON POST. The said trademark of the Complainant is either registered or pending registration in a number of countries including Australia, Canada, European Community, New Zealand, United Kingdom and the United States of America.

The Complainant is also incorporated and trading under the name TheHuffingtonPost.com.Inc. The Complainant has also submitted applications for the registration of their trademark THE HUFFINGTON POST and HUFFPOST in India in Class 41. The said applications are pending registration. In due course of time, the Complainant has become associated with the trademark THE HUFFINGTON POST and has gained recognition.

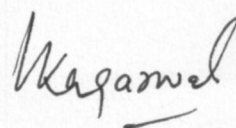
In support of its contention, the Claimant has relied on a number of



decisions. In the cases of *Farouk Systems Inc., v. Yishi*, Case No. 02010-0006 it has been held that the domain name wholly incorporating a complainant's registered trademark may be sufficient to establish identity or confusing similarity, despite the addition of other words to such marks. Further that, in the case of *Alta Vista Company v. Curtis Claard/b/a Tae Po Promotions*, FA 0009000095549 (NAF Oct. 24, 2000) it has been held that the domain name <altavistas.com>, irrespective of addition of the word "s" was confusingly similar to the ALTAVISTA trademark. See also *M/s Satyam Infoway Ltd., v. M/s Siffynet Solutions (P) Ltd.*, JT 2004 (5) SC 541; *Lego Juris AS v. Robert Martin*, INDRP/125 regarding the domain name <lego.co.in>; *Starbuck Corporation v. Mohanraj*, INDRP/118.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark THE HUFFINGTON POST. Further, the 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.

In support of its contention, the Claimant has submitted that in the case of *Guerlain S.A. v. PeiKang*, (WIPO Case No. D2000-0055) it has been held that bad faith is found where a domain name "is so obviously connected with such a well known product that its vey use by someone with no connection with the product suggests opportunistic bad faith". The other cases relied on are *VeuveClicquotPonsardin v. The Polygenix Group Co.* (WIPO Case No. D2000-0163); *Charles Jourdan Holding*



AG v. AAIM, (WIPO Case No. D2000-0403).

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.huffingtonpost.co.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

In support of its contentions, the Respondent has relied on the cases of *Playboy Enterprises International, Inc. v. Hector Rodrigues* (WIPO Case No. D2000-1016); *Telstra Corporation Limited v. Nuclear Marshmallows*, (WIPO Case No. D2000-0003); *Bennett Coleman & Co. Ltd., v. Steven S. Lalwani* (WIPO Case No. D2000-0014), and *Bennett Coleman & Co. Ltd., v. Long Distance Telephone Company* (WIPO Case No. D2000-0015).

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.huffingtonpost.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 used 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 Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

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According to the Policy, the Complainant must prove that:

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

A. *Identical or Confusingly Similar*

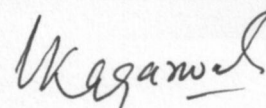
The disputed domain name was created by the Respondent on March 14, 2013. The said registration has expired on March 14, 2014.

The Complainant contends that he is the owner of the trademark THE HUFFINGTON POST for a long time and that the said trademark is registered in a number of countries. The present dispute pertains to the domain name <www.huffingtonpost.co.in>. The Complainant possesses a number of other domain names, as mentioned above, with the word THE HUFFINGTON POST. Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is very much similar or identical to these domain names and the trademark of the Complainant.

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

B. *Rights or Legitimate Interests*

The Respondent may demonstrate its rights to or legitimate interest in

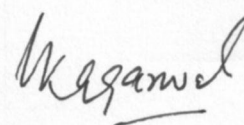


the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent 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; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent 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 Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name or by the name of THE HUFFINGTON POST anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The HuffingtonPost.com, Inc is the name of the Complainant. The trade mark of the Complainant "THE HUFFINGTON POST" has acquired unique importance and is associated with the Complainant. A mention of the said trademark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Jeff. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. The Complainant has no relationship whatsoever with the Respondent.



The decisions relied upon by the Complainant support its contentions that the use of domain name consisting of a trademark to divert users to another commercial websites is not a bona fide offering of goods or services and cannot confer any rights or legitimate interests upon the Respondent.

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

C. Registered and Used in Bad Faith

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 Respondent 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 Respondent 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 Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of

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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 Respondent has intentionally attempted to attract, for commercial gain, internet users to the disputed website.

The Complainant has contended that it had sent a demand letter to the Respondent. However, the said letter was received back by the Complainant with the noting that "undelivered due to incomplete address". Further that, the "Respondent registered the Disputed Domain Name for purposes of selling it" and "has offered to sell the domain name for an unreasonable price".

The Respondent's registration of the domain name <www.huffingtonpost.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.

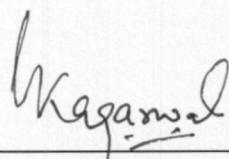
The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In the light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and

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is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.huffingtonpost.co.in> be transferred to the Complainant.



Vinod K. Agarwal

Sole Arbitrator

Date: April 14, 2014