



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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e-Stamp

Certificate No.	: IN-DL32471237824197T
Certificate Issued Date	: 18-Jan-2021 02:56 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ DWARKA/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1767949019587836T
Purchased by	: KAMAL DAVE
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KAMAL DAVE
Second Party	: Not Applicable
Stamp Duty Paid By	: KAMAL DAVE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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In the matter of the Arbitration Act 1996 as Amended by
Arbitration & Conciliation (Amendment) Act, 2015;
and
INDRP Rules of Procedure;
and
.IN Domain Name Dispute Resolution Policy (INDRP)
and

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Statutory Alert:

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In the matter of an arbitration between

Spencer's Retail Limited
2/4 Judges Court Road
Alipore
Kolkata 700027

...Complainant

AND

Ziming Wu
Huliqu, Youjia #58,
Xiamen, Fujian, 361019
China

...Respondent

in respect of Disputed Domain Name(s):

[www.spencer.in]

INDRP Case No: 1296

FINAL AWARD

1 THE PARTIES AND THEIR REPRESENTATIVES

1.1 Claimant :

Spencer's Retail Limited
2/4 Judges Court Road
Alipore
Kolkata 700027

Represented by :

Ms. Malavika T Vikram &
Mr. R. Ravindran
Attorney for
DePenning & DePenning,
120 Velachery Main Road,
Guindy, Chennai - 600 032.

1.2 Respondent

Ziming Wu
Huliqu, Youjia #58,
Xiamen, Fujian, 361019
China



2 THE DOMAIN NAMES AND REGISTRAR

2.1 The disputed domain name [www.spencer.in] is registered with Dynadot LLC, 210, S Ellsworth Ave, #345 San Mateo, CA 94401, US

2.2 Details of the server name pertaining to the disputed domain name are as follows:

Name Server: ns1.sedoparking.com

Name Server: ns2.sedoparking.com

3 THE ARBITRAL TRIBUNAL – APPOINTMENT

3.1 As per the records, Complainant sent the Complaint to NIXI [National Internet Exchange of India (hereinafter referred to as "NIXI")] with a copy to Respondent on .

3.2 As per the records, on 04th December 2020 NIXI sent intimation to the Arbitrator & the parties including the Respondent regarding the appointment of arbitrator to decide the dispute in respect of domain [www.spencer.in].

3.3 As per the records, I, the undersigned (i.e. Kamal Dave) was appointed as arbitrator by NIXI, in accordance with INDRP Rules of Procedure and .In domain name dispute resolution policy (INDRP), vide appointment order dated 03rd December 2020.

3.4 The .IN Domain Name Dispute Resolution Policy (INDRP) & Rules of Procedure of INDRP mandates appointment of arbitrator by NIXI, Accordingly paragraph 5 (b) of INDRP Rules of Procedure provides for it, which reads, "The .IN Registry shall appoint, an Arbitrator from the .IN Registry's list and shall forward the Complaint along with supporting documents to such Arbitrator".

3.5 There is no document/ correspondence on record to show that the Respondent replied to the intimation of arbitration dispute regarding the domain [www.spencer.in].



4 PROCEDURAL HISTORY :

- 4.1 After my appointment as arbitrator by NIXI, on 17th December 2020, I passed Procedural Order No 1, thereby directing the complainant & respondent through email at their registered email addresses provided at www.whois.com service to file their respective pleadings i.e. complaint {within three days i.e. on or before 20th December 2020} & reply {within ten days i.e. on or before 30th December 2020} and their respective rejoinder {within three days thereafter i.e. on or before 04th January 2021} & reply to rejoinder {within three days thereafter i.e. on or before 07th January 2021} and also directed parties to file their respective written arguments {within ten days thereafter i.e. on or before 18th January 2021} thus entire proceedings to complete as per schedule of dates and that language of arbitration shall be English.
- 4.2 On 19th December 2020, I passed procedural order no 2, thereby directing the complainant to file affidavit on oath to reiterate contents of complaint duly sworn-in and attested by Notary and affidavit of service {scanned copy within three days of its receipt i.e. on or before 23rd December 2020} {original paper copy within ten days i.e. on or before 30th December 2020}.
- 4.3 Pursuant to the directions authorized signatory of Complainant i.e. Spencer's Retail Limited filed Affidavit in support of the complaint duly sworn-in and attested by Notary along-with covering letter of compliance and undertaking to produce the original.
- 4.4 The complainant has filed documents regarding service of copy of complaint along-with documents/ annexures, affidavit, through electronically as well as courier. The screen shot electronic delivery and copy of courier receipt and tracking report of courier service has been placed on record by the complainant.
- 4.5 The respondent has neither replied to the intimation by NIXI, myself and nor to the complaint sent by the complainant sent through email & courier and I am satisfied that the



communication/ service on the respondent as per paragraph 2 of INDRP Rules of Procedure is completed.

- 4.6 Therefore I am satisfied that the respondent has chosen to abstain & not participate in the arbitration proceedings hence as per paragraph 12 of INDRP Rules of Procedure, which mandates that where parties are in default i.e. who willfully abstains from the proceedings may be proceeded *ex-parte*. Accordingly, proceedings against the respondent to continue *ex-parte*.
- 4.7 The complainant cannot take benefit from the non-presence of the other party and his claim must stand on merits.

5 PLEADINGS :

- 5.1 The complainant has filed its complaint stating out facts & circumstances

5.1.1 The Complainant contended under "Factual and Legal Grounds" that the disputed domain name is identical to the trade marks in which the Complainant has right. The Complainant's trademarks SPENCER'S have been derived from the initials of the founders' i.e Durnnat and Spencer in the year 1877, the name was changed to Spencer and Co. The Complainant registered office was at Chennai has been continuing since 1877 & 1895 respectively and is a land mark in Chennai. The Complainant was initially partnership firm later incorporated under the Indian Companies act of 1882. The Complainant became public limited company called Spencer and Company Limited with 403 shareholders over 25 lakhs. The Complainant has been doing extensive business for over a century. A wealth of information on the Complainant can be accessed on www.spencers.in, www.spencers.co.in and www.spencersretail.com. A brief profile of the Complainant is filed as 'Annexure C'.



- 5.1.2 The Complainant further contended under "Trade Mark registrations of the Complainant" that it has secured statutory protection for the trade mark SPENCER'S in several jurisdictions in India, and the details of such registrations provided in complaint.
- 5.1.3 The Complainant further contended under "DOMAIN NAMES" that it has devoted an enormous amount of time, effort and energy in promoting and advertising the said marks in the print and online media and the said marks are consequently identified solely with the Complainant. The Complainant has built a strong on-line retail business. Further, several of SPENCERS products are available on several e-commerce sites. The Proof of Expenses relating to Advertisement and Marketing of the "Spencers" brand in Newspapers and Electronic Media is marked as 'Annexure E'. Find enclosed snap shot of SPENCER'S on - line presence filed as 'Annexure F'. Given below are the domain registration secured by the Complainant-

Sl No	Domain	Country	Date of Registration	Expiry Date
1	Spencers.in	India	16 th July 2012	16 th July 2028
2	Spencers.co.in	India	6 th June 2017	6 th June 2027
3	Spencersretail.com	Global	7 th October 2006	7 th October 2022

- 5.1.4 And further contended that Whois records of the said domain names are annexed as 'Annexure G' Records of Data Demonstrating Flow of Online Internet Traffic to the Complainant Website between 01 January 2017 to 31 December 2019 is marked as 'Annexure H'. Data relating to Search Engine Optimisation and Expenses related to the same duly



certified by a Chartered Accountant is marked as 'Annexure I'

5.1.5 The complainant further contended -

5.1.5.1 A. The disputed domain name is identical to a trade mark or service mark in which the complainant has rights : (Policy, Paragraph 4 (i) ; Rules, Paragraphs, 3 (b) (v) (b) (vi) (1))i. The Respondent's domain name www.spencer.in is confusingly similar to the Complainant's trademarks SPENCERS. The Complainant has overwhelming common law as well as statutory rights in its trade/service marks SPENCERS. Therefore, the Complainant is the sole legitimate owner of the trade/service mark SPENCERS.

5.1.5.2 ii. Respondent's registration and use of the domain www.spencer.in is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship or approval of the Complainant, when it is not so.

5.1.5.3 iii. The distinctive and the dominant element in the Respondent's domain is the word SPENCER hence, the domain www.spencer.in is confusingly similar to the trade/service mark SPENCERS in which the Complainant has statutory and common law rights.

5.1.5.4 The disputed domain name clearly incorporates the famous trademarks SPENCER'S of the complainant in its entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use under the INDRP. In this regard the Complainant relies on the decisions of this Hon'ble NIXI Arbitration and Mediation Centre passed in the case of Mozilla Foundation Vs Mr. Chandan INDRP case No. 642 <Mozilla.in> marked as marked as 'Annexure J'.



5.1.5.5 B. The Respondent has no rights claims, or legitimate interests in respect of the disputed domain name. (Policy, Paragraph 4 (i), Rules, Paragraphs, 3 (b) (v), (b) (vi) (1)) The Complainant is the sole legitimate owner of the trade mark SPENCERS. i) The Complainant has not licensed or otherwise permitted the Respondent to use trade/service mark SPENCERS or to apply for any domain name incorporating the said trade/service marks.

5.1.5.6 ii) The Respondent has not made any legitimate use of the domain name www.spencer.in since the date of its registration and is prejudicially blocking the domain register. However, in view of the popularity and the well-known status of the Complainant's trade mark SPENCER'S, the disputed domain name www.spencer.in is bound to induce members of the public and trade to believe that the Respondent has trade connection, association, relationship or approval of the Complainant.

5.1.5.7 iii) Considering the blatant infringement caused to the Complainant's trade mark rights, it is obvious that the sole purpose of the Respondent maintaining the Registration of the disputed domain www.spencer.in is to misappropriate and usurp the reputation and goodwill of the Complainant's trademark SPENCER'S.

5.1.5.8 C. The domain name was registered and is being used in bad faith : (Policy, Paragraph 4 (a) (iii), 4 (b); Rules, Paragraphs, 3 (b) (ix) (3)) i) The Respondent has fraudulently provided links to various third party e-commerce sites under the domain name www.spencer.in. It is obvious that the Respondent is making monetary gains by attracting unwary customers by misrepresenting an association with the Complainant. Further,



considering the incessant use, reputation and the well-known status of the Complainant's marks, the illegitimate use of the impugned domain name is amounting to brand dilution which cannot be compensated monetarily.

5.1.5.9 ii) It is furthermore stated in various precedents that the domain names are fast emerging corporate assets and have evolved as a fulcrum of a company's visibility and marketing operations. Business transactions are primarily being carried out only through internet addresses rather than street addresses, or post boxes or even faxes. Hence, it becomes critical that unscrupulous individuals are not allowed to usurp well known trademarks and domain names to unfairly benefit from such act.

5.1.5.10 iii) 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 trademarks Spencer's or to a competitor of that complainant, for valuable consideration related to the domain name or by using the domain name, the respondent has intentionally registered domain name www.spencer.in for commercial gain by creating a likelihood of confusion with the complainant mark

5.1.5.11 iv) The very use of a domain name by someone with no connection with the Complaint suggests opportunistic bad faith as stated in INDRP Case No 527 Decision between Panasonic Corporation Vs Sun Wei, copy of the said order is annexed hereto "Annexure K"

5.1.6 The complainant requested for Remedies (Rules, Paragraph. 3(b)(x))[12] In accordance with paragraph 4 (i) of the Policy, for the reasons described in Section VI above, the Complainant



requests the Administrative Panel appointed in this administrative proceeding to issue a decision that the ownership in www.spencer.in be rightfully transferred to the Complainant herein and pass any other appropriate favorable orders deemed fit.

5.2 The respondent has abstained from the arbitration proceedings and has been proceeded ex-parte as per paragraph 12 of INDRP Rules of Procedure.

5.3 From the complaint following issues have been framed :

6 The Issues :

- 6.1 Whether Respondent's domain name [www.spencer.in] in question is identical to the Complainant's well-known brand 'SPENCER'S'?
- 6.2 Whether Respondent has no claims, rights or legitimate interests in respect of disputed domain name?
- 6.3 Whether the impugned domain name [www.spencer.in] has been registered in bad faith?
- 6.4 Relief – prayer to rightfully transfer the ownership of domain name [www.spencer.in] in favour of the complainant.

7 Analysis of the issues on Merit

7.1 The first issue arising from pleading i.e. contention of the complainant is that the domain name [www.spencer.in] registered by the Respondent is identical to the Complainant's well-known brand 'SPENCER'S'.

7.1.1 In this regard the complainant relied on INDRP Policy, Paragraph 4 (i) ; Rules, Paragraphs, 3 (b) (v) (b) (vi) (1))

7.1.2 The complainant has stated on oath the history of commencement of business of the complainant since 1877, which was derived from the initials of the founders' i.e Durnnat and Spencer in the year 1877, the name was changed to Spencer and Co and later the complainant got registered trademarks in different categories in the trademark "SPENCER'S". The complainant has further stated on oath that the



company operated from their registered office at Chennai has been continuing since 1877 & 1895 respectively and is a land mark in Chennai. The Complainant also stated that their business was initially partnership firm later incorporated under the Indian Companies act of 1882. The Complainant stated that the company became public limited company called Spencer and Company Limited with 403 share-holders over 25 lakhs. The Complainant also stated that the company has been doing extensive business for over a century

7.1.3 In order to prove this the complainant has filed Trademark certificate which is placed at Annexure 'D' of the complaint. And that the complainant company is already registered owner - owning & running business from domain names Spencers.in, Spencers.co.in since 16th July 2012 & 6th June 2017 respectively in India & with global presence under domain name Spencersretail.com since 7th October 2006.

7.1.4 The complainant also placed on information record from [www.whois.com] which is placed at Annexure 'G' of the complaint giving detail of the domain name name [www.spencers.in] and also placed on record aboutus page of the official site of the complainant company which is Annexure 'C' to the complaint [corporate.spencersretail.com/aboutus.php].

7.1.5 The complainant also placed Annexure 'E' on record showing Tax Invoice bearing no – SK/19-20/234 and issued by SOCIAL KINNECT PRIVATE LIMITED, 3rd Floor KSL House, Raguvanshi Mill Compound, Lower Parel, Mumbai, Maharashtra 400013 IN in favour of the complainant company which is invoiced for providing service to complainant viz Spencers Google + Facebook performance campaign for period 1st April to 30th April 2019.



- 7.1.6 The complainant also placed on record Annexure 'H' snapshot of network traffic analysis data showing traffic of visitors visiting the website [www.spencers.in] for the period Jan 1, 2017 - Dec 31, 2019.
- 7.1.7 The complainant also placed on record at Annexure 'I' giving details of webpages showing products such as fruits, liquor, groceries, organic, dairy-products, Tea-beverages, packaged-foods, imported-gourmet, fish-meat, baby-care, personal-care, bathroom-cleaning, home-dining, electrical-electronics, discounted products etc displayed at different pages for selling items under various categories and heads of different consumer categories.
- 7.1.8 The respondent has preferred to abstain from the proceedings and thus has not objected to the submissions.
- 7.1.9 I am satisfied that the complainant company is a registered business entity carrying out its business in the name of Spencer's rightfully since 1877 & 1895 respectively.
- 7.2 The second issue arising from pleading i.e. contention of the complainant is that the respondent has no claims, rights or legitimate interests in respect of disputed domain name?
- 7.2.1 In this regard complainant relied on INDRP Policy, Paragraph 4 (i) ; Rules, Paragraphs, 3 (b) (v) (b) (vi) (1))
- 7.2.2 The complainant has stated that they have been continuously carrying out business under various categories using trademark "SPENCER'S" since 1877 & 1895 respectively, and documents of the same has been placed on record by them.
- 7.2.3 The complainant has placed at Annexure 'A' Domain Name Information from which is giving details of person registering domain name [www.spencer.in].



- 7.2.4 The complainant has placed on record at Annexure 'B' which is a snapshot of notice of sale (The owner of spencer.in is offering it for sale for an asking price of 3500 USD! - webpage was generated by the domain owner using Sedo Domain Parking) stating that respondent has put-up on sale the domain [www.spencer.in] for an asking price of 3500 USD!.
- 7.2.5 The complainant has stated that the respondent is not carrying out any legitimate business activity from the disputed domain name [www.spencer.in] but the act of displaying notice of sale of the domain name in its home page contemplates that he has no legitimate interest in the business.
- 7.2.6 The respondent has preferred to abstain from the proceedings and thus has not controverted the allegations/ contentions of the complainant.
- 7.2.7 I am satisfied with the contentions of the complainant that they have been carrying out business activities under the trademark "SPENCER'S" since 1877 & 1895 respectively whereas the respondent has no claims, rights or legitimate interests in respect of disputed domain name. I am also satisfied that the respondent has acted in violation of paragraph 4 & paragraph 6 of INDRP Policy in entirety.
- 7.3 While analysing third issue arising from pleading that the impugned domain name [www.spencer.in] has been registered in bad faith?
- 7.3.1 As analysed in previous issue regarding Annexure 'B' which is a snapshot of notice of sale (The owner of spencer.in is offering it for sale for an asking price of 3500 USD! - webpage was generated by the domain owner using Sedo Domain Parking) stating that respondent has put-up on sale the domain [www.spencer.in] for an asking price of 3500 USD!.
- 7.3.2 The disputed domain name appears to have been registered with the purpose to derive profit from



advertising revenue, and/ or to trade upon the reputation of the Complainant in its trademark "SPENCER'S".

7.3.3 The snapshot of notice for sale at Annexure 'B' is sufficient evidence to prove that the respondent has registered the domain name [www.spencer.in] in bad faith.

7.3.4 I am satisfied with the contention of complainant that domain name [www.spencer.in] has been registered in bad faith.

7.4 As the three issues have been settled in favour of the complainant thus in my opinion the final issue i.e. Relief also settles in favour of the complainant and in accordance with paragraph 10 of IN Domain Name Dispute Resolution Policy I allow the prayer of the complainant to rightfully transfer the ownership of domain name [www.spencer.in] in favour of the complainant.

8 AWARD

8.1 I AWARD AND DIRECT, in accordance with paragraph 10 of IN Domain Name Dispute Resolution Policy that the ownership of domain name [www.spencer.in] be transferred in the name of the complainant.

8.2 The Parties shall bear their own costs.

This is my final award made and published by me at New Delhi, the seat of arbitration, on this 1st day of February 2021.

Kamal Dave
Sole Arbitrator

KAMAL DAVE
Arbitrator
FCI Arb., FAMINZ (Med / Arb), FMI Arb., BA
LLB, PGD ED/ecommerce, PGD IR & PM, DLL
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