



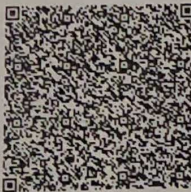
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL7317135588591T
Certificate Issued Date	: 15-Apr-2021 01:15 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ TIS HAZARI/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1746998792034196T
Purchased by	: R K KASHYAP
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: R K KASHYAP
Second Party	: Not Applicable
Stamp Duty Paid By	: R K KASHYAP
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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

NATIONAL INTERNET EXCHANGE OF INDIA
B Wing, 9th Floor, Statesman House Building,
148, Barakhamba Road,
New Delhi-110001.

M/S SOCIAL ORGANICS PRIVATE LIMITED
V/s

SLIMJIM TRADING LLP

Handwritten signature

Statutory Alert

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stamp India Ltd.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
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AWARD

1. THE PARTIES

The Complainant is M/s Social Organics Private Limited, office situated at Gate 1, Gr Floor, Sky Heights, NIBM Road, Kondhwa, Pune-411048, being represented by Jehangir Gulabbhai & Bilimoria & Daruwalla, Advocates and solicitors, having its office at Rajabhadur Mansion, 20, Ambalal Doshi Marg (Hamang Street), Fort, Mumbai-400023, India.
Email: jgbdadvo@gmail.com

The Respondent is A.W.ALLIANCE, 20/14, Panthaky Buag, Andheri East, Mumbai-400069.

2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name **SLIMJIM.IN**

The disputed Domain name is **SLIMJIM.IN**

The abovesaid domain registered particulars in detail is provided and available in Annexure-A.

Registrar Name : Endurance Domains Technology LLP
IANA ID : 801217

ASSIGNED NAMESERVERS: dns1.bigrock.in
: dns2.bigrock.in
: dns3.bigrock.in
: dns4.bigrock.in

ROID : D8858142-IN
Date of creation : 19-10-2014
Date of Expiry : 19-10-2025
Registrant Client ID : WIQ_39653240
Registrant ROID : C9083117-IN
Email: tinaazwadia@gmail.com
Phone: (+91)9619683030

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3. PROCEDURAL HISTORY

- (a) The Complainant has filed a complaint on 24th March, 2021 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure-A to D**. The exchange verified 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 has appointed Sh. R.K.Kashyap, Advocate as the Sole Arbitrator in this matter vide letter dated 26.03.2021. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted his Statement of acceptance and Declaration of Impartiality and Independence, on 27.03.2021, as required by the Exchange.
- (c) The Arbitrator, as per the INDRP Policy and the Rules, has duly issued the notice on 01.04.2021 and directed the complainant to serve the Respondent with a copy of the Complaint alongwith annexures on the given e-mail as well as on physical address. In the Notice it has also been mentioned that the respondent to file the reply/response within 15 days from the receipt of notice. The direction of the arbitrator to serve the respondent has duly been complied with by the complainant and send the mail to the respondent at the available mail and address, and it is also crystal clear from the mail of the respondent dated 12.04.2021 that the respondent was having the complete information and knowledge about the present complaint filed by the complainant against them and the same is pending adjudication before the present arbitrator. Hence, the respondent has been deemed served.

The Respondent has failed /neglected to file its reply to the specific allegations made in the complaint within the stipulated time despite receipt of copy of the Complaint and Annexures, as mentioned above. I feel that enough time and opportunity has been given to the Respondent. Since, no response has been received. Hence, the present proceedings have to be ex-parte.

P. K. Kashyap

4. **Factual Background:**

The following information has been derived from the Complaint and the various supporting annexure to it, the Arbitrator has found the following facts:

Complainant's Activities

The complainant is a company incorporated under the Companies Act, 2013 having its registered office at Gate 1, Gr Floor, Sky Heights, NIBM Road, Kondhwa, Pune - 411048. The complainant is a domestic manufacturer of safety filters for protection from the damage caused by smoking.

The complainant is the registered proprietor of the mark SLIMJIM bearing application no. 3718407 in class 34 which was filed on 3/01/2018, claiming use from 14/02/2013 in respect of Cigarettes, Tobacco, Cigarette paper, Tobacco paper, rolling paper, smoking paper, tobacco filters, cigarette filters, filter rods, filter buds, pipe filter, pipe holder, cigarette holder, cigar paper, cigar filter, cigar holder, smokers' articles, tobacco related articles and accessories.

The present complaint is filed against the domain name "slimjim.in". As per the data available on the WHOIS website, the domain name is registered under the Registrar "Endurance Domains Technology LLP", which is annexed as **Annexure A** is a copy of the slimjim .in domain information as per the WHOIS data. Further, the WHOIS details as publicly available and given herein before.

The complainant submits that the impugned domain name is visually, phonetically and structurally identical to the registered trademark "SLIMJIM" of the complainant. The complainant submits that the impugned domain name incorporates the whole of complainant's trademark thus violating paragraph 3 of the INDRP Policy, the entire information is available in **Annexure B**.

The complainant further submits that the goods sold under the said domain name are also similar to that of the goods dealt with by the complainant. Thus, confusion is bound to be created in the minds of common public whether or not the goods sold under the impugned

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domain name are in fact the goods manufactured by the complainant or in some manner connected with the complainant.

The complainant submits that the goods sold by the complainant are advertised and promoted through its website "socialorganics.in" and the same are accessible all over India. The complainant primarily sells and distributes the goods to small and large distributors and wholesalers all over India. The complainant exports its products and thus has gained an enviable amount of goodwill and reputation not only in India but also abroad.

The complainant has been selling its products on e-commerce platforms like Amazon.in since 20/10/2019. Within a short span of time, the complainant's products have gained popularity and has become a No. 1 selling brand in its category on Amazon.in. Further, the complainant has been vigilant since the beginning and has successfully filed various complainants with the Amazon.in portal against other sellers trying to pass off their products under the brand "SLIMJIM" of the complainant. The related information is available in ANNEXURE-C, which are the screenshots of infringement complaints filed by the complainant on Amazon.in and the same being accepted. Subsequently to the complaints, Amazon promptly removed over 40 product listings that infringed on complainant's trade marks "SLIMJIM".

The complainant claimed that large sums of monies have been spent in creating and maintaining the quality of goods sold under the trademark "SLIMJIM" of the complainant. It further submits that the goods sold under the mark "SLIMJIM" are associated only with the complainant and with no one else.

The complainant further claimed that by virtue of extensive use, its trade mark "SLIMJIM" has gained enviable goodwill and reputation in relation to goods sold and is associated solely with the complainant.

The complainant submits that after doing a cursory search on the Registrant's website, it is noted that the website promotes and sells products such as tobacco and cigarettes that are not only prohibited but also illegal under the Cigarettes and Other Tobacco Products Act 2003 and the Legal Meteorology Act 2009. The complainant

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submits that this will lead the buyers and the public in general to think that the complainant and the products sold under its mark "SLIMJIM" are involved in such illegal activities, the entire information in this regard have been provided through **ANNEXURE-D**, which are the list of a few illegal and prohibited products being advertised and sold by the Registrant of the impugned domain name.

The complainant claimed that the Registrant of the impugned domain name is carrying out activities with a view to ride on the hard earned goodwill and reputation of the complainant.

The complainant further submits that the use of impugned domain name amounts to the acts of infringement of the registered trade mark, passing off, dilution and misappropriation of the brand of the complainant

The complainant submits that the Registrant of the impugned domain name has acted with mala fide intentions of misappropriating the complainant's brand, to deceive and cause confusion, to mislead the internet users members of trade and public and to make unjust and illegitimate profits.

The complainant further submits that the registrar of the impugned domain name attempts to associate its goods with the complainant's brand and take advantage of the goodwill and reputation of the said brand by using the deceptively similar domain name which comprises of the identical mark as that of the complainant's registered trademark in respect to similar goods.

The complainant says that there can be no plausible justification for the adoption of the impugned domain name. The mark "SLIMJIM" of the complainant is a highly distinctive trade mark.

The complainant further claims that the impugned domain name has been adopted in bad faith and with mala fide intentions with a view to trade upon the good will and reputation of the complainant's prior registered mark.

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TRADE MARK REGISTRATIONS AND COMPLAINANT:

The Complainant has statutory protection of its trade mark "SLIMJIM.IN" in several jurisdictions.

RESPONDENT'S IDENTITY AND ACTIVITIES :

The Respondent registered the disputed domain name, the entire detail provided in Annexure-A. The respondent advertised and soled few illegal and prohibited products, the entire detail in this regard is available in annexure-D.

5. PARTIES CONTENTIONS:

A: COMPLAINANT:

The entire detail of the complainant has already been provided hereinbefore and the same is not repeated herein.

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.

Therefore, the Respondent has no legitimate Justification or interest in the disputed Domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has registered the disputed Domain name in bad faith and for its actual use in bad faith. The main object of registering the Domain name "Slimjim.in" by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent has registered the disputed Domain name; but has not demonstrated any preparations to use the Domain name or a name corresponding to the Domain name in connection with any bona fide offering of goods or Services.

This clearly demonstrates that the respondent has registered the Domain name solely with an intention to derive undue

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pecuniary benefit from the Complainant trade name and not for any genuine or legitimate use.

The Complainant has stated that the use of a Domain name that appropriates a well-known Trademark to promote competing or infringing products cannot be considered a "*bona fide offering of Goods and Services*".

The disputed domain name clearly incorporates the famous trademark "Slimjim.in" 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.

The disputed domain name wholly incorporate, the prior registered trademark of the complainant, the disputed domain name is identical or confusingly similar to the trademark for the purpose of INDRP. It has been held that "incorporating a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark. Reliance can be placed on the following cases:-

- NIXI case number INDRP/956,
- NIXI case number INDRP/997,
- NIXI case number INDRP/1038,
- NIXI case number INDRP/992,
-

B: RESPONDENT :

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name "Slimjim.in" or any Trademark right, Domain name right or contractual right.

6. DISCUSSION AND FINDINGS:

The Rules instructs 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 by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any Rules and Principles of

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Law that it deems applicable”.

According to the 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's 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 or is being used in bad faith.

A. Identical or Confusingly Similar:

The disputed Domain name "Slimjim.in" was duly Registered by the Respondent on 19.10.2014. The registration of the said disputed Domain name is due to expire on 19.10.2025. It is pertinent to note that the Complainant has not taken swift action and filed complaint on 24.03.2021.

The Complainant is the proprietor of the Registered Trademark "Slimjim.in". The domain name of the complainant and the Trademarks 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 Trademark "Slimjim.in". Thus, the disputed Domain name is very much similar to the name and the Trademark of the Complainant.

The Hon'ble Supreme Court of India has recently held that the Domain name has become a business identifier. A Domain name helps identity the subject of trade or Service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for "Slimjim.in" products in India or elsewhere would mistake the disputed Domain name as of the Complainant.

Furthermore, it appears that the impugned domain is owned by A.W.ALLIANCE upon checking the official website of the respondent, which is crystal clear from the Annexure-A that the Respondent, being in the same field of business as the Complainant

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and cognizant of the reputation and goodwill associated with the trademark / domain "Slimjim.in", registered the domain name "Slimjim.in" to disingenuously exploit the Complainant's stellar reputation and goodwill.

Contention of Complainant is squarely covered in a decided Case No. **INDRP/776, Amundi versus GoaGou** "The disputed Domain name incorporates the trade name "Amundi" in its entirety and this is adequate to prove that the disputed Domain name is either identical or confusingly similar to the mark".

Contention of Complainant is also squarely covered in Case of *Walmart Stores, Inc. v. Richard MacLead*, (WIPO Case No. **D2000-0662**) wherein it has been held that "When the Domain name includes the Trademark, or a confusingly similar approximation, regardless of the other terms in the Domain name" it is identical or confusingly similar for purposes of the Policy. The reliance can be placed on the following cases of NIXI in this regards :-

- NIXI case number INDRP/956,
- NIXI case number INDRP/997,
- NIXI case number INDRP/1038,
- NIXI case number INDRP/992,

Therefore, I hold that the Domain name "Slimjim.in" is phonetically, visually and conceptually identical or confusingly/deceptively similar to the Trademark of the Complainant.

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 Registrant of the dispute, the Registrant'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

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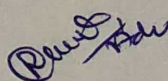
- (ii) The Registrant (as an individual, business or other organization) has been commonly known by the Domain name, even if the Registrant has acquired no Trademark or Service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the Domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Trademark or Service mark at issue.

The 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 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 as such the Respondent has no rights or legitimate interests in the disputed Domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or Trademark "Slimjim.in" or to apply for or use the Domain name incorporating said mark. The Domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

Contention of Complainant is squarely covered in a decided Case number **INDRP/776 Amundi versus GoaGou**, the Complainant is required to make out a prima facie case that Respondent lacks right or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating right or legitimate interests in the Domain name. If Respondent fails to do so, the Complainant is deemed to have satisfied para 4(II) of the INDRP policy.

I, therefore, find that the Respondent has no rights or legitimate interests in the Domain name under INDRP Policy, Paragraph 4(ii).



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 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 bears the name or is the owner of the Trademark or Service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's 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 corresponding Domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- iii) by using the Domain name the Registrant has intentionally attempted to attract the internet user to the Registrants website or other online location by creating a likelihood of confusion with the Complainant's name or Mark as to the source, Sponsorship, Affiliation, or Endorsement of the Registrant's website or location of a product or Service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the 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 mark. It may also lead to deceiving and confusing the trade and the public.

Further, as has been mentioned above if there are 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

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registration to the Complainant who bears the name or is the owner of the Trademark or Service mark or to a competitor of that Complainant for valuable consideration in excess of the Registrant's documented out of pocket cost directly related to the Domain name, it will amount to the registration or use of the main name in bad faith.

The very use of a domain name by someone with no connection with the Complaint suggests opportunistic bad faith as stated **INDRP Case No 934 between Mozilla Foundation and Mozilla Corporation Vs LINA Double fist Limited.**

The respondent has no right or legitimate interest in the disputed domain name. The complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to register or used the "Slimjim.in" trademark in any manner. The respondent is neither a license of the complainant nor has it otherwise obtained authorization of any kind whatsoever to used the trademark of the complainant. In this regard the reliance can be placed in the following decision:-

NIXI Case No.INDRP/027.

NIXI Case No.INDRP/999.

NIXI Case No.INDRP/442.

NIXI Case No.INDRP/725.

Accordingly, the respondents has no rights or legitimate interests in respect of the disputed Domain name.

The foregoing circumstances lead to the presumption that the Domain name in dispute was Registered and used by the Respondent in bad faith.

7. DECISION

In light of the foregoing findings, namely, that the Domain name is confusingly/deceptively similar to Complainant's well known brand "**Slimjim.in**", a mark in which the Complainant has rights, that the Respondent has no claims, rights or legitimate interests in respect of

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the disputed Domain name, and that the disputed Domain name was Registered in bad faith and is being used in bad faith, in accordance with the policy and the rules, the Arbitrator orders that the Domain name "**Slimjim.in**" be transferred to the Complainant.

This award is passed at New Delhi on this 29th day of May, 2021.

(Signature)
29/5/2021.

R. K. KASHYAP
SOLE ARBITRATOR