



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.

: IN-DL00532303655297T

Certificate Issued Date

: 22-Jul-2021 01:45 PM

Account Reference

: IMPACC (SH)/ dlshimp17/ TIS HAZARI/ DL-DLH

Unique Doc. Reference

: SUBIN-DLDSLHIMP1799093652338866T

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

HAPPN (Society)

V/s

Happndating

[Signature]

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App 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.

AWARD

1. THE PARTIES

The Complainant is HAPPN (Society) having its registered office at 48 rue Montmartre F-75002 PARIS (France) being represented by Amit Aswal, Arnab Ghosh, Anjali Arora, Radhika Sharma, Dipti Dewangan, Ranita Das, Shivani Tiwari, Kumari Purna, Bidya Chetri, Vipul Rai, Abhiyank Sharma, Shreya Gupta, Monika Gupta, Nikita Lakhera situated at 45/1, Floor No.3, Corner Market, Malviya Nagar, New Delhi, duly authorized through GPA dated 22.04.2021 (The entire detail are available in **Annexure-A**).

The Respondent is "Happndating", having its office at New # 9, Old # 11, Lakshmi Ammal Street, Ayyavu Colony, Aminjikarai, Chennai-600029.

2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name **Happndating.in**

The disputed Domain name is Happndating.in

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

Registrar Name: GoDaddy.com,LLC

IANA ID : 146

**ASSIGNED NAME SERVERS: ns23.domaincontrol.com/
ns24.domaincontrol.com**

ROID : D41440000007410369-IN

Date of creation : 01-02-2019

Date of Expiry : 01-02-2022

Registrant Client ID : CR365334395

Registrant ROID : C290DEEFA380D435998C89930DBA0B6CE-IN

Registrant Create Date : 27-03-2019

Email : ashisharmaneha@gmail.com

Phone : (+91) 7814372585

3. PROCEDURAL HISTORY

(a) The Complainant has filed a complaint dated 04.05.2021 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made

*Devi
Soh*

the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure-A to F**. 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 14-06-2021. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted his Statement of acceptance and Declaration of Impartiality and Independence as required by the Exchange.

(c) The Arbitrator, as per the INDRP Policy and the Rules, has duly issued the notice on 15.06.2021 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 and taken the tracking report wherein mentioned that, "The consignee has shifted from the given address". The aforesaid notice has also sent by my office to the respondent and the respondent has neither filed any reply nor any response to the notice. The complainant has duly informed through mail that the respondent's website <http://happndating.in/about-us/>, was earlier active and contents were visible with the complete contact detail address, however, after serving legal notice dated 19.03.2021, the respondent's aforesaid website is now not active. The respondent was duly served through mail and thereafter, their website is neither visible nor active, which shows that the respondent is having complete knowledge about the present complaint lodged by the complainant and the present proceedings before the arbitrator. Hence, I feel that enough opportunity has been given to the Respondent. Since, no response has been received. Hence, the present proceedings have to be ex-parte.

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

Demanded
for

1. That the Complainant is HAPPN (Society) is having its regd. Office at 48 rue Montmartre F-75002 PARIS France. The Complainant is running a dating website under the Domain name <https://www.happn.com/en/> since 2014 to bridge the territorial gap between the people and help them to understand the other people in a better way.

2. That the Complainant started the dating website <https://www.happn.com/en/> with the objective as follows:-

“Why use a dating website when we cross paths with hundreds, and sometimes thousands of people in our everyday lives? We believe fate is what brings two people to the same place at the same time, but we know that it can be difficult to actually connect with that person when you cross paths. That’s why we created a tool to make the process easier.”

3. The Complainant is using the domain name <https://www.happn.com/en/> continuously and uninterruptedly since 2014. The Complainant has earned envious reputation and goodwill among its users. The Complainant website is famous all over the world. The Complainant has registered its domain name in various countries. The list of such countries Our Client has registered various domain names for various countries. The entire detail is available in *Annexure-C*.

4. That the Complainant to secure its rights has registered the domain name <https://www.happn.com/en/>. It is also submitted that the Complainant has also registered the trademark



under no. 3358774 in classes 09 and 45 in the Trademarks Registry. The entire detail in this regard is available in *Annexure-D*. The domain name and trademark 'happn' is exclusively belongs to the complainant only. The Complainant is lawful, honest and bonafide proprietor of the domain name and trade mark.

5. That the Complainant came to know about the impugned website <http://happndating.in/about-us/> in December 2020. The Complainant was shocked at the identical or deceptive similarities between the two websites. On perusal of both the websites, it is difficult to tell the difference between the website of the Complainant and impugned website. It is strongly submitted that the Respondent has copied all the essential/ non-essential features of the website of the Complainant. The Respondent is showing the identical trademark



as that of Complainant. The Respondent's website theme color is also in blue color. The Complainant is mentioning the live counting of no. of users on its website. The Respondent has blatantly copied the same as provided below:

Plumby

The Complainant is purely a dating website where people find their match through communication. But, the Respondent's impugned website on the pretext of dating website are engaged into some objectionable services such as Escort services etc. The impugned website has also mentioned on their website as follows:-

"We have the hottest male escort and masseurs from around the globe, Including Male escort in New York City, Los Angeles, London, Chicago, Paris, Berlin. We are the Pioneers of offering to our member Direct Access to all amature and Professional male escort photos. Whatever type of guy you're looking for muscular studs to cowboys call boys, sexy soft horny boys, hairy men, bears or mature daddies you will locate them easily on Richboy.co.in by requesting a callback to us you can search our male escort and masseurs by their photos with stats or by location or searching by their fetish preferences."

The Complainant strongly condemned the actions of the unlawful activities of the Respondent. The Complainant alleges that the Respondent is mischievously taking advantage of the Complainant's reputation and clientele earned in due course of business.

6. The Complainant has made great effort in contacting the Respondent to resolve the issue; prior to the commencement of the arbitration proceedings

The Complainant served a legal notice on the Respondent vide email dated March 19, 2021 on the email id. CARE@happndating.in as provided on their impugned domain name <http://happndating.in/about-us/> asking the Respondent to cease and desist the domain name. The copy of Cease and Desist letter has been attached as **Annexure-E**. The Complainant also served the legal notice through **DTDC Z62273723**. The copy of courier receipt has been attached as **Annexure-F**. Till date, the Complainant has not received any response from the Respondent either on mail or through any other medium.

The Respondent has no rights or legitimate interests in respect of the disputed domain name The Complainant argued that the Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration of the disputed domain name. The Complainant has further submitted that the Respondent has used the disputed domain name and trademark or a service mark in connection with dating

Quint

website to piggyride on the goodwill of the Complainant. The Complainant submitted that the Respondent has no rights in trademark law or any legitimate interest in respect of the disputed domain name <https://www.happn.com/en/>.

The Respondent's disputed domain name is being used in bad faith. The Complainant submits that the Respondent's adoption and registration of the disputed domain name is dishonest and malafide. The Respondent had no previous connection with the disputed domain name. Any use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the complainant and the Respondent's website or other online locations of the Respondents or services on the Respondent's website, due to the use by Respondent of the Complainant's said trademark in the disputed domain name, which trademarks have been widely used and advertised in India and all over the world by the Complainant and which trademarks are associated exclusively with the Complainant, by the public in India and all over the world.

It was further submitted that the Respondent has not given complete and authentic contact details and has not been replying to the communications sent by the Complainant. It is therefore clear that the Respondent has no legitimate rights in the domain name and is acting in bad faith.

TRADE MARK REGISTRATIONS AND COMPLAINANT:

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

DOMAIN NAMES AND COMPLAINANT:

The Complainant owns so many trademarks registrations, the entire detail is available in Annexure-C, in many countries or jurisdictions worldwide for marks that consist of or contain the word "Happn" logo, which is a strong mark because it is entirely distinctive of the complainant.

RESPONDENT'S IDENTITY AND ACTIVITIES :

Quid, for

The Respondent registered the disputed domain name on 01.02.2019 (The entire detail provided alongwith the complaint). Whereas, the complainant using the aforesaid trademark since 2014 and registered on 20.04.2016, as the complete detail provided in Annexure-D. The complainant is the prior user of the domain and the respondent registered his trademark much later around 3 years later than the complainant.

PARTIES CONTENTIONS:

A: COMPLAINANT:

The Complainant contents that each of the elements specified in the policy are applicable to this dispute.

The Complainant Company **Happn** is based on the Trade Mark/Service Mark Happn. The entire details of the classes under which the mark is registered are duly provided in Annexure-C.

The Complainant is using the domain name <https://www.happn.com/en/> continuously and uninterruptedly since 2014. The Complainant has earned envious reputation and goodwill among its users. The Complainant website is famous all over the world. The Complainant has registered its domain name in various countries. The list of such countries Our Client has registered various domain names for various countries. The entire detail is available in *Annexure-C*.

That the Complainant to secure its rights has registered the domain name <https://www.happn.com/en/>. It is also submitted that the Complainant has also registered the trademark



Placed by

under no. 3358774 in classes 09 and 45 in the Trademarks Registry. The entire detail in this regard is available in **Annexure-D**. The domain name and trademark 'happn' is exclusively belongs to the complainant only. The Complainant is lawful, honest and bonafide proprietor of the domain name and trade mark.

The Complainant claim that they have maintained high set of standard and quality on its dating app and do not entertain any nonsense in any manner. Owing to such supreme standards and their Client has achieved envious number of people who are using this website. Since the inception of dating website millions of users have signed up on the website worldwide.

The Complainant is the prior adopter of the Mark "Happn" and the owner of The Trademark Mark/Service mark "Happn" the Complainant is well known all around the World by the name of "Happn", and has made profits under this name.

The Complainant further states that its use of the well-known Trademark has been Extensive, Exclusive and Continuous all around the World. As a result of the Complainant's Marketing and promotion of its Goods and Services under its Trademark "Happn", the mark has gained Worldwide Recognition and Goodwill, and has become well known. Moreover the Complainants Trademark has firmly been associated with the Complainant.

The Complainant contents that the disputed Domain name contains the Registered Trademark of the Complainant, that is, "Happndating.in". The respondent does not lead to any distinctive or reduce the similarity to the Trademark "Happn" of the Complainant. They will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the Services offered under the disputed Domain name from the Complainant. Further that they do not help in distinguishing the disputed Domain name from the Complainant's Trademark. On the contrary, the disputed Domain name leads the public to believe that it relates to the Services rendered by the Complainant.

It is critical especially because the Complainant has operations in India and the customers will mistakenly be redirected to the Respondents

Pruthi

website which uses the identical Domain name "Happndating.in" that it belongs to the Complainant.

Therefore, the Complainant contends that the disputed Domain name is identical and/or confusingly/deceptively similar to their Registered Trademark "Happn".

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 "Patreon.in". The Respondent does not own any Trademark registration as "Happndating.in" or a mark that incorporates the expression "Happndating.in". The Respondent has no license or authorization or permission from the Complainant to either use the designation "Happndating.in" or to register the disputed Domain name. The Respondent does not have any *bona fide* reasons to adopt the Domain name which is identical to the Trademark of the Complainant.

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 "Happndating.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.

*Done
by*

This clearly demonstrates that the respondent has registered the Domain name solely with an intention to derive undue 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 "Happn" 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 decision of this Hon'ble NIXI Arbitration and Mediation Centre passed in the case of **Vodafone group PLC Vs. Syed Hussain Trading as IBN7 Media group, NIXI case no. INDRP/1009** and another case titled as **"Genpact Ltd Vs. Manish Gupta, NIXI case No. INDRP/055.**

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. In this regard the reliance can be placed on Kenneth Cole Productions Inc. Vs. Viswas Infomedia, NIXI case number INDRP/093. another NIXI case number INDRP/347, wherein held "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 also 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 :

Pruthi
20/0

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

5. 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 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.

(i). Identical or Confusingly Similar:

The disputed Domain name "Happndating.in" was Registered by the Respondent on **01.02.2019**. The registration of the said disputed Domain name is due to expire on 01.02.2022.

The Complainant is an owner of the Registered Trademark "Happn". The Complainant is also the owner of a large number of domains with the Trademark "Happn" as stated above and referred to in the Complaint and duly mentioned in detail in Annexure-C. Most of these Domain names 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 "Happndating.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 "Happndating.in" products in India or elsewhere would mistake the disputed Domain name as of the Complainant.

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 "Happndating.in" is phonetically, visually and conceptually identical or confusingly/deceptively similar to the Trademark of the Complainant.

(ii). 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

Praveen

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 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 "Happndating.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).

Amundi
Amundi

(iii). **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 Complainant submitted that the Respondent has no rights in trademark law or any legitimate interest in respect of the disputed domain name <https://www.happn.com/en/>.

The Respondent's disputed domain name is being used in bad faith. The Complainant submits that the Respondent's adoption and registration of the disputed domain name is dishonest and malafide. The Respondent had no previous connection with the disputed domain name. Any use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or

Quintanilla
Pdu

association between the complainant and the Respondent's website or other online locations of the Respondents or services on the Respondent's website, due to the use by Respondent of the Complainant's said trademark in the disputed domain name, which trademarks have been widely used and advertised in India and all over the world by the Complainant and which trademarks are associated exclusively with the Complainant, by the public in India and all over the world.

It was further submitted that the Respondent has not given complete and authentic contact details and has not been replying to the communications sent by the Complainant. It is therefore clear that the Respondent has no legitimate rights in the domain name and is acting 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 "Happndating.in" trademark in any manner. The respondent is neither a licensee of the complainant nor has it otherwise obtained authorization of any kind whatsoever to use 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.

SIX Continents Hotels, Inc. Versus Patrick Ory, WIPO Case No.D2003-0098.

Marriott International Versus Thomas Burstein and Miller, WIPO Case No.D2000-0610.

Praveen
del

MBI, Inc Versus Moniker Privacy. Services, WIPO Case No.D2006-0550.

Western Union Holdings Versus Anna Valdieri, WIPO Case No.D2006-0884.

Accordingly, the respondent 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.

6. **DECISION**

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

This award is passed at New Delhi on this 14th day of August, 2021.

R. K. Kashyap
14/8/2021

R. K. KASHYAP
SOLE ARBITRATOR