



सत्यमेव जयते

INDIA NON JUDICIAL Government of Uttar Pradesh

e-Stamp

Signature.....
ACC Name : SARVESH KUMAR KARDAM, ACC No. : UP14008104
ACC Add : Sub-Register, Noida, Mob. 9716593230
Phone No. : 11410, Tehsil & Distt. Dadri, G.B. Nagar, U.P.

Certificate No.	: IN-UP85299170451673T
Certificate Issued Date	: 15-Jun-2021 02:40 PM
Account Reference	: NEWIMPACC (SV)/ up14008104/ NOIDA/ UP-GBN
Unique Doc. Reference	: SUBIN-UPUP1400810458423984415035T
Purchased by	: PUNITA BHARGAVA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	:
First Party	: PUNITA BHARGAVA
Second Party	: Not Applicable
Stamp Duty Paid By	: PUNITA BHARGAVA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY**

Arbitral Award in Case No. 1396
Ms. Punita Bhargava, Sole Arbitrator
Disputed domain name: < havaianasindia.net.in>

In the matter of

Alpargatas S.A.
Av. Das Nações Unidas
14261 - Ala A - 10th floor
CEP 04794-000, São Paulo-SP
Brazil

... Complainant

v.

Web Commerce Communications Limited dba WebNic.cc
Achter de Dom 12, Utrecht
Nordrhein-Westfalen
Postal code- 3512 JP, Germany

... Respondent

1. The Parties

The Complainant in this proceeding is Alpargatas S.A. a public company incorporated under the laws of Brazil with headquarters at Av. Das Nações Unidas, 14261 - Ala A - 10th floor, CEP 04794-000, São Paulo-SP, Brazil, Tel: 55 11 4569 7154 and is represented in this proceeding by its General Counsel, Mr. Adalberto Fernandes Granjo and Indian counsel J. Sagar Associates. The Respondent in this proceeding is Web Commerce Communications Limited dba WebNic.cc of the address Achter de Dom 12, Utrecht, Nordrhein-Westfalen Postal code- 3512 JP, Germany, Telephone- (+49).310302341731; email- diaogai718068@yeah.net.

2. Disputed Domain Name and Registrar

This dispute concerns the domain name <havaianasindia.net.in> (the 'disputed domain name') registered on March 11, 2021. The Registrar with which it is registered is also Web Commerce Communications Limited dba WebNic.cc.

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (Policy), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated June 30, 2021 requested availability of Ms. Punita Bhargava to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure (Rules) on the same day. In accordance with Rules, NIXI vide its email of July 2, 2021 appointed the Arbitrator and also notified the Respondent of the Complaint. The Arbitrator sent an email to the Respondent on July 5, 2021 informing it of the commencement of the proceeding and providing it time of two weeks to file its reply.

No reply was received from the Respondent within the time prescribed and so the Arbitrator sent an email to all concerned parties on August 6, 2021 that she would proceed to pass its award ex-parte taking into consideration all the material presented before her

The language of this proceeding is English.

4. The Complainant and its rights in HAVAIANAS as submitted by it

The Complainant states that it is a public company based in Brazil that owns HAVAIANAS, a brand of sandals which were launched in 1962. In 1990 the product became a Brazilian fashion item and around the 2000, the product became a globally known and used brand. The brand is currently a global leader in the sandals category, with over 252 million pairs sold every year in over 100 countries,

The trademark HAVAIANAS is owned by the Complainant. It has registered HAVAIANAS as a word and figure mark in numerous countries all over the world, including in India. In India, it is owner of registered word and trademarks pertaining to HAVAIANAS and Havaianas. It also has the following India specific domain name registrations containing the HAVAIANAS designation, namely, havaianas.co.in, havaianas.in, havaianasindia.co.in and havaianasindia.com

The Complainant states that products sold under the HAVAIANAS brand are well known to consumers all around the world. The Complainant after decades of continuous efforts, time, capital and investment of resources has been able to build immeasurable goodwill and an outstanding reputation for its HAVAIANAS brand and it is therefore exclusively identified with the Complainant. Amongst all the countries that the Complainant has introduced the brand in, India is a very important market with a huge demand for its products. The Complainant's trademark HAVAIANAS has been widely used and advertised in India; and it is associated exclusively with the Complainant by the trade and public in India. The Complainant *inter alia* uses its official websites to tend to this demand and sell its products to the Indian consumers.

5. Grounds for Complaint

The Complainant submits that the name HAVAIANAS, over which the Complainant has rights, appears in the disputed domain name. In addition, a perusal of the layout of the website of the Respondent shows that it is not merely similar but is comprehensively identical to one owned and registered by the Complainant.

The Complainant submits that the Respondent has no rights or legitimate interest in the disputed domain name and no registered trademark rights over the brand HAVAIANAS that appears in the disputed domain name. The Respondent has attempted to take advantage of the domain names owned by the Complainant by simply registering the disputed domain name with the ".NET.IN" suffix, since "havaianasindia.co.in" and "havaianasindia.com" were already in use and registered by the Complainant. The Respondent has been making commercial use of the disputed domain by selling footwear bearing the HAVAIANAS brand of the Complainant. This has been done by the Respondent with intent to commercially gain from misleading consumers into thinking that products sold under the disputed domain name belong to or are connected in some manner to the Complainant.

The Complainant submits that the Respondent's adoption and registration of the disputed domain name is dishonest and malafide. The use of the disputed domain name by the Respondent is a portal for making money by confusion and deception of the consumers. The Complainant is not aware of the authenticity of the products being sold on the Respondent's website and in all probabilities, the products that are being sold are

fake/counterfeit. The disputed domain name, if allowed to operate, would tarnish the Complainant's reputation and it would be detrimental to its goodwill that it enjoys with its Indian consumer base. In addition, there is extensive revenue loss to the Complainant since the consumers are buying the fake products being sold through the disputed domain under the impression that the products are being manufactured/sold by the Complainant. By using the Complainant's trademark in the disputed domain name, the Respondent is also attempting to create a likelihood of confusion with the Complainant's name and mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Therefore, the Respondent's registration and use of the disputed domain name is in utter bad faith.

The Complaint submits that the disputed domain is only one amongst many websites that are being fraudulently operated by persons worldwide. Similar websites as that of the disputed one, have been registered in various countries other than India, such as www.havaianas-portugal.com, www.havaianasgr.com, www.havaianasale.com. The Complainant has taken/is taking legal action against all such attempts in various jurisdictions.

6. Respondent's default

Despite notice of the present proceeding in terms of the Rules and an opportunity to respond, no response has been received from the Respondent by the Arbitrator.

7. Discussion and Findings

The Arbitrator has reviewed the Complaint and the Annexures filed by the Complainant as well as the website <https://www.havaianasindia.net.in/>. The Arbitral Tribunal has been properly constituted.

The Policy requires that the Complainant must establish three elements *viz.* (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 has no rights or legitimate interests in respect of the domain name; and (iii) the Registrant's domain name has been registered or is being used in bad faith. These are discussed below.

(i) Identical or Confusingly Similar

The Complainant owns the trademark and brand HAVAIANAS and has been using the same since 1962 for sandals. The brand is a global leader in the sandals category, with over 252 million pairs sold every year in over 100 countries. The Complainant has registered the trademark HAVAIANAS in word and design form in numerous countries around the world including in India and is the registered proprietor of HAVAIANAS marks in India as under:

- HAVAIANAS under no. 2131339 in class 35;
- **havaianas** under no. 3714068 in classes 9, 14, 18, 24, 25, 35; and
- HAVAIANAS under no. 1762961 in class 25

It has also registered India specific domain names containing HAVAIANAS *viz.* havaianas.co.in, havaianas.in, havaianasindia.co.in and havaianasindia.com.

The Complainant has spent time, effort, capital and investment in building goodwill and reputation in the HAVAIANAS brand and it is exclusively

identified with the Complainant. The HAVAIANAS brand has been advertised in India and goods under the same are sold here by the Complainant, , inter alia, through its official websites.

Thus, the Complainant has rights in the HAVAIANAS brand.

The Arbitrator notes that the dominant part of the disputed domain name is HAVAIANAS i.e., the disputed domain name wholly incorporates the Complainant's HAVAIANAS brand and this is also the distinctive part of the same. The Respondent has simply taken the Complainant's HAVAIANAS brand and has combined it with INDIA, a geographic descriptor and NET non-significant element and this is not sufficient to escape a finding of confusing similarity under the first element. INDIA and NET do not serve to distinguish the disputed domain name from the Complainant's HAVAIANAS brand in any way. Rather, INDIA is indicative of the Complainant's business here and increases the element of confusion. It has been routinely held that the mere addition of a descriptive term or a non-significant element does not prevent a finding of confusing similarity. See Starbucks Corporation v. Registration Private, Domains by Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico, WIPO Case No. D2019-1991. It has also been held that when a domain name wholly incorporates a complainant's registered mark, this is sufficient to establish identity or confusing similarity. See F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. mei xudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304. It is also well settled that for the purpose of comparing a trademark with a disputed domain name, the country code top-level domain (ccTLD) can be excluded.

The Arbitrator accordingly finds that the first element is satisfied and that the disputed domain name is confusingly similar to the Complainant's registered trademark.

(ii) Rights or Legitimate Interests

As regards the second element, the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. With respect to this requirement, a complainant is generally required to make a prima facie case that a respondent lacks rights or legitimate interests and once such prima facie case is made, the burden of proof shifts to the respondent to come forward with evidence demonstrating rights or legitimate interests in the disputed domain name. Paragraph 6 of the Policy contains a non-exhaustive list of the circumstances which, if found by the Panel to be proved, shall demonstrate the respondent's rights or legitimate interests to the disputed domain name.

Based on the undisputed contentions made by the Complainant as stated above, it has made a prima facie case that none of these circumstances are found in the case at hand and therefore, the Respondent lacks rights or legitimate interests in the disputed domain name. It is also settled that if the respondent fails to come forward with relevant evidence, the Complainant is deemed to have satisfied the

second element. See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org WIPO Case No. D2015-1149.

Since the Respondent in the present case has failed to come forward, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(iii) Registered or Used in Bad Faith

As regards the third element of bad faith, based on the contentions of the Complainant describing use of the HAVAIANAS mark, a review of the Complainant's website and the documents filed with the Complaint, the Arbitrator accepts that HAVAIANAS is a brand of the Complainant and is associated with it. The Complainant's rights also significantly predate the registration of the disputed domain name by the Respondent.

The Arbitrator accepts that the Respondent's adoption and registration of the disputed domain name is dishonest and malafide and use of the disputed domain name by the Respondent can create confusion and deception as to source, sponsorship, affiliation, or endorsement. The Arbitrator also accepts that if the disputed domain name is allowed to operate, the Complainant's reputation and goodwill will be tarnished. The disputed domain name cannot be considered to be in use in relation to bona fide offering of goods. Further, the Respondent would also be gaining commercially by use of the disputed domain name and hence, revenue loss would be caused to the Complainant. The acts of the Respondent do not confer any legitimacy on it and are indicative of bad faith on its part. See Starbucks Corporation (supra) and StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC, WIPO Case No. D2018-0497.

Thus, the Arbitrator concludes that the Respondent's conduct constitutes bad faith registration or use of the disputed domain name within the meaning of the Policy.

Accordingly, the Arbitrator finds that the Complainant has established all three elements as required by the Policy.

8. Decision

For all the foregoing reasons, the Complaint is allowed and it is hereby ordered in accordance with paragraph 10 of the Policy that the disputed domain name be cancelled. There is no order as to costs.

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


Punita Bhargava
Sole Arbitrator
Date: September 1, 2021