INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

सत्यमेव जयते

Certificate No.	:	IN-DL04698849990821T
Certificate Issued Date	:	31-Jul-2021 12:36 PM
Account Reference	:	IMPACC (IV)/ dl859003/ DELHI/ DL-DLH
Unique Doc. Reference	:	SUBIN-DLDL85900307118684170865T
Purchased by	:	PANKAJ GARG
Description of Document	:	Article 12 Award
Property Description	:	Not Applicable
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	PANKAJ GARG
Second Party	:	Not Applicable
Stamp Duty Paid By	:	PANKAJ GARG
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

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BEFORE SHRI PANKAJ GARG, SOLE ARBITRATOR, AT NEW DELHI

COMPLAINT NO. INDRP

CASE NO. 1402/2021

R & A BAILEY & CO

...COMPLAINANT

VERSUS

DB/DOMAINBOOK

.....RESPONDENT

CORAM:

HON'BLE MR. PANKAJ GARG

AWARD

24.08.2021

The matter is taken up today by this Tribunal for passing an award on merits in terms of the notices issued by this Tribunal.

The service of the soft copy of the Complaint and the Notice of this Tribunal upon the Respondent has already been completed.

The Application of the complainant seeking the exemption from Rule 3(d) of INDRP for service of the hard copy of the full complaint upon the Respondent is hereby allowed and service of soft copy upon the Respondent is treated as sufficient.

The Respondent failed to file a reply/counter on the Complaint, preferred by the Complainant.

Considering the circumstances that the award has to be passed in time bound manner, within 60 days from the date of initiation of the Arbitral Proceedings, an award on merits is passed today on 21.08.2021.

CONCLUSION FOR AWARD

As per the material placed on record and the averments made in the complaint and also in the annexed evidences and documents, which have been proved in evidence, it is evident that the domain name www.baileys.co.in is a well known domain name. The same is known to most of the people of the entire world. No one is entitled and can be authorized to use the same either as a domain name or as a trademark in relation to the similar or dissimilar business, as the said domain name/trade mark has got a unique goodwill and reputation.

In nutshell the case of the Complainant is that the impugned domain name is being illegally used by the Respondent giving an injury to the Complainant. It is also stated by the Complainant that various Trade Marks in the name of

"BAILEYS" have already been registered in India as well, since 1993 and being continuously used by the Complainant.

Respondent despite the opportunities failed to file a reply/counter on the complaint preferred by the Complainant till date.

It is an undisputed fact that the Complainant is the legitimate owner of the Trade mark "BAILEYS" and has acquired ownership rights in terms of the provisions of Section 17 of Trade Marks Act, 1999, even if it is considered that the Respondent is using the impugned domain name which includes the word "BAILEYS", since 2018, then also the Respondent cannot have a better title over the name "BAILEYS". This Tribunal is jurisdictionally bound to consider only the dispute of present domain name. And in the present circumstances under the impugned domain name word "BAILEYS" is already a registered Trade Mark under the ownership of the Complainant.

In the opinion of this Tribunal, the impugned domain name is a trademark backed domain name and it not only violates the provisions of the Trade Marks Act, 1999 but also violates Clause 4 of the INDRP policy issued by the NIXI. The impugned domain name conflicts with the legitimate rights and interests of the Complainant on the following premises:-

Sole Arbitrator
Pankaj Garg
Advocate
Sole Arbitrator

a) The impugned domain name is identical and confusingly similar to a named trademark as well as a service mark, in which the Complainant has a right;

b) Respondent has no right or legitimate interest in respect of the impugned domain name;

c) The Respondent impugned domain name has been registered and is being used in bad faith by using the registered trademark of the Complainant and giving a pecuniary loss to the Complainant by using the name and trademark of the Complainant.

The evidences filed by the Complainant have been proved by the Complainant, therefore, the statements and documents filed by the Complainant are accepted as correct deposition. In view of the facts and settled law, with the deposition and documents of the Complainant placed before this Tribunal, the Complaint deserves to be allowed for an Award on merits in favour of the Complainant, as prayed in the Complaint by the Complainant.

DECISION

a) In view thereof, it is directed that the domain name www.baileys.co.in be transferred in favour of the

Complainant by the Registry. As a result, the Respondent, his agents, servants, dealers, distributors and any other person(s) acting for and on its behalf are permanently restrained from using the domain name www.baileys.co.in or any other deceptively similar trademark, which may amount to infringement of Complainant registered trademark and also from doing any other thing, which is likely to create confusion and deception with the goods/services of the Respondent for any connection with the Complainant.

b) The Complaint is allowed in the above terms.

c) National Internet Exchange of India (NIXI) is advised to take incidental or ancillary action involved in the transfer of the domain name, as directed.

d) A cost of Rs. 75,000/- is imposed upon Respondent to be paid to Complainant for inordinate delay in renaming/surrendering the impugned Domain name.

Sole Arbitrator
Pankaj Garg
Advocate
Sole Arbitrator

(PANKAJ GARG)
SOLE ARBITRATOR

Place: New Delhi
Date: 24th August, 2021