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Government of National Capital Territory of Delhi

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Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
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NATIONAL INTERNET EXCHANGE OF INDIA

B Wing, 9th Floor, Statesman House Building

148, Barakhamba Road,
New Delhi-110001

ISLAND YOGA, LLC

V/s

CHARLES LAMBROU

Ques ⁷
Adv.

Statutory Alert:

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AWARD

1. THE PARTIES

The Complainant is Island Yoga, LLC, 1880, Century Park East, 1600 Los Angeles, CA 90067, USA, by authorized representative Mr. Vikrant Rana, of S.S. Rana and company, having office at, 317, Lawyer's Chamber High Court of Delhi, New Delhi-110003, vide phone No. 91 11 40123000 and E-mail: inf@ssrana.com.

The Respondent is Charles Lambrou, 51 Alsid, St Andrews Rd, Bandra West, Mumbai, Maharashtra- 400050, India, E-mail suraagl@gmail.com, vide phone No.+91.9870472228.

2. THE DOMAIN NAME AND REGISTRAR:

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

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

The abovesaid domain registered particulars in detail is provided and available in **Annexure-C3**.

Registrar Name: GoDaddy.com, LLC

**Registrar Address: 14455 North Hayden Road Suite 219
Scottsdale, AZ 85260 United States.**

IANA ID : 146

Date of creation: 16-05-2020

Date of Expiry : 16-05-2022

Registrant Client ID : CR424050134

Email: suraagl@gmail.com

For detail information please refer Annexure C-3

3. PROCEDURAL HISTORY

(a) The Complainant has filed a complaint on 01.11.2021 with the NATIONAL INTERNET EXCHANGE OF INDIA. The

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Complainant made the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure- C1 to C11**. 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 NIXI has appointed Sh. R.K. Kashyap, Advocate as the Sole Arbitrator in this matter vide letter dated 29-11-2021. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted his Statement of acceptance and Declaration of Impartiality and Independence on 30-11-2021, as required by the Exchange.
- (c) The Arbitrator, as per the INDRP Policy and the Rules, has duly issued the notice on 30-11-2021 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 10 days from the receipt of notice. The direction of the arbitrator to serve the respondent has duly been complied with and the complainant sent the notice through mail as well as through courier dated 01.12.2021, the respondent was duly served through mail and the complainant also sent through courier vide airway bill No. 40621545731, reported unsuccessful with the remarks "no such consignee at the given address". The complainant has sent this information through E-mail on 15.12.2021. The respondent is duly served through E-mail and having complete knowledge about the proceedings before the arbitrator, as such the respondent is deemed served. The respondent has not filed any response till date. Hence, the respondent proceeded ex-parte.

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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

- a) Rachel Brathen, who is a Swedish citizen famously known as “**YOGA GIRL**”, is the founder of the complainant, the entire detail are provided in Annexure C-4.
- b) The origin of the brand trade mark Yoga Girl can be traced back to 2015, when she released her first book titled YOGA GIRL, which is still available worldwide, YOGA GIRL is an inspirational, full colour look at the adventure that took her from home town in Sweden to the jungles of Costa Rica and finally to the Paradise Island in the Caribbean. Her instagram account under the handle @yoga_girl has been active since 2014 and the mark Yoga Girl is also since 2014.
- c) Since 2014-15, the efforts of Rachel Brathen, has seen in exponential rise in her global fame and goodwill and the mark Yoga Girl has become synonymous with her. As such the Yoga Girl group of companies is coming together with several different organizations, all emanating from the founder, who is popularly known as Yoga Girl.
- d) The complainant through her husband is also the proprietor of the top level domain name **YOGAGIRL.COM** which was registered on 24.04.1999. the said website is accessible globally and its contents and interactive features can be viewed and explored by persons all over the world, including India.
- e) The founder also become the social media influencer in 2013. FORBES also listed her in their list of “top influencer-fitness 2017, having over 2 Million + followers on social media, the entire detail is available in Annexure C-5. Also provide help to women and children in need, 10% of royalties are donated to her instituted charity, Yoga Girl Foundation.

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- f) The founder has also opened a yoga studio in Aruba in 2016 under the name of Island yoga, which till date remains the largest yoga studio in Caribbean.
- g) By the year 2017, the founder had been living in Aruba for almost a decade. she realized that almost 50 % of children in Aruba are victims of abuse and in attempt to provide in help to those in need, founded the Yoga Girl foundation in 2018 in Sweden and to provide support to survivors of abuse and injustice. The foundation supports women and children who suffers from the consequences of trauma, injustice, abuse and poverty and provides emotional, financial and medical aid to support healing and empower growth.
- h) The reach and impact of the yoga girl foundation is evident from the fact that the foundation has over 3.1 million followers on social media and has already raised thousands of dollars for social causes.
- i) The yoga girl foundation has an interactive website at <https://www.yogagirlfoundation.com>, from where donations can be made. The foundation has also created Yoga Girl foundation program, also offers scholarships to yoga teacher trainings, yoga memberships and retreats all over the world.
- j) The complainant has also applied for and obtained registrations for the trademark Yoga Girl and formatives thereof in many countries of the world. The entire detail of the registration trademark is available in Annexure C-6. The Indian registration detail is available in Annexure C-7.
- k) The complainant's revenue and advertising figures and financial records are available in Annexure C-8. The complainant's goodwill and reputation in the trademark yoga girl and variations thereof, have not come from sales along. Thousands of Swedish kronor have been spent till now for promoting its trademarks by means of advertising.
- l) The complainant and its trademark Yoga Girl have been advertised in the wide variety of print and electronic media, newspapers, magazines, catalogues, brochures and other

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promotional materials, the details are provided in Annexure C-9.

- m) The complainant is a social media star and one of the most popular instagrammers in the industry of health, fitness and yoga and has over 2 million followers. The entire detail are available in Annexure C-10.
- n) Yoga Girl is not only the trademark and trade name of the complainant, but it is also by nature, Its trading style. By virtue of the prior adoption, long standing and uninterrupted use, extensive publicity and the complainant's propitiatory rights in its trademark and in its name Yoga Girl. By virtue of its long establishment and reputation in charitable works have acquired fame and distinctiveness as being associated exclusively with founder and her Yoga Girl brand.

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:-

- a) The Registrant's Domain name is identical or confusingly similar to a name, Trademark or Service mark in which the Complainant has rights;
- b) The Registrant's has no rights or legitimate interests in respect of the Domain name that is the subject of Complaint; and
- c) The Registrant's Domain name has been Registered or is being used in bad faith.

(A). Identical or Confusingly Similar:

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- i) The disputed Domain name "YOGAGIRLFOUNDATION.IN" was Registered by the Respondent on 16-05-2020.
- ii) The Domain Name < YOGAGIRLFOUNDATION.IN > entirely reproduces Complainant's trademark Yoga Girl, Yoga Girl Foundation and YOGAGIRL.COM, mark has been in continuous use since at least 2015 and on the other hand the disputed domain name registered by the respondent only on 16.05.2020. By virtue of long standing use and registration, immense global fame and reputation, the complainant's trademark YOGA GIRL, qualifies to be a well known trademark which has been registered by Complainant in India and several other Countries, as highlighted above and in Annexes 2.
- iii) The impugned domain name < YOGAGIRLFOUNDATION.IN > comprises of the complainant's trademark Yoga Girl/ Yoga Girl foundation in toto. Therefore, the domain name < YOGAGIRLFOUNDATION.IN > is identical to complainant's corporate and trade names YOGA GIRL FOUNDATION and Yoga Girl AB, trade marks Yoga Girl / Yoga Girl Foundation and domain names <YOGAGIRL.COM> and <YOGAGIRLFOUNDATION.COM>.
- iv) The complainant relied upon the following decisions:-
D2000-0794
D2016-0575
D2001-1324
INDRP-093
INDRP-278
INDRP-148
INDRP-238
INDRP-323
INDRP-887
INDRP-905

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D2001 0903

D2007-1090

D2000-1525

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

(B). Rights or Legitimate Interests :

- i) The Complainant submits that it has legitimate interest in the "YOGA GIRL" trademark in India as it registered the said mark since 2015, and has been openly, continuously and extensively using it in said Country for several years. Moreover, by virtue of long and extensive use and advertising, the "YOGA GIRL" trademark has become well-known mark.
- ii) The Complainant submits that it has registered the domain name YOGA GIRL/ YOGA GIRL FOUNDATION are exclusively tied, the respondent is not commonly know by the name YOGA GIRL. The respondent does not have any right or legitimate interest in the names/ marks YOGA GIRL/ YOGA GIRL FOUNDATION. Infact it appears that respondent had deliberately chosen to use the domain name <YOGAGIRLFOUNDATION.IN>, which is identical to the complainant trademark.
- iii) The respondent is likely to create a false association and affiliation with the complainant with its well known trademarks. The respondent registered the impugned domain almost 5-6 years after the complainant adopted the trademark.
- iv) Respondent is not a licensee, an authorized agent of Complainant, or in any other way authorized to use Complainant's trademark Yoga Girl/ Yoga Girl Foundation . the complainant relied upon the following decisions:-

INDRP-139

INDRP-192

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INDRP-1092

Therefore, concludes that Respondent has no rights or legitimate interests in respect of the Domain Name "YOGAGIRLFOUNDATION.IN" as per INDRP policy.

(C). Registered and Used in Bad Faith:

- i) In view of continuous and exclusive use of the mark Yoga Girl/ Yoga Girl Foundation by the complainant by many years. As such the respondent has no reason to adopt the identical name/ mark with respect to the impugned domain name except to create a deliberate and false expressions in the mind of consumers that the respondent is some how associated with or endorsed by the complainant, with the sole intention to ride on the massive goodwill and reputation of the complainant and to unjustly gain enrichment from the same.
- ii) Additionally the respondent does not appear to be currently using the domain name at all. The reliance has been placed on case no D-2019-0419, D-2017-0709, D-2000-0003, The respondents name is clearly contrary to the provisions of para 4-c of the INDRP.
- iii) In view of the complainants long standing reputation and presence with mark Yoga Girl/ Yoga Girl Foundation on the internet, which is registered and used in many countries of the world. The respondent intent appears as blatant attempts to ride on the association and goodwill of the complainants brand.
- iv) In view of the above, the complainant has established that the marks Yoga Girl/ Yoga Girl Foundation is distinctive and well known it is highly likely that the respondent had prior knowledge of complainants aforesaid name and mark.

In view of the above, it is clear that the Domain Name was registered and is being used by Respondent in bad faith according to Paragraph 4(c) of the INDRP.

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6. **DECISION**

In light of the foregoing findings, namely, that the Domain name is confusingly/deceptively similar to Complainant's well-known brand "Yoga Girl/ Yoga Girl Foundation", 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 "YOGAGIRLFOUNDATION.IN" be transferred to the Complainant.

This award is passed at New Delhi on this 30th day of December , 2021.

R. K. Kashyap
30/12/2021

R. K. KASHYAP
SOLE ARBITRATOR