

सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

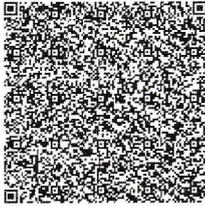
e-Stamp

Reprinted e-Stamp Certificate

Certificate No. : IN-DL61111847650015W  
Certificate Issued Date : 20-Mar-2024 11:17 AM  
Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH  
Unique Doc. Reference : SUBIN-DL DL-SELF82120608600011W  
Purchased by : SANJEEV CHASWAL  
Description of Document : Article 12 Award - Movable  
Property Description : GARNT OF AWARD IN GUESS INDIA CASE INDRP CASE NO 1820  
Consideration Price (Rs.) : 100  
(One Hundred only)  
First Party : SANJEEV CHASWAL  
Second Party : NA  
Stamp Duty Paid By : SANJEEV CHASWAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)

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SELF PRINTED CERTIFICATE TO BE  
VERIFIED BY THE RECIPIENT AT  
WWW.SHFILESTAMP.COM

IN-DL61111847650015W

Please write or type below this line

**INDRP ARBITRATION [NIXI] ADMINISTRATIVE PANEL  
PROCEEDING SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**In the matter of Arbitration Proceeding for the Domain name  
<guessindias.net.in> and in the matter of INDRP Case no: 1820**

**Statutory Alert:**

1. The authenticity of this Stamp certificate should be verified at 'www.shfilestamp.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.
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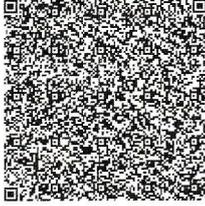
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**INDRP ARBITRATION  
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]  
ADMINISTRATIVE PANEL PROCEEDING  
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**In the matter of Arbitration Proceeding for the Domain name**

***<guessindias.net.in>***

**and in the matter of INDRP Case no: 1820**

**M/s. Guess IP Holder L.P. and Guess, Inc.  
Address: 1444 South Alameda Street  
Los Angeles, CA 90021  
E-Mail: [udrp5@lewisroca.com](mailto:udrp5@lewisroca.com)**

**....Complainant**

**Vs.**

**M/s. Patrick Schreiner  
Address: Meininger Strasse 721  
Eppelborn, Eppelborn 66571 DE  
E-Mail: [sadlimireamy@hotmail.com](mailto:sadlimireamy@hotmail.com)**

**..... Respondent**

**ARBITRATIONAWARD**

**Disputed Domain Name: *<guessindias.net.in>***

**History:**

The undersigned has been appointed by NIXI as sole arbitrator pursuant to the complaint filed by the complainant The Complainant in this administrative proceedings is M/s. Guess IP Holder L.P. and Guess, Inc. Address: 1444 South Alameda Street, Los Angeles, CA 90021 represented through its authorized representatives / attorneys seeking invoking of arbitration proceedings, against the Registrant / Respondent M/s. Patrick Schreiner, Meininger Strasse 721, Eppelborn, Eppelborn 66571 DE E-Mail: [sadlimireamy@hotmail.com](mailto:sadlimireamy@hotmail.com) in respect of registration of domain name *<guessindias.net.in>*


As the Complainant has filed the above arbitral complaint against the Registrant / Respondent for registering the domain name <*guessindias.net.in*> though complainant being actual user and owner of the domain name *the* Registrant / Respondent took the similar domain name thus complainant moved an complaint seeking a claim of relief for transferring the domain name to the Complainant herein.

As the Registrant / Respondent, who had obtained registration of domain name <*guessindias.net.in*> in the year 2023 through the IN. registry Registrar's M/s. Hosting Concepts B.V. d/b/a, Open provider Inc, 197 Hanlon Creek Boulevard, Ontario, Canada, NIC 0A1abuse@openprovider.com but the Registrar domain has withheld and concealed the registration record containing the address and the domain details by invoking "REDACTED FOR PRIVACY" on request of the complainant the NIXI has provided the copies of WHOIS record containing the address and the domain details of the Registrant / Respondent to the complainant.

The complainant after receipt of the said domain details the address etc., from the NIXI in relation to the Registrant / Respondent, the complainant has moved an amended complaint by incorporating all the details of the Registrant / Respondent, who has obtained the registration of the disputed domain name from the domain Registrar.

That in the above said arbitral reference, the sole arbitrator had issued the directions to the complainant and the Registrant / Respondent to comply notice of 24<sup>th</sup> of February 2024 to file reply, detail statement, if any, **within 15 (fifteen) days from issue the date of this Notice**, the reply detail statement, if any should reach by **10<sup>th</sup> of March 2024**. The complainant had served the notice to the respondent / registrant to their email address as listed in WHOIS records. As such the issued notice is duly served to the respondent / registrant

As the respondent / registrant, who has obtained registration in respect of domain name <guessindias.net.in> has failed to its submit reply, or any detail statement to the above arbitral complaint reference after receipt of notice. On 14<sup>th</sup> of March 2024 the undersigned as sole arbitrator has decided foreclosed the opportunity of filing of reply or statement and reserved this domain dispute complaint <guessindias.net.in> for final orders on its merits.

## 1. The Parties:

That the Complainant in this arbitration proceeding is M/s. Guess IP Holder L.P. and Guess, Inc. Address: 1444 South Alameda Street, Los Angeles, CA 90021, USA, the complainant is a American corporation incorporated under the laws of the USA with its principal place of business at United States of America represented through its authorized representative, has invoked this administrative domain arbitration proceedings against the Registrant / Respondent, in respect of registered domain name <guessindias.net.in>

Registrant / Respondent M/s. Patrick Schreiner, Address: Meininger Strasse 721 Eppelborn, Eppelborn 66571 DE E-Mail: sadlimireamy@hotmail.com in respect of registration of domain name <guessindias.net.in>. As the Registrant / Respondent, who had obtained registration of domain name <guessindias.net.in> in the year2023

## 2. The Domain Name and Registrar:

2.1 The disputed domain name <guessindias.net.in> is registered by the IN. registry, M/s. Hosting Concepts B.V. d/b/a, Open provider Inc, 197 Hanlon Creek Boulevard, Ontario, Canada, NIC 0A1abuse@openprovider.com but the Registrar domain has withheld and concealed the registration record containing the address and the domain details of the Registrant / Respondent by invoking “REDACTED FOR PRIVACY”


### 3. Arbitration Proceedings Procedural History:

3.1 This is a mandatory arbitration proceeding in accordance with the IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to their solution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

3.2 In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent to the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under. IN Domain Name Dispute Resolution Policy and the Rules framed there under. The Arbitrator as submitted the Statement of Acceptance and Declaration of Impartiality and Independence as required by the NIXI.

**As per the information received from NIXI, the history of the proceedings is as follows:**

3.3 The present Arbitral Proceedings have commenced on 24<sup>th</sup> of February 2024 by issuing of 1<sup>st</sup> notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the WHOIS. The said notice was successfully served by the complainant to the Respondent / Registrant through email too.



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp with a grid pattern. The text in the stamp reads: "SANJEEV KUMAR CHASWAL ADVOCATE SOLE ARBITRATOR \* DELHI \*".

3.4 Further as per the issued Notice to the Respondent / Registrant was directed to file their reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by 10<sup>th</sup> March 2024, failing which the Complaint shall be decided on the basis of the merits.

3.5 Further as the Respondent / registrant has failed to submit its reply statement hence on 14<sup>th</sup> March 2024 sole arbitrator foreclosed the right of Respondent / registrant to file reply or statement On non receipt of reply as such the sole arbitrator now reserves this domain dispute complaint <*guessindias.net.in*> for final orders and shall be decided on merits.

#### 4 Complainant Contentions:

4.1 The complainant has submitted many legal submissions under INDRP Rules of Procedure for seeking relief against the Registrant / respondent for registering domain name <*guessindias.net.in*> *illegally*.

4.2 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <*guessindias.net.in*> is stated as under:

##### A. Complainant Grounds for proceedings

*I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.*

*II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.*

*III. That the disputed domain name has been registered or is/are being used in bad faith.*


The Complainant submits its detailed contentions in their complaint that are described in details as under:

- I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.***

### **The Complainant's Claim of Statutory Rights**

- 4.3 The complainant is the prior user and owner and started its business in 1981 as a small California jeans company. While jeans remain the foundation of the company's history and success, Guess? designs, markets, and distributes its full collections of women's and men's apparel throughout the United States, India, and worldwide. The company has successfully granted licenses for the manufacture and distribution of many of its product categories, including kids & baby apparel, watches, footwear, belts, fragrance, jewelry, swimwear, handbags, small leather goods, eyewear, and leather apparel.
- 4.4 The Complainant Company in the mid-1990's, became a public company and launched its first website at the domain name guess.com. Guess now operates websites at the domain names guess.com, gbyguess.com, and marciano.com.
- 4.5 In 1995, Complainants expanded their retailing business by launching an e-commerce website at guess.com. The e-commerce website displays photographs of Guess famous models and operates as a virtual storefront that sells both Guess products and promotes Complainants' brands. The website also provides fashion information and a mechanism for customer feedback while promoting customer loyalty and enhancing Guess identity through interactive contents with striking images and fresh products,



The image shows a handwritten signature in black ink to the left of a circular stamp. The stamp is a professional seal for an advocate in Delhi. The text within the stamp includes the name 'SANJEEV KUMAR CHHABRA', the title 'ADVOCATE', and the location 'DELHI'. The stamp also mentions 'SOLE ARBITRATOR' and 'SANSER'.

Guess has gained momentum and nationwide recognition. In the 1980's, the Guess product line expanded beyond men's and women's jeans, and perfume. The 1990's saw rapid international expansion, bringing the GUESS brand to Europe, Asia, South America, and the Middle East.

The Complainant company quickly infiltrated popular culture and became an icon of the generation. Guess had created groundbreaking advertising campaigns featuring sexy, sultry models previously unknown in the industry, and turned them into superstars overnight. Models such as Claudia Schiffer, Carrè Otis, Eva Herzigova, Laetitia Casta, Carla Bruni, and Naomi Campbell had launched their careers in the original Guess campaigns.

4.6 The Complainant enjoy prior trade name rights, prior trademark rights, prior domain name rights and other related rights in respect of the "GUESS" marks in various countries and regions worldwide. The Complainant has been using marks including "GUESS" as their trade name since long. Apart from the aforementioned registration in India, The Complainant have a registration of Trademark qua "GUESS" wide application 2448055 for classes 9, 39 and 42.

4.7 The Complainant holds a large number of registrations for its trade mark As a result of more than 40 years of use, Complainants have created in their GUESS Mark one of the most famous and distinctive marks in retailing. The GUESS Mark has acquired a valuable goodwill and reputation, and is widely recognized by the consuming public as a designation of source of the goods and services of Guess, not only in the United States but throughout the world. Complainants are responsible for the operation of over 1,300 stores located in premier retailing locations in major markets worldwide. Additionally, billions of dollars of sales have been made in connection with the GUESS Mark over the past 40 years.



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- 4.8 That by virtue of prior adoption, extensive and continuous use in respect of the “GUESS” mark, the Complainant is entitled to the exclusive proprietary rights therein, and the public at large associate the said mark with the goods/services offered by Complainant alone and none else. As the goods/services offered under the said trademarks conform to very high standards of quality.
- 4.9 The disputed domain name *<guessindias.net.in>* incorporates the Complainant’s “GUESS” mark in its entirety. The alterations of the mark, made in forming the domain name, do not save it from the realm of confusing similarity. Precedents have shown that a domain name is identical to a trademark when the domain name contains or is confusingly similar to the trademark, regardless of the presence of other words in the domain name (*INDRP Case No.868, Amazon Technologies, Inc. v. Jack Worli*).
- 4.10 The Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to “GUESS” but the impugned domain name is being registered and / or used in bad faith by the Respondent.
- 4.11 The Domain Name is identical or confusingly similar to Complainants’ GUESS Marks. The Domain Name includes the word mark GUESS in its entirety along with a generic top-level suffix. Moreover, the Domain Name includes the use of a geographic term (“India”), which only exacerbates the likelihood of confusion since Complainants do business in India. The resulting Domain Name is identical or confusingly similar to Complainants’ GUESS mark.

***II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.***

- 4.12 The Complainant submits that that the Respondent has no legitimate interest in the impugned domain name *<guessindias.net.in>* is clearly evident. The unlawful

acquisition of the impugned domain name <**guessindias.net.in**> without due reason and with the sole objective of obtaining illegal revenue on account of misdirected traffic intending to reach the Complainant's website, further establishes that the Respondent has registered the same in bad faith.

4.13 The Complainant submits that the registration and usage of the impugned domain <**guessindias.net.in**> by the Respondent is an attempt to ride on the back of the massive reputation and goodwill of the Complainant and to pass off the impugned domain name as that belonging to the Complainant.

4.14 The Complainant submits that the Domain Name incorporates Complainants' GUESS word mark in its entirety. Based on this alone, the Domain Name should be considered the same or confusingly similar to the GUESS Marks...

4.15 The Complainant submits that the addition of the top-level suffix in the disputed Domain Name should be disregarded because it is a necessary requirement to register and use the dispute Domain Name, and would not be considered a distinctive element of the Domain Name but Internet consumers, which is well established by previous arbitrators as stated in ***Lenovo (Beijing) Ltd. vs. Raj Kumar re <lenovindia.co.in>***.

It is therefore amply clear that the Respondent has absolutely no rights whatsoever in the impugned domain name <**guessindias.net.in**>. and the confusion is exacerbated by the fact that the Domain Name features an additional geographic term, "India," since Complainants do business in India. The combination of a geographic term with the mark does not prevent a domain name from being confusingly similar. Further Respondent is not using the Domain Name in connection with a legitimate noncommercial use or fair use or to comment upon Complainants. Thus, Respondent has no legitimate interest in the Domain Name.

*As in the case referred by the Complainant in Hugo Boss Trade Mark Management GmbH & Co. KG, Hugo Boss AG v. Xu Xiaobei, WIPO D2016-2456 (Jan. 31, 2017) (transferring domain name hugoboss-mexico.com where the Panel found that "The*

*suffix “-mexico” is clearly used to geographically associate the Respondent’s Website and/or Disputed Domain Name with Mexico” and that “the mere addition of generic or descriptive terms to a trademark in a domain name does not mitigate the confusing similarity between the mark and the domain name”). and in another case Net2phone Inc. v. Netcall SAGL, WIPO D2000-0666 (Sept. 26, 2000).*

4.15 The Complainant submits that the Respondent’s use of the GUESS Mark within the Domain Name is not a legitimate use, but a deliberate infringement of Complainants’ rights to misdirect traffic from Complainants to Respondent for the Respondent’s own financial gain. The Domain Name resolves to a website entitled “GUESS,” designed to mimic Complainants’ own website, that features counterfeit clothing, apparel, and accessories for sale designed to look like Complainants’ goods, with multiple imitation products featuring the GUESS Marks. Moreover, the website features obvious claims and implications which further associate it with the GUESS Marks (including the header), and illegally reproduces multiple images owned by Complainants. See Screenshots of the website at the Domain Name attached hereto. Based on these elements, Internet users are likely to wrongly believe that these Domain Name points to an official website of the Complainants.

4.16 The Complainant submits that there is no conceivable bona fide use of the Domain Name exists when the intended use is a deliberate infringement of another’s rights.<sup>7</sup> Further, selling unauthorized and illegitimate goods featuring Complainants’ Mark is compelling evidence that Respondent has no rights or legitimate interests in respect of the Domain Name, because there can be no legitimate interest in the sale of counterfeit goods.

In addition to their exceptionally strong common law trademark rights, the complainant owns numerous trademark registrations for their GUESS Mark throughout the world. Guess IP Holder L.P. licenses certain Guess trademarks and corresponding registrations. Guess?, Inc. is a licensee of Guess trademarks, and has the right to use such marks. Accordingly, both Complainants have a sufficient trademark rights and interest in the disputed Domain Name.



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp. The stamp contains the text "SANKAR CHANDAN ADVOCATE" at the top, "DELHI" in the center, and "SANKAR CHANDAN" at the bottom. There are small stars on either side of the bottom text.

*See Compagnie de Saint Gobain v. Com-Union Corp., WIPO D2000-0020 (Mar. 14, 2000) (finding no rights or legitimate interests where the respondent had never applied for a license or sought permission from the complainant to use the mark);*

*Gorstew Ltd. v. Twinsburg Travel, NAF 95424 (Sept. 21, 2000) (“The fact that the Respondent is a travel agent and sells Beaches Resorts vacations does not give it any interest or right to register the ‘Beaches’ trademark, which it does not own or have a license to use, as a domain name and lead users to believe that the website is sponsored by an entity that owns the Beaches Resorts.”).*

*See Solstice Marketing Corp. v. Marc Salkovitz d/b/a Image Media, LLC, NAF 040087 (Aug. 31, 2007) (respondent was not commonly known by the disputed domain name because, in part, respondent lacked authorization to use complainant’s registered service mark); American Girl, LLC v. George Rau, NAF 308206 (Apr. 2, 2010) (respondent was not commonly known by the disputed domain name when respondent was “not licensed or otherwise authorized to use” complainant’s mark).*

*See Telestra Corporation Limited v. Nuclear Marshmallows, WIPO D2000-0003 (Feb. 18, 2000) (holding that given the numerous trademark registrations and wide reputation for the mark TELESTRA, it was inconceivable to imaginethat Respondent’s use was legitimate); WordPress Fdn. v. Pham Dinh Nhut, NAF 1603156 (Mar. 12, 2015) (complainant’s extensive and exclusive use of its mark warranted inference that respondent had knowledge of mark prior to registering the domain name).*

4.17 The Complainant submits that the Respondent is neither an authorized vendor nor a licensee of Complainants and does not have authorization to use the GUESS Mark or to register any domain name containing the GUESS Marks or any confusingly similar variation thereof. This alone is sufficient to support a finding that Respondent has no rights or legitimate interests in the Domain Name.

The image shows a handwritten signature in black ink on the left. To its right is a circular stamp. The stamp has a double-line border. The outer ring contains the text "SARVESH KUMAR CHAWLA ADVOCATE-AT-LAW" at the top and "DELHI" at the bottom. The center of the stamp contains the text "DELHI" and a small star symbol.

4.18 The Complainant submits that the Respondent is not commonly known as “guess,” or “guessindias” nor can it be since Guess has not authorized use of its GUESS Marks by Respondent.

4.19 That despite of having longstanding use and trademark registrations for the GUESS Mark as well as the high reputation of Guess? and its brand, there is no plausible circumstance in which Respondent could legitimately use the Domain Name.

***III. That the disputed domain name has been registered or is/are being used in bad faith.***

4.20. The Complainant submits that they have used the GUESS Mark for more than 40 years before the Domain Name was registered this year, on August 26, 2023..

The Respondent is having mere initial interest confusion caused by the similarity between the GUESS Mark and the Domain Name should be sufficient for a finding of bad faith. The Respondent also plainly had at least constructive knowledge of Complainants’ rights in its GUESS Mark due to Complainants’ prior registration of the GUESS Mark, further evincing bad faith intent..

4.21 The Complainant submits that a domain name is so obviously connected with a well-known trademark, its very use by someone with no connection to the trademark suggests opportunistic bad faith.<sup>10</sup> Given the reputation and fame of the GUESS trademark, registration in bad faith can be inferred.

4.22 The Complainant submits that the Domain Name is currently used to direct Internet users to a website entitled "GUESS" which impermissibly features Complainants’ own copyright protected images. Respondent’s website at the subject Domain Name also offers for sale numerous counterfeit GUESS items that feature the GUESS Marks.



When a domain name is used to sell counterfeit goods in competition with those offered under Complainants' Marks and diverts Internet users seeking Complainants' website to a website for Respondent, such use clearly demonstrates bad faith.

4.23 . Respondent uses the Domain Name to attract, for commercial gain, users to its own website, which is textbook evidence of bad faith registration and use.<sup>12</sup> Put another way,

4.24 The mischievous and mala fide conduct of the Respondent is evident from the fact that the Respondent deliberately chose to acquire the impugned domain name *<guessindias.net.in>* whilst having no association with either the Complainant or any of its group companies, or with the word 'GUESS'.

*See Madonna Ciccone v. Dan Parisi, WIPO D2000-0847 (initial interest confusion can be the basis for a finding of bad faith). See L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter WIPO D2018-1937 (Oct. 12, 2018).*

*See Dollar Financial Group, Inc. v. Bankshire Corp. FA 13686 (Forum Jul. 30, 2007) (respondent's use of confusingly similar domain name to complainant's mark, to redirect Internet users to respondent's own commercial website offering goods and services in direct competition with complainant's goods was evidence of bad faith registration and use under Policy); S. Exposure v. S. Exposure, Inc., FA 94864 (Forum Jul. 18, 2000) (finding the respondent acted in bad faith by attracting Internet users to a website that competes with the complainant's business); Chan Luu Inc. v. Li Yong Ze, FA 1463461 (Forum Nov. 2, 2012) (use of a confusingly similar domain name to compete with a complainant's business by marketing counterfeit goods is disruptive and demonstrates bad faith registration and use pursuant to the Policy ¶ 4(b)(iii)); Juicy Couture, Inc. v. Chinasupply, FA 1222544 (Forum Oct. 13, 2008) (holding that the selling of counterfeit versions of a complainant's products disrupted the complainant's business and is evidence of bad faith registration and use).*

*See General Electric Co. v. Japan, Inc., WIPO D2001-0410 (June 14, 2001) ("The Domain Name is designed to imply that there is an affiliation between Respondent and Complainant or that GE endorses Respondent's activities even though no such affiliation or endorsement exists. ICANN panels have addressed such situations in several instances and have consisten[tly] held that it is bad faith to misrepresent an affiliation with a third party where none exists").*

The image shows a handwritten signature in black ink on the left. To its right is a circular stamp. The stamp has a double border. The outer ring contains the text "SAMRAT CHAHAL" at the top and "ADVOCATE" at the bottom. In the center of the stamp, the word "DELHI" is printed.

### **Brief Contention of the Complainant:**

4.20 Firstly the Complainant submits that the Respondent has used the Complainant's well-known trademark "GUESS" as part of the impugned domain name <*guessindias.net.in*> in which the Complainant has legitimate right under common law as well as under statutory rights. The said acts of the Respondent, therefore, amount to an infringement of the complainant's rights as are vested in the trade / service: mark "GUESS". Secondly, the Respondent is well aware of the insurmountable reputation and goodwill associated with the Complainant's mark "GUESS" which insures and continue to insure its legitimate right to Complainant only.

4.21 It is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of bad faith as understood in the Policy. With regard to famous brands, successive UDRP panels have found Bad faith registration where:

#### **a) Brief Contention of the Respondent:**

4.22 The Respondent / Registrant had failed to file its detailed reply /statement rebutting the claim of the Complaint. The Complaint did not submit its submissions on record and to stake a claim that the respondent is registered owner of the mark but did not file the reply rebutting the claim of the complainant that the respondent domain does not come ambit within the conditions laid down in IDR of the policy.

### **5 Discussion and Findings:**

5.1 It is clear from the record of NIXI the Respondent / registrant redacted private policy to conceal their identity. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp. The stamp has a double border. The outer border contains the text "SAHDEV YADAV CHASWAL ADVOCATE SOCIETY" at the top and "DELHI" at the bottom. The inner border contains the text "ARBITRATOR" at the top and "DELHI" at the bottom.

5.2 It is evidently clear that the Respondent knowingly chose to registered and use the disputed domain name <*guessindias.net.in*> to confuse customers from the Complainants' official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.

5.3 As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

**"Brief of Disputes:** Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

**(i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**

**(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and**

**(iii) the Respondent's domain name has been registered or is being used in bad faith.**

5.3 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

**I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.**

5.4 The Complainant further submits that any person or entity using the mark "GUESS" as a domain name that too with related keyword referring to its corporate name "GUESS" is bound to lead customers and users to infer that its product or service has an association

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or nexus with the Complainant and lead to confusion and deception. It is indeed extremely difficult to foresee any justifiable use that the Respondent may have with the disputed domain name. On the contrary, registering this domain name gives rise to the impression of an association with the Complainant, which is not based in fact. [**Daniel C. Marino, Jr. v. Video Images Productions, WIPO-D2000-0598**].

Paragraph 3 of the INDRP is reproduced below:

*"The Respondent's Representations: By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that: the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate; to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations. It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."*

- 5.11 The Respondent / Registrant has failed in his responsibility in submission of its detailed reply as discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <**guessindias.net.in**> is identity theft, identical with or deceptively similar to the Complainants' mark. Accordingly, the undersigned conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.
- 5.12 The Respondent by choosing to register and use a domain name which is not only fully similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant.

Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [*Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO- D2005-0321 – mtvbase.com*]

**II. The Respondent has no rights or legitimate interests in respect of the disputed domain name**

- 5.13 The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 5.14 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.
- 5.15 The domain name in dispute was registered in 2023, which is much later than the time of the Complainant and its affiliates' earliest use and registration of the trademarks "GUESS" and the domain name <*guessindias.net.in*> and there is no relationship between the Complainant and the Respondent. The Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to "GUESS" reasons justifying that the impugned domain name is being registered and/ or used in bad faith.
- 5.16 The Respondent has not submitted its reply and has failed to rebut how the respondent has created the right over the domain name, when as a trademark it is registered and domain name by third party as such mere absence of contentions of the Respondent does not establish his/ her interest in protecting right and interest in the domain name. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name.

For these reasons, the Arbitrator opines that the Respondent / Registrant have no rights or legitimate interests in the disputed domain name.

**III. The disputed domain name has been registered or is being used in bad faith.**

5.17 It has been contended by the Complainant that the Respondent / Registrant has registered and used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

5.18 Further the due to act of the Respondent / Registrant has prevented the Complainant, who is the owner of the mark "GUESS" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "GUESS". Moreover, the Respondent / Registrant, who have intently, invoke private policy to conceal its actual identity details and have not been replying to the communications sent by the complainant.

5,19 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith:

5.20 *"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct;*

*or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."*

- 5.21 From the circumstances of the case and the evidences placed before me by the Complainant herein, I am of the opinion that the Respondent / Registrant had no previous connection with the disputed domain name and being web designer it has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.
- 5.22 Moreover, use of similar disputed domain name by the Respondent / Registrant would certainly result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainants as disputed domain name <guessindias.net.in>, is associated exclusively with the complainant, by the trade and public in India and all over the world.
- 5.23 Further the due to act of the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark "GUESS" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "GUESS". Moreover, the Respondent / Registrant, who have intently, invoke private policy to conceal its actual identity details and have not been replying to the communications sent by the complainant.
- 5.24 Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp with a grid pattern. The text in the stamp reads "SANJEEV KUMAR CHASWAL ADVOCATE SOLE ARBITRATOR \* DELHI \*".

## 6 DECISION

- 6.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein
- 6.2 The Complainant has given sufficient evidence to prove trademark rights on the disputed domain name. Further; the Respondent's registration of the domain name is dishonest and malafide.
- 6.3 That the complainant has also provide domain details wherein the registrant / respondent has also registered many similar, where probably the actual prior domain owner does not know that the similar domain registered by the third party, the registration of many similar domain names by the present registrant / respondent clearly indicates that the respondent is regular squatter and it registers similar domain names regularly and later trade upon as ransom on higher rates with rightful owners right.
- 6.4 Further the due to act of the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark "GUESS" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "GUESS". Moreover, the Respondent / Registrant, who have intently, invoke private policy to conceal its actual identity details and have not been replying to the communications sent by the complainant.
- 6.5 The document attached by the complainant here in clearly shows that the thus it clearly shows that the domain owner of [guessindias.net.in](http://guessindias.net.in) is a squatter and does not have legitimate right claim over the domain name and the present respondent cannot claim or derive right of the third party, who is owner of the trademark "GUESS".



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6.6 The Respondent / Registrant have not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.

**[Relevant WIPO decisions: *Uniroyal Engineered Products, Inc. v. Nauga Network Services* D2000-0503; *Thaigem Global Marketing Limited v. SanchaiAree* D2002-0358; *Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano* D2003-06611**

6.7 It is a settled proposition that the registration of a domain name incorporating a well-known trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision. in *Trivago N.V. is. Shiv Singh (INDRP/1 171)* and *WIPO decisions in Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767*.

6.8 While the overall burden of proof rests with the Complainant, The panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent.

6.9 Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie the case* is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is very much clear that the Respondent / Registrant who is actually squatter is using the disputed domain name in bad faith and has registered the domain name.

**[Relevant WIPO decisions: *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* D2003-0455; *Belupod.d. v. WACHEM d.o.o.* D2004-01101**


- 6.10 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant has no right or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.
- 6.11 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element. *FAIRMONT Sons Ltd v. mmt admin / OkFAIRMONTbyebye.com (WIPO Decision Case No. D2009-0646), F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. meixudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304*
- 6.12 The prior decision of a Panel in *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, *It was held that "The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier. A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant."*
- 6.13 It was observed that *"it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights"* and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.



The image shows a handwritten signature in black ink on the left. To its right is a circular stamp with a double border. The text inside the stamp reads "SANJEEV KUMAR CHASWAL \* ADVOCATE \* SOLE PROPRIETOR" around the perimeter and "DELHI" in the center.

In the present dispute as well, the WIPO Administrative Panel in *Veuve Clicquot Ponsardin, Maison Fondée en 1772 vs. The Polygenix Group Co., WIPO Case No. D2000-0163* has been held that registration of a domain name so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.

As the Registrant / Respondent, who had obtained registration of domain name <*guessindias.net.in*> unauthorisedly in the year 2023 through the IN. registry Registrar's and the impugned registration is valid up to 26<sup>th</sup> of August 2024, as and the said registration just have few more months for completion, as such no financial loss will occur to the Registrant / Respondent, if the impugned registration is restored back to the complainant herein but if the impugned registration is not restored to back complainant then monetarily as well as reputation, goodwill loss will certainly occur to the complainant herein as the impugned domain <*guessindias.net.in*> will be open to misuse and misappropriation by any third party.

As such, it is clearly proves from the document as mentioned that the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name <*guessindias.net.in*> be transferred from the Registrant / Respondent restored Back to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.



**SANJEEV KUMAR CHASWAL  
SOLE ARBITRATOR  
INDRP ARBITRATION NIXI**

**NEW DELHI**

**DATE 20<sup>th</sup> of March 2024**