



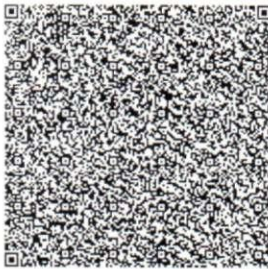
सत्यमेव जयते

INDIA NON JUDICIAL

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e-Stamp

Certificate No.	: IN-DL130608495124010
Certificate Issued Date	: 08-Feb-2016 03:46 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL921303246835925270220
Purchased by	: SANJAY KUMAR SINGH ARBITRATOR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SANJAY KUMAR SINGH ARBITRATOR
Second Party	: Not Applicable
Stamp Duty Paid By	: SANJAY KUMAR SINGH ARBITRATOR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)
INDRP CASE NO - 772.

Lucky Brand Dungarves - - - Complainant

versus.

Mr. Joti Tyagi

- - - Respondent.

Sanjay Kumar Singh
09-02-2016

Statutory Alert:

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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Lucky Brand Dungarees,
LLC, 540 S Santa Fe Avenue,
Los Angeles, California 90013,
USA.

Through its authorized representative
Mr. Vikrant Rana, S. S. Rana & co Advocates,
317, Lawyers Chambers, High Court of Delhi,
New Delhi-110003,
India.

E-mail: vikrant@ssrana.com

COMPLAINANT

Versus

Mr. Joni Tyagi
Logic Techsoft
Gurgaon, Nida
Uttar Pradesh-201301
E-mail: jonityagi32@gmail.com

RESPONDENT

II. THE PARTIES

A. THE COMPLAINANT:

1. The Complainant in this administrative proceeding is Lucky Brand Dungarees, LLC, 540 S Santa Fe Avenue, Los Angeles, California 90013, USA.
2. Complainant's authorized representatives in this administrative proceeding are:
Mr. Vikrant Rana, S. S. Rana & co Advocates, 317, Lawyers Chambers, High Court of Delhi,
New Delhi-110003, India E-mail: vikrant@ssrana.com.

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B. THE RESPONDENT

The Respondent (amended) in this administrative proceeding is:

Mr. Joni Tyagi

Logic Techsoft

Gurgaon, Nida

Uttar Pradesh-201301

E-mail: jonityagi32@gmail.com

III THE DOMAIN NAME AND REGISTRAR:

This dispute concerns the domain name identified below:

< luckybrand.in >

The Registrar with which the domain name is registered is given below:

GoDaddy.com (R101-AFIN)

The present Complaint has been filed by the complainant on account of the unauthorized and illegal registration and use of the Complainant's trademark "LUCKYBRAND" as part of its domain name by the Respondent.

The complainant has contended the following grounds in support of the Complaint in accordance with the .In Domain Name Dispute Resolution Policy:

1. The Registrant's domain name "luckybrand.in" incorporates the Complainant's trademark "LUCKYBRAND" and is identical or confusingly similar to the Complainant's trading style and Trademark "LUCKYBRAND", in which the Complainant has exclusive rights.
2. The Registrant has no rights or legitimate interests in respect of the impugned domain name.
3. The Registrant's domain name has been registered and is being used in bad faith.
4. The Registrant has intentionally attempted to attract Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's name and mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website.

IV Factual and legal Grounds:

The complainant has contended the following grounds:

1. The Complainant is engaged in the business of designing and selling Jeans for both men and women since year 1990. Further the complainant also offers other merchandise ranging from SKIRTS, SHIRTS, DROUSES, pants, jackets, vests, sweaters, dress jumpsuits, shorts,

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jerseys, scarves, tunics, blazers, neckwear, belts coats, hats, caps, gloves, underwear, camisoles, teddies and slips etc.

2. The complainant has submitted that it is the registered proprietor of trademark "LUCKYBRAND" in numerous countries of the world which are relevant in establishing their right as proprietor of the said trademark.
3. The complainant has submitted that the complainant has acquired excellent reputation and valuable goodwill in the trade name "LUCKYBRAND". Further the complainant has made significant investments to promote its goods and services under the trademark "LUCKYBRAND". The complainant has made substantial investments to promote its goods and services and its total expenditures on paid advertising run into USD 16.5 million.
4. The complainant has submitted that in addition to all the above, it has also registered the domain name "luckybrand.com" since October 07, 1999. In addition to the said domain name the complainant also owns the top level Indian domain name <luckybrand.co.in>.
5. The complainant has submitted that the present complaint has been filed on account of the unauthorized and illegal registration and use of the Complainant's prior trademark "LUCKYBRAND" as part of its domain name by the Respondent.

RESPONDENT

1. The Respondent in the present dispute has registered the domain name "luckybrand.in". The Complainant has submitted that Respondent is seeking to capitalize on the goodwill associated with trademark of Complainant and has registered in bad faith and without authorization, the domain name in issue "luckybrand.in", which (i) wholly incorporates the word "LUCKYBRAND" (ii) is identical to the Complainant's trademark "LUCKYBRAND". The domain name "luckybrand.in" is identical to the trademark of the Complainant as well as the Complainant's existing website "luckybrand.com", thereby making confusion and deception inevitable.

COMPLAINANT'S CONTENTION

1. The Complainant has submitted that the Respondent has no legitimate justification for having registered a domain name incorporating word "LUCKYBRAND" and has no apparent use for the domain name other than to profit from the diverted traffic to its website, which may confuse the Registrant as the website of the Complainant. The Complainant has further submitted that the Complainant approached the Respondent to request him to cease all use of the impugned website and transfer the domain name "luckybrand.in" but the respondent failed to transfer the domain name "luckybrand.in" to the complainant.

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2. The complainant has submitted that the registration of the domain name "luckybrand.in" is clearly in bad faith. The DOT IN country level domain is registered by the Respondent which will confuse and divert customers to believe that the disputed domain name maybe a country level equivalent to the Complainant's legitimate website. The complainant has submitted that the two domain names is identical and bad faith registration is writ large. It has been submitted by complainant that the act of registering a domain name, which incorporates the Complainant's trademark "LUCKYBRAND", by the Respondent is likely to cause confusion, deception or persuade Internet users into believing that the registration by the Respondent of the domain name <luckybrand.in> has been effected on behalf of the Complainant or is sponsored, licensed or authorized by, or that the Respondent is affiliated, connected or otherwise associated with the Complainant or its services. The domain name "luckybrand.in", registered in the name of the Respondent is causing considerable damage to the Complainant's business interests, apart from prejudicing substantial public interest.
3. The Complainant submits that the unlawful registration of the domain name by the Respondent would and is resulting in the dilution of the Complainant's trademark and service mark "LUCKYBRAND". The illegal registration of the above-mentioned domain name is causing irreparable damage and injury to the Complainant's reputation and goodwill.
4. The complainant has prayed that domain name "luckybrand.in" be transferred in favour of the Complainant and costs be also awarded in the matter.

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "luckybrand.in"
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
6. The complainant has stated in his complaint that:

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- i. The Registrant's domain name "luckybrand.in" incorporates the Complainant's trademark "LUCKYBRAND" and is identical to the complainant's trading style and service mark "LUCKYBRAND", in which the Complainant has exclusive rights.
 - ii. The Registrant has no rights or legitimate interests in respect of the impugned domain name.
 - iii. The Registrant's domain name has been registered and is being used in bad faith.
 - iv. The Registrant has intentionally attempted to attract Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's name and mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website.
7. The complainant as such has prayed for an award in the above matter for the transfer of the domain name "luckybrand.in" in favour of the complainant. The complainant has also prayed for cost in its favour.
8. On 23-01-2016, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter / reply and rejoinder with the supportive document/evidence.
9. On 24-01-2016 I received the intimation / e-mail from the respondent from the e-mail id of the respondent jonityagi32@gmail.com stating that the shop banner has been destroyed and the Facebook page also closed and the respondent and further there is no belonging he has to luckybrand. The respondent in the said email dated 24-01-2016 has further stated that the company can take the domain name to their address.
10. In the facts and circumstance stated above the award is hereby passed in view of the e-mail of the respondent from e-mail id of the respondent jonityagi32@gmail.com whereby he has conceded that the company can take the domain name to their address.
11. Further It has been held in **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & 'Siffy' were held to be phonetically similar and addition of word 'net' in one of them would not make them dissimilar. It is held in above case that in modern time's domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and

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trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Therefore, this matter is being decided as per law of the land as discussed above and in view of the reply / e-mail of the respondent from e-mail id of the respondent ionityagi32@gmail.com whereby he has conceded that the company can take the domain name to their address.


RELIEF

The domain name < luckybrand.in > of respondent be transferred to the complainant in view of law of the land and the e-mail of the respondent from his e-mail id "ionityagi32@gmail.com" whereby he has conceded that that the company can take the domain name to their address and further that the domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name < luckybrand.in > to him, as complainant has established its bonafide rights in trademark in facts and circumstances and in view of the law discussed herein above. Hence I direct that the Domain name be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 09-02-2016.


(Sanjay Kumar Singh)
Arbitrator