

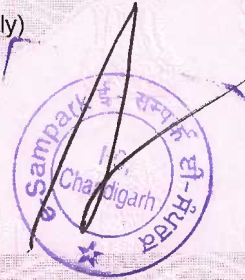
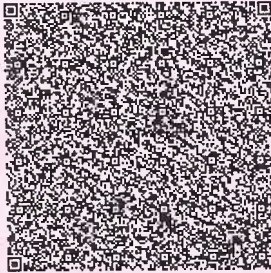


सत्यमेव जयते

# INDIA NON JUDICIAL Chandigarh Administration

## e-Stamp

Certificate No. : IN-CH058578308850810  
Certificate Issued Date : 29-Nov-2016 03:16 PM  
Certificate Issued By : chmukumau  
Account Reference : IMPACC (GV)/ chimpsp07/ E-SMP HIGH COURT/ CH-CH  
Unique Doc. Reference : SUBIN-CHCHIMPSP07116427571799320  
Purchased by : ANMOL  
Description of Document : Article 12 Award  
Property Description : HNO-187 ADVOCATE SOCIETY SEC-49 CHD  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : ASHWINIE KUMAR  
Second Party : Not Applicable  
Stamp Duty Paid By : ASHWINIE KUMAR  
Stamp Duty Amount(Rs.) : 120  
(One Hundred And Twenty only)



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### ARBITRATION AWARD

(On Stamp Paper)

*Ashwinie B*

VO 0005513559

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
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**INDRP ARBITRATION**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA**  
**[NIXI]**

**ARBITRAL TRIBUNAL CONSISTING OF**  
**SOLE ARBITRATOR:**  
**DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.**  
**Advocate, Punjab & Haryana High Court,**  
**Chandigarh**

**In the matter of:**

Lumenpulse Lighting Inc.  
1751 Rue Richardson,  
Montreal, Quebec,  
H3K1G6 Canada

**...Complainant**

**VERSUS**

Abhay  
Lumenpulse Technologies,  
134-1, Runwal Commercial Complex,  
Opp.Veena Nagar, L.B.S. Rd., Mulund (W)  
Mumbai – 400080,  
Maharastra, India

**...Respondent/Registrant**

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**REGARDING: DISPUTED DOMAIN NAME:  
www.lumenpulseled.in**

**1. The Parties:**

**Complainant:**

Lumenpulse Lighting Inc. 1751 Rue Richardson, Montreal, Quebec,  
H3K1G6 Canada.

**Respondent:**

Abhay, Lumenpulse Technologies, 134-1, Runwal Commercial  
Complex, Opp.Veena Nagar, L.B.S. Rd., Mulund (W) Mumbai -  
400080, Maharastra, India.

**2. The Domain Name and the Registrar:**

The disputed domain name <lumenpulseled.in> is registered with  
Trunkoz Technologies Private Limited d/b/a OwnRegistrar.com  
(the "Registrar").

**3. Procedural History [Arbitration Proceedings]**

A Complaint has been filed with the National Internet Exchange  
of India (NIXI). The Complainant has made the Registrar  
verification in connection with the disputed domain name  
<lumenpulseled.in>. It is confirmed that at present the  
Respondent is listed as the Registrant and provided the  
administrative details for administrative, billing and technical  
contact.

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NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole Arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

**Service of Respondent through emails:** NIXI had sent the copy of the Complaint and annexures to the Respondent by email on 01.11.2016. In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed the Respondent on 16.11.2016, with copy to Complainant and NIXI, through the email, to give his Reply within 15 days. The Complainant was also requested to send a soft copy of the Complaint to the Respondent along with Annexures and accordingly the Complainant had sent a soft copy of the Complaint and Annexures on 18.11.2016 to the Respondent as per direction of the Arbitrator. Hence Respondent is deemed to have been served at the email id given in the whois record.

**Service of Respondent through hard copies:** NIXI had sent the hard copy of the Complaint and annexures to the Respondent. Notice was also sent by the Arbitrator to the Respondent through speed post on 18.11.2016 on the address given in whois record. As per email received from NIXI on 23.11.2016, DTDC the courier agency has returned the consignment sent by NIXI to the address of the Respondent for the reason that incomplete address. The letter sent by the Arbitrator through speed post on 18.11.2016 has also been returned with a remark "Left". Section 3 of the Arbitration and Conciliation Act, 1996 provides as under:

"3.Receipt of written communications.- (1) Unless otherwise agreed by the parties,-  
(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at

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his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority."

In view of Section 3 of the Act reproduced above, Respondent is deemed to have been duly served. Respondent has failed to give any response to the Complaint inspite of expiry of stipulated period given to him vide email dated 16.11.2016 of the Arbitrator.

Respondent has not filed the Reply to the Complaint.

#### **4. Factual Background**

The Complainant is a pure-play specification-grade LED lighting solutions provider with a global presence. The Complainant was incorporated in Canada in 2008.

Complainant is registered proprietor of LUMENPULSE trade mark internationally. Complainant has registered the domain name <lumenpulse.com> which incorporates registered trade mark LUMENPULSE as early as in 2006.

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The Respondent has registered the disputed domain name <lumenpulseled.in> on 25.01.2016. Hence, present Complaint has been filed by the Complainant against the Respondent.

## **5. Parties Contentions**

### **A. Complainant**

The Complainant was founded by Francois-Xavier Souvay who has been in lighting industry for over 20 years. In 1999, Mr. Souvay bought over a company called Luxtec which was in the business of distributing LED lights and spent several years in research and development of lighting solutions in the field of LED lighting. In 2008 based on the research and the expertise that Mr. Souvay had gained, the Complainant was incorporated with the trading name Lumenpulse Lighting Inc. The Complainant is based out of Canada with operations in several countries, including its United States Headquarters and Global Technology Development Center is Boston, Massachusetts, EMEA Headquarters in London, United Kingdom, Southeast Asian Headquarters in Singapore Godown, Singapore, as well as offices in Paris, France and Manchester, United Kingdom. In 2014, the Plaintiff became a public company and is currently listed on the Toronto Stock Exchange. With over 300 personnel working globally, the Complainant is an international company with its products sold globally. The Complainant in addition to distributing its products has been involved in the installation of lighting displays as several monuments globally.

In India, the Complainant was referred to as a well-reputed international brand by the Shiromani Gurdwara Parbandhak

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Committte, Amritsar (SGPC) who had called upon tenders from international lighting fixtures manufacturers for the lighting of the Golden Temple in Amritsar.

The Complainant has registrations as well as pending applications for its Trademark LUMENPULSE in various classes in many jurisdictions of the world as per long list given in the Complaint. Few registration certificates of some of the Trademarks have also been produced by the Complainant. Certificate of registration LUMENPULSE Trademark was issued by the United States of America under registration No. 4,071,210 on 13.12.2011 under class 11.

The Complainant initially encountered the Respondent when in 2014 the Respondent had registered the domain [www.lumenpulselighting.com](http://www.lumenpulselighting.com) which not only incorporated the Complainant's LUMENPULSE trademark in the domain name but also listed products which were identical to the Complainant's. Aggrieved by this the Complainant sent the Respondent a 'Cease and Desist' Notice informing them of the Complainant's trademark rights and directing them to stop using the trademark. A copy of the notice was also sent to the Respondents email address. Subsequent to this, the Complainant filed a suit for trademark infringement along with an application for interim injunction before the Bombay High Court in August 2015 which were numbered CS. OS 812 of 2015 and Notice of Motion 2154 of 2015 respectively. On October 19, 2015, the Bombay High Court was pleased to grant an ex-parte interim injunction against the Respondent for the use of the trademark LUMENPULSE and any deceptively similar trademark. In the order there was a clerical error as to the domain name

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registered by the Respondent so the order was modified on October 27, 2015.

Additionally, the Complainant had filed a complaint with the National Arbitration Forum for the recovery of the domain lumenpuslelighting.com registered by the Respondent under the UDRP which was awarded in the Complainant's favour on December 20, 2015.

Subsequent to all of the aforementioned actions taken the Respondent and an existing interim injunction against them for the use of the trademark LUMENPULSE or any deceptively similar mark, the Respondent has in clear violation of the order of the Hon'ble High Court of Bombay, has registered the disputed domain <lumpulseled.in> on January 25, 2016.

The disputed domain name <lumpulseled.in> is identical or confusingly similar to the Complainant's Trademark. The Respondent has no rights or legitimate interest in respect of the domain name <lumpulseled.in>. The disputed domain name was registered or is being used in bad faith.

### **B. Respondent**

The Respondent has not filed the Response to the Complaint nor any evidence inspite of opportunity given to him.

## **6. Discussion and Findings**

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the Arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any

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exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response.

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

*"4. Types 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 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.*

*The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."*

The Arbitrator will address the three aspects of the Policy listed above.

**A. Identical or Confusingly Similar**

The Complainant has established that it has got registered trademark rights in its trademark LUMENPULSE and same has been registered in United States of America, China, Canada, Singapore,

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India and few other countries in various classes. The Complainant has also filed applications in India for registration of trademarks in which are pending. The Complainant has produced list of Trademarks which are already registered and list of Trademarks for which it has made applications for registrations with the Trademarks Registry.

The Trademark has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration.

The Respondent has registered the disputed domain name <lumenpulseled.in> wholly incorporating the Trademark of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy<sup>1</sup>. Internet users who enter the disputed domain name <lumenpulseled.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Arbitrator finds that the disputed domain name <lumenpulseled.in> is confusingly similar to the website and Trademark of the Complainant.

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<sup>1</sup> See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

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## **B. Rights or Legitimate Interests**

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name<sup>2</sup>.

The Respondent has registered the disputed domain name incorporating the Trademark LUMENPULSE owned by the Complainant. The Complainant has been using the Trademark for many years. The Complainant has not authorized or permitted the Respondent to use the Trademark.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <lumenpulseled.in> as per Paragraph 7 of the Policy. The Arbitrator finds that the Complainant has made out a *prima facie* case.

Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <lumenpulseled.in>.

## **C. Registered and Used in Bad Faith**

Paragraph 6 of the Policy identifies, in particular but without

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<sup>2</sup> See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

*"6. Evidence of Registration and use of Domain Name in Bad Faith*

*For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:*

*(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*

*(ii) the Registrant 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 Registrant has engaged in a pattern of such conduct; or*

*(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's*

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*name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."*

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered the disputed domain name <lumenpulseled.in> and used the same and attempted to attract, for commercial gain, internet users to his website. The Complainant has not granted the Respondent permission, or, a license of any kind to use its Trademark and register the disputed domain name <lumenpulseled.in>. Such unauthorized registration of the Trademark by the Respondent suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <lumenpulseled.in> which wholly incorporates the Trademark of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark .

Complainant had filed suit (L) No. 812 of 2015 in Bombay High Court against the same Respondent regarding another domain name [www.lumenpulselight.com](http://www.lumenpulselight.com) in which the High Court had granted ad-interim injunction in favour of the Complainant as against the same Respondent vide its order dated 19.10.2015. In its

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order dated 19.10.2015, the High court has observed in para 6 as under:

"6. The documents at page 664 and 684 clearly demonstrate that the Defendant is using the Plaintiff's mark with the addition of the word "light". There is very little doubt, given that the products are in the same channels, that the Defendant is attempting to pass off his products as those originating from the Plaintiff. There is in fact no manner to distinguish the two since the Defendant uses the same word "LUMENPULSE" and prima facie it is difficult to see how the adoption of that mark can be said to be bona fide."

It is interesting that inspite of interim directions issued by the court, Respondent had subsequently registered the disputed domain name on 25.01.2016.

In view of the facts stated above, the Arbitrator therefore finds that the disputed domain name <lumenpulseled.in> has been registered by the Respondent in bad faith. The Trademark has been a well-known name. The domain disputed name <lumenpulseled.in> is confusingly similar to the Complainant's Trademark , and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <lumenpulseled.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <lumenpulseled.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <lumenpulseled.in> be transferred in favour of the Complainant.

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7. **Decision**

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <lumenpulseled.in> is similar to the Trademark in which the Complainant has rights.

The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.lumenpulseled.in> be transferred to the Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 10.12.2016



**Dr. Ashwinie Kumar Bansal**

**Sole Arbitrator**

Advocate, Punjab and Haryana High Court

#187, Advocates Society, Sector 49-A

Chandigarh, India