



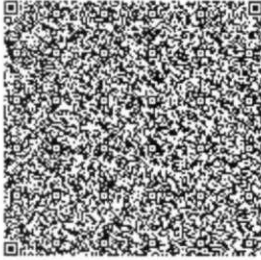
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL73271772267156N
Certificate Issued Date	: 20-Oct-2015 10:27 AM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP1744390136447270N
Purchased by	: JAYANT KUMAR
Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: JAYANT KUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: JAYANT KUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

IN THE MATTER BETWEEN

McDonald's Corporation

v.

Zhaxia

Complainant

Respondent

Statutory Alert:

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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.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

ARBITRATION AWARD

1. The Complainant is McDonald's Corporation, a company incorporated under the laws of Delaware having its address at 2915, Jorie Boulevard, Oak Brook, Illinois, 60523, USA.
2. The Arbitration pertains to the disputed domain name <mcdonalds.co.in>, registered on April 6, 2012 by the Respondent. The registrar for the disputed domain name is IN Registrar d.b.a. inregistrar.com.
3. The sole arbitrator appointed in this complaint by NIXI is Jayant Kumar. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI on September 21, 2015.
4. The Complaint was handed over to the Arbitrator by NIXI on September 23, 2015. The Arbitrator vide email dated September 24, 2015 directed the Respondent to file Reply by October 15, 2015.
5. On September 30, 2015, the Arbitrator was informed by NIXI that a physical copy of the complaint could not be served upon the Respondent since courier could not be delivered on the address of the Respondent as it was reported incorrect/incomplete address by the courier agency.
6. The Arbitrator therefore directed the Complainant to serve a copy of the complaint along with annexures upon the Respondent by email. The Complainant accordingly served the Complaint along with annexures upon the Respondent by email dated October 1, 2015.



7. The Respondent did not file its Reply to the Complaint by October 15, 2015. The Respondent was thereafter granted a final opportunity vide email dated October 17, 2015 to file its Reply by October 26, 2015.
8. The Respondent did not file its Reply by October 26, 2015 and is therefore proceeded *ex-parte*.

Complainant's Submissions

9. The Complainant states that it has established business in relation to quick service restaurants, snack shops and cafeterias known as McDonald's, all over the US since 1955 and thereafter in many countries and territories of the world including India.
10. The Complainant states that it owns trademark registration for the mark McDONALD'S in India in various classes since 1983, particularly Registration No. 404090 in class 32, 404107 in class 29, 404108 in class 30, 603932 in class 14, 603933 in class 16, 603934 in class 25, 603935 in class 28, 603936 in class 29, 603937 in class 30 and 603938 in class 32. The Complainant claims to have been using the mark McDONALD'S in India since October 13, 1996. The Complainant's first restaurant opened in India on October 13, 1996 in New Delhi and since then more than three hundred and fifty restaurants have commenced operations in various cities in India.
11. The Complainant states that it has registered and is using the mark McDONALD'S in more than 100 countries of the world, details of which were also provided in the complaint.
12. The Complainant states that it owns the domain name <mcdonalds.com> since July 12, 1994, <mcdonaldsindia.com> since July 1, 1998 and <mcdonalds.in> since February 14, 2005 and many other domain names featuring the mark McDONALD'S.

13. The Complaint states that McDONALD'S is one of the top brands of the world and feature in many brand rankings and has received various awards/accolades, including featuring in the Guinness Book of World Records for largest restaurant chain in the world.
14. The Complaint states that the mark McDONALD'S has acquired significant goodwill and reputation and is well known in India within the meaning of Section 2(zg) of the Trade Marks Act, 1999.
15. The Complainant further states that it has successfully enforced the mark McDONALD'S in India against various infringers.
16. The Complainant submitted that the domain name <mcdonalds.co.in> is confusingly similar to its mark McDONALD'S.
17. The Complainant submitted that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent registered the disputed domain name after the Complainant had acquired and established rights in the trademark McDONALD'S. It was also submitted that there exists no relationship between Complainant and the Respondent and the Respondent is not commonly known by the disputed domain name and is not making legitimate non-commercial or fair use of the disputed domain name.
18. The Complainant submitted that the disputed domain name was registered and is being used in bad faith. The Respondent is not hosting any business website at the disputed domain name and has listed it for sale.

Discussion and Finding

19. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the

.IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

- a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- b. The Respondent has no rights or legitimate interests in respect of the domain name; and
- c. The Respondent's domain name has been registered and is being used in bad faith.

20. The Arbitrator finds that the Complainant has submitted sufficient documentary evident, including trademark registration certificates, to establish ownership in the mark McDONALD'S. The Arbitrator is convinced with the distinctive nature of and the Complainant's ownership in the mark McDONALD'S. The disputed domain name incorporates the mark McDONALD'S in entirety and hence, the disputed domain name is held to be confusingly similar with the Complainant's mark.

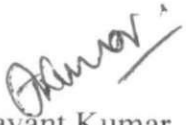
21. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) the registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Respondent has not filed any evidence on record to show that the Respondent has made preparations to use the disputed domain name for a bona fide offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes legitimate non-commercial fair use of the website linked to the disputed domain name. Moreover, the Respondent does not appears to have any connection with the mark McDONALD'S. The Complainant has

rightly submitted that the Respondent is not making a legitimate or fair use of the disputed domain name for offering goods or services and has rather placed the said domain name on sale to extract unfair profits from such sale proceeds. Based on the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

22. The Respondent has not made any bonafide use of the domain name or any website that connects with the domain name, and has listed it for sale. It is evident that the sole intention of the Respondent in registering the domain name is to sale it to extract unfair profits and is now holding the domain name only to attract potential buyers for it. Based on this, the Arbitrator finds that the disputed domain name was registered and is being used in bad faith by the Respondent.

Decision

23. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <mcdonalds.co.in> be transferred to the Complainant.


Jayant Kumar
(Sole Arbitrator)

Dated: November 6, 2015