



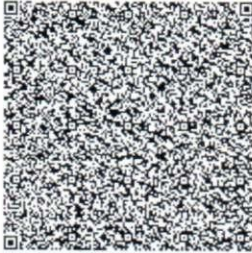
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Description of Document	: Article 12 Award
Property Description	: Not Applicable
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ARBITRATION AWARD
IN THE MATTER OF HOUZZ, INC. VS. SURESH BALA IN RESPECT OF
DISPUTED DOMAIN NAME <THEHOZZ.CO.IN>

Statutory Alert:

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ARBITRATION AWARD

**.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF
INDIA**

**.IN domain Name Dispute Resolution Policy INDRP
Rules of Procedure**

IN THE MATTER OF:

HOUZZ, INC.,
285 Hamilton Avenue
4TH Floor Palo Alto
California 94301 U.S.A.

..... Complainant

VERSUS

Suresh Bala
Plot No. 88, second Floor
LIC Colony, Near ITI college
Vijayawada
Andhra Pradesh 520008
India

..... Respondent

1. THE PARTIES:

- 1.1. The Complainant in this administrative proceeding is HOUZZ, INC., 285 Hamilton Avenue 4TH Floor Palo Alto California 94301 U.S.A. and is represented through Anand and Anand First Channel, Plot 17-A, Sector 16-A, Film City, Noida.
- 1.2. The Respondent in this administrative proceeding is Suresh Bala Plot No. 88, second Floor LIC



Colony, Near ITI college Vijayawada Andhra Pradesh 520008 India.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <thehouzz.co.in> has been registered by the respondent. The registrar with whom the disputed domain is registered GoDaddy.com.

3. **PROCEDURAL HISTORY**

3.1 The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Suresh Bala, 88, second Floor LIC Colony, Near ITI college Vijayawada Andhra Pradesh 520008 India. The NIXI verified that the Complaint together with the annexures to the Complaint satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules")

3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with INDRP Policy and The Arbitration and Conciliation Act, 1996, Rules framed there under. The parties were first notified about my appointment of as Arbitrator on **11th September , 2017.**

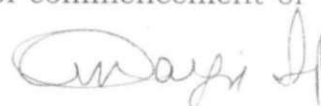


3.3 The panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on 11th September, 2017. In accordance with the rules, paragraph 5(c), the Respondent was notified about the commencement of arbitration proceedings and was sent the complaint along with all the Annexure by NIXI.

3.4 The respondent was duly served with the Complainant through email and filed the reply on 11th September 2017. The response as has been filed by the Respondent, was forwarded to the Complainant and 7 days time was given to them to file rejoinder, if any, under the cover of my e-mail dated 18th September, 2017. The Complaint did not file any rejoinder to the response filed by the Respondent.

3.5 The panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

3.6 The present award is passed within the period of 60 days from the date of commencement of

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Arbitration proceedings as per Paragraph-5 of the rules.

4. **FACTUAL BACKGROUND**

4.1. The Complainant claims to be the proprietor of the trade mark/Trading style "HOUZZ" which is used Internationally including India since the year 2008, providing services in connection with home remodeling and designing services. The complainant also holds registration for trademark/ service mark HOUZZ in different countries in the world and earliest registrations being in Australia as of September 7th, 2012. The domain www.houzz.com is also registered in the name of the Complainant, which enables Indian customers to avail their services. Apart from this, application for registration of the trade mark/ service mark HOUZZ are pending registrations in several jurisdictions around the world. The trade mark HOUZZ of the Complainant has received widespread International press coverage having circulation in India.

4.2. The disputed domain name <thehouzz.co.in> was registered by the respondent on December 22nd, 2015. And the aggrieved by said registration, present complaint is filed.

5. **PARTIES CONTENTSIONS**

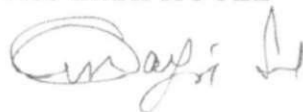
5A **COMPLAINANT**



5A-1 The complainant provides services in connection with home remodeling and designing bringing home owners and home professionals together in a unique visual community. They provide a platform whereby consumers can browse and save beautiful home photos. They help find the right designs and construction professionals. Houzz initially started as a side project but is now a community of more than 35 million homeowners, home design enthusiasts and home improvements professionals around the world.

5A-2 The complainant claims proprietor right in the trademark/service mark on account of priority in adoption and use thereof Houzz. Since the year 2008 the trademark/service mark HOUZZ has been used extensively as both trademark and trading styles in India as well as internationally. Because of such extensive use the complainant has built up impeccable reputation and goodwill amongst the public. The complainants have also received widespread media coverage. Extracts relating to the same are annexed as Annexure A to the complaint.

5A-3 The complainant has also promoted the trademark/service Houzz in the form of television advertisements videos etc. The complainant's trademark/service mark HOUZZ

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has also featured in leading magazines, newspaper, publication reports and media portals with global consumer reach. samples of the same are annexed as **Annexure E**. The complainant has also received vast amount of media coverage in India. Relevant extracts pertaining to the same are annexed as **Annexure F** to the Complaint.

5A-4 The social media presence of the complainant is vast and reaches a large consumer base in India. The services of the Complainant are available through range of internet platforms readily accessible in India such as Amazon, Instagram, Twitter and Facebook. The complainant also offers its services through Downloadable applications for mobile phones for Android, IOS and Windows. The high number of Houzz app installations are a proof of Complainants popularity. Relevant Data has been attached as **Annexure I**. The complainant's App was also awarded the overall best Android App of the Year at the Google Play Award in 2016. Indian consumers have also given positive reviews and testimonials across different forums regarding the services offered by the Complainants. The same have been annexed as **Annexure K** to the complaint.

5A-5 The details of Complainant's Trademark/ service mark are as under:



Mark	Registration	Class	Date of Application	Status
HOUZZ	3127345	9,35,36,37 & 42	13/10/2014	Pending

The complainant's Trademark/service mark is also registered/pending registration in numerous jurisdictions all over the world. Details and Copies of the registration certificates are enclosed as **Annexure L** to the complaint.

5A-6 The complainant have also successfully challenged the use HOUZZ either as a mark or as domain name in various jurisdiction over the world including India. Copy of the proceedings are enclosed as **Annexures M-P** to the Complaint.

5A-7 The Complainant has huge internet presence and its website www.houzz.in which is India specific is vital to its businesses. The Website targets both existing customers with various online services and also provides vital information for new customers. Statistics representing use and popularity of Complainants website is enclosed as **Annexure S** to the Complaint.

5A-8 The Respondent in the present dispute registered the domain name www.thehouzz.co.in on 22nd December 2015 thereby misappropriating illegally and without authority, the mark HOUZZ which is exclusive property of the Complainant. This date of registration of domain name is well after the first use of the trade mark/ service mark HOUZZ by the Complainant.

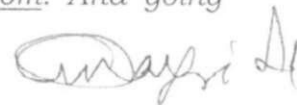


The Respondent, as aforesaid, filed his response to the averments made in the complaint and/or the documents filed in support thereof to the following effect

“you better stop this nonsense and do something productive. Don't think that writing crap and stuffing some legal terms makes you a hero. Tu are only making yourself a fool out of this. And going forward your e-mails will simply not reach me”.

In reply to E-mail dated 18.09.2017 sent by panel to the respondent for filing rejoinder, if any, the responded as under

“I am not sure about so many emails bombarding my inbox. And it seems none of these emails are bothered about mentioning the primary purpose. And why is that you are not bothered to reach the owner of the domain directly whose information is provided on their website? Also structure your emails properly so that it makes sense to the recipient. Look at the first email that I received without mentioning the details properly. A spam email is much better than this. I am the one who registered this domain name for one of our clients and if you want to talk to them you can deal with them. Given below is their contact information Trinadh Nanduri M.Tech(struct), MBA Sarayu Saniatry, 52-1/9-4, Jewel Kakatiya, NTR Colony, Vijayawada-520008 Andhra Pradesh, India, 0866-2450377, 7659810077, 7659820077 Sarayusanitary@gmail.com. And going

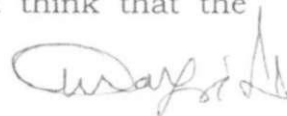


forward I will take the privacy of my Inbox seriously".
Keeping in view the fact that the respondents instead of meeting the case of the complainant on merits showed complete disregard to the p[process of law the panel has to proceed with the matter on the basis of the material on record and pass appropriate orders in accordance with law.

6. DISCUSSIONS AND FINDINGS

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the



present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.5 The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872). The material facts stated in the complaint have neither been dealt with nor specifically disputed or denied by the Respondent.

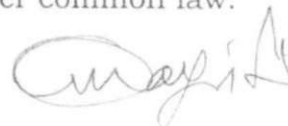


- 6.6 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.
- 6.7 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled. I, therefore, proceed to deal with the three elements under the policy irrespective of the deemed admissions made by the respondent to the averments made in the complaint and the documents filed on record.

A. IDENTICAL AND CONFUSINGLY SIMILAR

6A-1 The Complainant is the proprietor of the trademark/ service mark HOUZZ and holds common law as well as statutory rights therein. the complainants is also the owner of the domain names www.houzz.com and www.houzz.in

6A-2 The respondents' domain name incorporates in its entirety the mark HOUZZ of the Complainant in which the complainant has statutory as well as rights under common law.

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6A-3 The complainants has contended that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has prior rights.

6A-4 The INDRP decisions titled Taco Bell v. West Masters Casino, Dart Industries V. Lokesh laid down the proposition that incorporating a Trademark in its entirety, is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark.

6A-5 Internet users who are not aware that the complainant and the respondent have no affiliation, are bound to confuse or associate the respondent's activities as those either affiliated or endorsed by the Complainant.

6A-6 The Complainant is therefore successful in establishing the first element of INDRP and the panel finds that the disputed domain name is identical to the mark/domain name of the complainant. Consequently, the first requirement of paragraph 4 of the policy is satisfied.

**B. THE RESPONDENT HAS NO RIGHTS OR
LEGITIMATE INTEREST IN THE DISPUTED
DOMAIN NAME**

6B-1 Paragraph 7 of the Policy lists the following three non-existence methods for determining

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whether the Respondent has rights or legitimate interest in the disputed domain name:

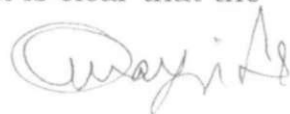
(i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*

(ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

(iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

6B-2 The Domain Names under the Policy are available to anyone on first come first serve basis. In case, any person or organization claims right over the Domain Name as violation of its trade/service mark rights, the onus is on such person/organization to prove the right in the mark and the burden thereafter shifts to the Respondent to prove its legitimate interest and the use of the Domain Name in good faith.

6B-3 Since the disputed domain name www.thehouzz.co.in comprises of the mark HOUZZ as a whole which is used in connection with Complainant's services, it is clear that the

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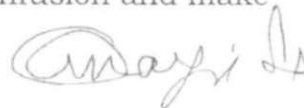
Respondent can have no right or legitimate interest in the said domain name,

6B-4 The respondents choice of the reputed Trademark as its domain name is completely unnecessary and lacks any legitimate business purpose and the sole purpose of carrying business through the impugned domain name is to create confusion as the source, sponsorship, affiliation or endorsement of activity being carried on through the website.

6B-5 The respondents uses the domain name www.thehouzz.co.in with respect to tiles, sanitary and all building related products. The complainant provides services in relation to home remodeling and designing. Thus a strong nexus exists between the two business and thus increased likelihood of confusion amongst the member of Public and Trade.

6B-6 The trading style of the respondent is 'SARAYU SANIATRY' and not HOUZZ. Thus he has no basis for the adoption of the impugned domain name but with a dishonest intention to trade upon the reputation and goodwill of the Complainant and wrongly misdirect consumer attention to respondent's website.

6B-7 The Respondent's website is not bona fide since the Respondent is trading on fame and recognition of the Complainant's reputed Trademark to cause initial confusion and make



illegal gains. The respondents on the website claims "the firm SARAYU SANITARY with brand name THE HOUZZ established in AP's capital Vijawada aim to become leader in the field of tiles, Sanitary and all building related products to be trading under the trademark "THE HOUZZ". The term HOUZZ has been given prominence by the respondents in order to mislead the consumers into believing that they are related to the Complainant. The respondent's domain name was registered on December 22nd 2015 which makes it impossible for them to be unaware of the existence of the Complainant at the time of registration.

6B-8 Use of confusingly similar or identical domain name to divert internet users is not use that can be termed as bona fide offering. Reliance is placed on Zurich American Insurance Corporation v. Administrator Domain WIPO Case Number D-2007-0481.

6B-9 From the above facts it can be adduced that the respondent has no right or legitimate interest in the domain name and the sole purpose of registering it is to misappropriate the reputation associated with complainant's trademark and ride upon its goodwill.

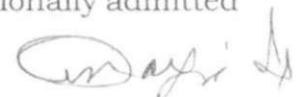
**C. RESPONDENT REGISTERED THE DOMAIN NAME
IN BAD FAITH**

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6C-1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C-2 For the purposes of establishing registration and use of Domain Name in bad faith by the Complainant, any of the following circumstances should be present:-

- i) Circumstances indicating that the Registrant has registered or acquired the Domain Name primarily for the purpose of selling, running or otherwise transferring the Domain Name registration to the Complainant, who bears the name or is the owner of the trade mark or service mark, or be 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 trade mark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged any pattern of such conduct; or
- iii) By using the Domain Name, the Registrant has intentionally admitted



to attract Internet users to the Registrant's Website or other online location, by creating a likelihood of confusion that the Complainant's 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 Registrant's Website or location.

6C-3 The domain name registered by the respondent www.thehouzz.co.in fully incorporates Complainant's trademark Houzz which shows respondent's intent to misappropriate Complainant's trademark.

6C-4 There is a strong likelihood that the respondent's use of domain name will cause third party to incorrectly:

- Believe that the Complainant has licensed the trademark HOUZZ to the respondent or has authorized the respondent to register the disputed domain name
- Believe that the respondent has some connection with the Complainant in terms of direct nexus or affiliation with the Complainant or has been authorized by the Complainant.

6C-5 In the above circumstances, the Panel concludes that the registration of impugned Domain Name was obtained in bad faith.



7. DECISION

The Complainant has succeeded in establishing all three elements of the policy.

In view of the above discussions, the Panel direct the transfer of impugned domain name <www.thehouzz.co.in> to the complainant.



AMARJIT SINGH
Sole Arbitrator

Dated: 10th November, 2017