



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.

Certificate Issued Date

Account Reference

Unique Doc. Reference

Purchased by

Description of Document

Property Description

Consideration Price (Rs.)

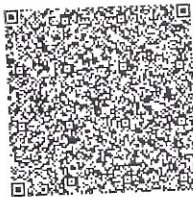
First Party

Second Party

Stamp Duty Paid By

Stamp Duty Amount(Rs.)

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: 13-Aug-2019 11:40 AM
: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
: SUBIN-DLDSLHIMP1781714058735027R
: POOJA DODD
: Article 12 Award
: Not Applicable
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: POOJA DODD
: Not Applicable
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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

PD

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.
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.

Disputed Domain Name: www.ikeahyderabad.in

Decision of Pooja Dodd, Sole Arbitrator

INDRP Case No. 1123

IN THE MATTER OF:

Inter IKEA Systems B.V.
Olof Palmestraat 1,
2616 LN Delft,
The Netherlands

...Complainant

Versus

Nitesh Nigam,
205, 2nd Floor,
6th Cross, 3rd Main,
MICO Layout, BTM Stage 2,
Bangalore,
Karnataka

...Respondent

1. The Parties:

1.1. The Complainant in this arbitration proceeding is Inter IKEA Systems BV, with its corporate headquarters at Olof Palmestraat 1, 2616 LN Delft, The Netherlands. The Complainant is represented by Ms. Shwetashree Majumder and Ms. Astha Negi of Findus Law Chambers, with office at F-12, Ground Floor, Sector 8, NOIDA- 201301.

1.2. The Respondent is Mr. Nitesh Nigam, residing at 205, 2nd Floor, 6th Cross., 3rd Main, MICO Layout, BTM Stage 2, Bangalore 560076, Karnataka, India. The email address connected with the Respondent is nitesh_del6@live.com and the phone number listed with the Domain Name Registrar is (91) 9886827847.

2. Domain Name and Registrar:

- 2.1. The Disputed Domain Name is www.ikeahyderabad.in which was registered on June 7, 2018.
- 2.2. The accredited Registrar with whom the Disputed Domain Name is registered is GoDaddy.com, LLC (R101-AFIN) with office at 14455 North Hayden Road, Suite 219 Scottsdale, AZ 85260-6993, United States of America.

3. Procedural History:

- 3.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the Policy and the Rules.

The history of the proceedings is as follows:

- 3.2. The Complaint was filed by the Complainant against the Respondent, NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules and emailed me to check if I had any conflict to be appointed as the Arbitrator. On July 5, 2019, I submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI, to ensure compliance with Paragraph 6 of the Rules.

- 3.3. NIXI notified the Parties of my appointment as the Arbitrator via email on July 15, 2019 and served an electronic as well as a physical copy of the Complaint on the Respondent. I informed the Parties about the commencement of Arbitration proceedings on July 15, 2019 and the Respondent was directed to submit a Response within 10 days.
- 3.4. On July 26, 2019, I informed the Parties that though no Response was received from the Respondent within the time period granted, in the interest of justice, I was granting additional time of 5 days, and that if no Response was filed by July 30, 2019, the Award would be passed on merits. The additional time period granted lapsed, but no Response was received.

Grounds for Arbitration Proceedings:

- A. The Disputed Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name; and
- C. The Disputed Domain Name was registered and is being used in bad faith.

4. Summary of the Complainant's Contentions:

In support of its case, the Complainant has made the following submissions:

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- 4.1. The Complainant, Inter IKEA Systems BV, is a company organized and existing under the laws of The Netherlands with its principal place of business at Olof Palmestraat 1, 2616 LN Delft, The Netherlands.
- 4.2. The Complainant is a company within the Franchise Division of the Inter IKEA Group (the 'Complainant Group') which also includes service companies and companies selling IKEA products to franchisees in certain markets. The Complainant Group is engaged *inter alia*, in manufacturing and selling a large number of retail, office and hospitality products, including but not limited to furniture and furnishing products and accessories, bathrooms and kitchen fittings, lights, stationary including paper and paper articles; tools and implements, etc. and offering retail store services, restaurant services, transportation services, e-commerce services, bathroom and kitchen installation services, interior design services, issuing of credit cards, education and training, development of franchise business, philanthropic services, all of which are carried under the Complainant's IKEA mark.
- 4.3. The Complainant is the owner of IKEA Concept and the IKEA Retail System which is franchised to Retailers, specifically dealing in the Complainant Group's products, worldwide. The IKEA Retailers operate 430 stores in over 50 countries of the world and collectively make up the world's largest network of retailers.
- 4.4. The Complainant's IKEA mark was adopted as early as 1943 by the Complainant's founder Ingvar Kamprad. IKEA is an acronym that consists of the initials of Ingvar Kamprad, Elmtaryd (the farm where he grew up), and Agunnaryd (his hometown in

Smaland, South Sweden). The Complainant has continuously used the IKEA mark globally since its adoption in 1943. The IKEA mark is inherently distinctive and is a strong identifier of source of origin associated with the Complainant Group. IKEA has no dictionary meaning and does not otherwise exist in the English language.

4.5. The Complainant is the proprietor of the IKEA mark by virtue of priority in adoption, continuous and extensive use and advertising, and the reputation accruing thereto in the course of trade. The trademark IKEA are the subject of a large number of trademark registrations the world over, including in India. In India, the Complainant owns 81 applications and registrations for the trade mark IKEA including vernacular versions of the IKEA mark. The Complainant's IKEA mark forms a part of the trade names of nearly all the companies under the Complainant Group.

4.6. The Complainant owns statutory rights over the IKEA mark across approximately 109 countries of the world including but not limited to the US, Philippines, Australia, Israel Republic of South Africa, United Arab Emirates, UK, Japan, Germany, Netherlands, France, Sweden, Russia, China, Denmark, Norway etc.

4.7. The following domain names are owned by the Complainant, and the Complainant's IKEA mark is an essential and integral part of each of these:

Sr. No.	Domain name	Creation date
i.	www.ikea.com	July 29, 1995
ii.	www.ikea.in	February 14, 2005

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- 4.8. The Complainant has been found to be one of the top 500 most valuable brands of 2018 and 2017 in the rankings by Brand Finance Global 500. Additionally, Interbrand, Millward Brown survey and Forbes have also rated the Complainant as one of the Best Global Brands in the World in 2017.
- 4.9. IKEA Trading (India) Private Limited, when given the FDI approval was the first company doing so in connection with a major single brand retailer in order to set up a franchising system under which retail operations would be carried out in India. The first IKEA store opened in Hyderabad on August 9, 2018 to record crowds which demonstrated the immense popularity and goodwill in the IKEA mark in the minds of Indian customers.
- 4.10. The Complainant's trans-border goodwill and reputation have also been confirmed by the Hon'ble Delhi vide order dated September 9, 2016 in *Inter IKEA Systems BV v. Imtiaz Ahmed* CS(OS) No. 3295 of 2014. On the strength of the extensive goodwill and reputations associated with the trademark IKEA, the Complainant has been able to restrain various other third parties from unauthorized usage of the IKEA mark in plethora of cases.
- 4.11. The Complainant has been vigilant in safeguarding its statutory rights over and priority in adoption as well as use of the Complainant's IKEA mark has been upheld by various UDRP panellists in the past.

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4.12. The Disputed Domain Name was registered on June 7th, 2018 many years after the Complainant established its rights in the well-known trademark IKEA.

4.13. It is the case of the Complainant that the Disputed Domain Name <ikeahyderabad.in> completely subsumes the Complainant's well-known trademark/trade name IKEA. The Disputed Domain Name is confusingly similar to the Complainant's IKEA mark. Moreover, people accessing the Disputed Domain Name, even without being aware of the content, are likely to think that the Disputed Domain Name is owned by the Complainant or is in some way connected with it.

4.14. The Complainant submits that the addition of the name of the city "Hyderabad" to the Complainant's IKEA mark does not affect the overall impression of the dominant part of the Disputed Domain Name and in fact increases confusion that the Respondent's domain is associated with the Complainant since the first IKEA store in India was recently inaugurated in Hyderabad.

4.15. Additionally, the Complainant submits that regardless of the reason for the inclusion of the term "Hyderabad" in the Disputed Domain Name, the fame of the distinctive and well-known IKEA mark and the significance of the added term with respect to India will cause users encountering the Disputed Domain Name to mistakenly believe that it originates from, is associated with, is sponsored by the Complainant, or indeed stands for the IKEA store in Hyderabad.

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- 4.16. The Complainant submits that the Respondent has merely parked the domain and has not hosted any content on the website. The web page indicates that a website is coming soon. There is no demonstrable preparation to use or actual use of the domain name in connection with any bonafide offering of goods or services.
- 4.17. Given that the term "IKEA" is neither a dictionary word nor a common personal or a nick name as such, but rather a composition of letters originating from the initials of Complainant's founder Ingvar Kamprad, there is no reason to believe that the Respondent is commonly known by the domain name. The Complainant submits that the Respondent has no rights over the IKEA mark.
- 4.18. The Complainant submits that the Respondent registered this Disputed Domain Name several years after the adoption of the IKEA mark by the Complainant. Furthermore, the IKEA mark has not been used by anyone other than the Complainant. Therefore, it is obvious that it is the fame of the trademark that has motivated the Respondent to register the disputed domain.
- 4.19. The Respondent registered this Disputed Domain Name several years after the adoption of the IKEA mark by the Complainant. Furthermore, the IKEA mark has not been used by anyone other than the Complainant. It is obvious that it is the fame of the trademark that has motivated the Respondent to register the Disputed Domain Name. Therefore, it is evident that the Respondent has not been commonly known by the Disputed Domain Name.



4.20. The Complainant has not authorized or licensed the Respondent to use any of its trademarks in any way. Such unlicensed and unauthorized use of domain incorporating the Complainant's trademark is solely with a view to misleadingly divert consumers and to tarnish the trademark of the Complainant.

4.21. Further, the Complainant submits that the Respondent has no rights or legitimate interest in the domain name and its primary aim of the Respondent is to disrupt the business of the Complainant as well as take advantage of the goodwill and reputation associated with the IKEA mark.

4.22. The Complainant submits that the Respondent's bad faith is further evidenced from the fact that the Respondent registered the Disputed Domain Name on June 7th, 2018 which is 2 months prior to the opening of the first retail store of the Complainant in Hyderabad in India, clearly to show a commercial nexus between the Complainant and the Respondent. Prior to the opening of the retail store, the Complainant had been actively promoting the same by way of advertisement in print media as also television commercials. Therefore, the Respondent is bound to be aware of the Complainant's business and its expansion into India.

4.23. The Complainant further submits that there is a great likelihood that actual or potential visitors to the present website of the Respondent will be induced to:

- Believe that the Complainant has licensed its trade mark/trade name/trading style IKEA to the Respondent or authorized the Respondent to register the disputed domain name; and

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- Believe that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant.

4.24. The Complainant submits that given its numerous trade mark registrations for and wide reputation in the IKEA mark as established by the Complainant, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the Disputed Domain Name. It is also not possible that the Respondent was unaware of the same at the time of the registration. Therefore, in the light of the above it is proved that the Respondent registered the Disputed Domain Name in bad faith.

- The Complainant alleges that the passive holding of the Disputed Domain Name by the Respondent amounts to Respondent acting and using the Domain Name in bad faith in the following circumstances mentioned below: The Complainant's IKEA mark has a strong reputation and is widely known, as evidenced by its substantial use worldwide and in India;
- There is no evidence whatsoever of any actual or contemplated good faith use by the Respondent of the Disputed Domain Name;
- The Respondent registered the Disputed Domain Name in order to prevent the Complainant from reflecting the mark in a corresponding domain name;
- The Respondent has registered the Disputed Domain Name for primarily for the purpose of disrupting the business of the Complainant;
- By using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's

IKEA 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.

4.25. In support of the contentions, the Complainant has furnished copies of the following documents:

Annexure A	Copy of the .IN Domain Name Dispute Resolution Policy
Annexure B	The Original Power of Attorney.
Annexure C	A print out from .IN Registry WHOIS records for the disputed domain name.
Annexure D	An extract from the https://in.godaddy.com/ in respect of the domain name www.ikeahyderabad.in
Annexure E	An extract from the homepage of the Respondent's website
Annexure F	Printouts from the website of the Complainant showing use of the mark IKEA in relation to a variety of products and services in India
Annexure G	Relevant printouts from the Complainant's website highlighting the specified figures
Annexure H	A list of Complainant's IKEA mark registrations in India
Annexure I	Extracts from www.ikea.com and www.ikea.in along with the WhoIs details
Annexure J	Documents pertaining to the Brand Finance Global 500 rankings, the Millward Brown survey, Forbes and Interbrand
Annexure K	Copies of few articles evidencing the facts about the Complainant
Annexure L	Copy of the order dated 9 th September 2016 viz. <i>Inter IKEA Systems BV v. Imtiaz Ahmed CS(OS) No. 3295 of 2014</i>
Annexure M	Copies of the orders of various case laws in favour of the Complainant
Annexure N	Copies of various orders in favour of Complainant, upheld by various UDRP panellists in several cases
Annexure O	Copy of the web page of the Respondent's website

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5. Discussions and findings:

- 5.1. I have perused all the documents annexed with the Complaint which lead me to the conclusion that the Complainant's IKEA mark forms an integral part of the Complainant's business. The Respondent neither has any relationship with the business of the Complainant, nor does he have any authorization from the Complainant or for that matter, any legitimate interest in the Disputed Domain Name. The Respondent has sought to register the Disputed Domain Name to unjustly enrich itself from the registration.
- 5.2. It's a well-established principle that that once a Complainant makes a *prima facie* case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.
- 5.3. The Respondent has not filed any Response to the Complaint. Paragraph 8(b) of the Rules requires that the Arbitrator must ensure that each party is given a fair opportunity to present its case. Even though adequate time (including additional time) was granted, the Respondent chose to refrain from submitting any Response to the Complaint.
- 5.4. Paragraph 11(a) of the Rules empower the Arbitrator to proceed with the Complaint in accordance with the law, in case any party does not comply with the timelines set or fails to submit a Response to the Complaint filed against it. As stated above, I initially



gave the Respondent 10 days and in the absence of a Response, I granted an additional 5 days to the Respondent to file a Response. However, the Respondent failed to file any Response to the Complaint and has chosen not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend himself.

5.5. Paragraph 12(a) of the Rules provides that the Arbitrator shall decide the Complaint based on the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996 and any law that the Arbitrator deems fit to be applicable. In accordance with Paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, my decision is based upon the Complainant's assertions, documents annexed and inferences drawn from the Respondent's failure to submit a Response, despite having been given sufficient opportunity and time.

6. The issues involved in the Dispute:

6.1. The Complainant invokes Paragraph 3 of the Rules to initiate an arbitration proceeding by submitting a Complaint to NIXI. The Respondent in registering a .in domain name submitted to the mandatory arbitration proceeding in terms of Paragraph 4 of the Policy, which determines the elements for filing a domain name dispute, which are;

- (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.

These elements are discussed below in tandem with the facts and circumstances of this case.

Element (i)- The Respondent's domain name is identical/confusingly similar to a name, trade mark or service mark in which the Complainant has rights:

6.2. IKEA is a coined mark adopted in 1943 by the Complainant's founder. It is an acronym that consists of the initials of the name of the Complainant's founder Ingvar Kamprad along with Elmtaryd, the farm where he grew up and his home town Agunnaryd. IKEA does not have any dictionary meaning and does not otherwise exist in the English language. The Disputed Domain Name uses the IKEA mark in its entirety. The addition of the word "Hyderabad" in the Disputed Domain Name which was registered merely two months prior to the inauguration of the first IKEA store in India, at Hyderabad, give the impression that the Disputed Domain Name is associated with the Complainant and the associated website is a dedicated website for the Hyderabad store. The Complainant has provided sufficient proof that IKEA has been registered across approximately 109 countries of the world including India where it has over 81 applications and registrations for the IKEA mark including vernacular versions of IKEA.

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- 6.3. The Complainant's domain name registrations contain IKEA as an integral part of the second level domain and the Complainant has an India specific website namely <www.ikea.in> which was registered on February 14, 2005. The website that resolves at this URL is used to provide information on the Complainant Group's presence in India. Having perused the WhoIs details annexed as Annexure I, there is no doubt that these domains belongs to the Complainant Group. IKEA is one of the most valuable brands of 2018 & 2017 in rankings *inter alia* by Melward Brown and Forbes, which stands substantiated by Annexure J. A perusal of articles annexed as Annexure K, sufficiently prove that the opening of the Hyderabad store was newsworthy and attracted unsolicited media attention.
- 6.4. Moreover, several courts and UDRP panellists have consistently held that the IKEA brand has acquired extensive goodwill and reputation. In fact, in case no. D2011-1961 it was noted that numerous UDRP panels over the years "have considered IKEA for the purposes of their proceedings as one of the World's most reputed trademarks and/ or as a trademark of high level distinctiveness." All of the above show that the Complainant has exclusive rights to the IKEA mark and that the Disputed Domain Name is nearly identical /confusingly similar to the Complainant's IKEA mark.
- 6.5. Therefore, the evidence produced by the Complainant clearly shows that the Disputed Domain Name, which is nearly identical to the Complainant's IKEA mark will inevitably be confused with the Complainant's IKEA marks, over which the Complainant has legitimate rights, owing to its fame, popularity, and trans-border reputation. Thus, I find that Element (i) has been satisfied.



Element (ii) - The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:

6.6. The Complainant has stated that it never authorized or licensed the Respondent to use the Complainant's IKEA mark and that the Respondent does not have any relationship or business association with the Complainant. The Complainant's IKEA mark is a coined term with no dictionary meaning. While the Respondent chose not to file a Response, I am of the view that there can be no plausible explanation that can be offered regarding the adoption of the Disputed Domain Name by the Respondent. It is more than a year since the Disputed Domain Name was registered, however the website which resolves at the Disputed Domain Name displays a message stating "website is coming soon" evidencing that no demonstrable preparations to use the Disputed Domain Name has been made by the Respondent.

6.7. The Respondent has not made use of the Disputed Domain Name in connection of bonafide offering of goods or services; there is nothing on record to show that the Respondent is commonly known by the Disputed Domain name; and neither has the Respondent made any legitimate non- commercial or fair use of the Disputed Domain Name. Given that the Disputed Domain Name was registered by the Respondent on June 7, 2018 which is decades after the Complainant first used the IKEA mark, it can reasonably be presumed that the Respondent has no legitimate interest in respect of the Dispute Domain Name.



6.8. Further, once the Complainant has established a prima facie case, the burden of proof to establish any legitimate interests over the Disputed Domain Name falls on the Respondent. By not responding to the Complaint within the timeline set, the Respondent has failed to establish legitimacy in registering the Disputed Domain Name. Thus, I find that this Element (ii) has been satisfied.

Element (iii) - The domain name in question should be considered as having been registered and being used in bad faith.

6.9. The Complainant has sufficiently established that the IKEA mark is well-known throughout the world including in India. The Respondent ought to have been aware of the fame, repute and goodwill of the Complainant since a simple search on the Internet would have revealed the Complainant's rights in and to the IKEA mark. It is unfathomable that the Respondent was unaware of the fame of the IKEA mark, especially given that the Respondent registered the Disputed Domain Name just 2 months prior to the opening of the first IKEA store in India, at Hyderabad. The addition of Hyderabad, the city where the first IKEA store opened in India is bound to give an impression that the Complainant has either authorized or has some connection with the Disputed Domain Name and more likely that the Disputed Domain Name is dedicated to the IKEA store in Hyderabad. The fact that IKEA is a coined word with no dictionary meaning; that it is a well-known trade mark; that the Respondent has not been authorised by the Complainant; that the Disputed Domain Name contains the IKEA mark in its entirety with the name of the city where the first IKEA store was opened in

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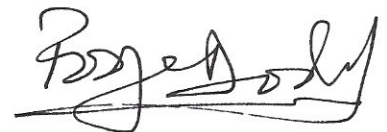
India; and that the Disputed Domain Name is being held in a passive manner all point to bad faith on part of the Respondent and thus this Element too, is satisfied.

Decision:

6.10. In view of the foregoing, I am convinced that the Disputed Domain Name is nearly identical/confusingly similar to the Complainant's IKEA mark. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and the Disputed Domain Name is registered in bad faith. In accordance with the Policy and Rules, I direct that the Disputed Domain Name be transferred to the Complainant, with a request to NIXI to monitor the transfer.

6.11. In the facts and circumstances as discussed above, the Respondent is ordered to pay costs of ₹ 1 lakh for present proceedings to the Complainant,

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Pooja Dodd

Sole Arbitrator

Dated: August 22, 2019