



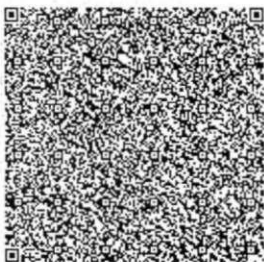
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL83595296230358N
Certificate Issued Date	: 19-Nov-2015 02:31 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1765117067699127N
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)



Please write or type below this line

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

IN THE MATTER BETWEEN

Wendy's International, LLC

v.

Apex Limited

Complainant

Respondent

Signature

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.

ARBITRATION AWARD

1. The Complainant is Wendy's International, LLC, a Ohio Limited Liability Company.
2. The Arbitration pertains to the disputed domain name <wendys.co.in>, registered on July 31, 2014 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 November 17, 2015.
4. A physical copy of the complaint was handed over to the Arbitrator by NIXI on November 25, 2015. Despite repeated attempts, the Respondent could not be served with a physical copy of the complaint since the address provided by it in the WhoIs details was found to be incorrect/incomplete. The Complainant was therefore directed to serve a copy of the complaint along with Annexures on the Respondent through email. The Complainant accordingly served a copy of the complaint along with Annexures on the Respondent vide emails dated November 28, 2015. The Arbitrator vide email dated December 12, 2015 directed the Respondent to file its Reply, if any, by December 26, 2015.
5. The Respondent did not file its Reply to the Complaint by December 26, 2015. The Respondent was therefore granted the final opportunity to file its Reply by January 5, 2016, but no Reply has been filed by the Respondent till date. The Respondent is therefore proceeded *ex-parte*.

Complainant's Submissions

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6. The Complainant states that it is a subsidiary of Wendy's Company and is the current owner of the mark WENDY'S in India. The mark WENDY'S is worldwide owned by Wendy's Company and its subsidiaries.
7. The Complainant states that the mark WENDY'S was adopted by it in the year 1969. The mark WENDY'S is registered with the USPTO vide Registration No. 935110 since February 4, 1971. In India, the Complainant's trademark applications for the mark WENDY'S are pending registration.
8. The Complainant claims to have presence in 29 countries and is extensively using the mark WENDY'S in respect of restaurants and food & beverages services. The Complainant also owns various domain name registrations featuring the mark WENDYS. It also owns domain name registrations for the domain names <wendysindia.in> and <wendysindia.co.in> since June 18, 2014.
9. The Complainant has also filed list of its worldwide trademark applications and registrations for the mark WENDY and WENDY'S.
10. The Complainant states that it has recently entered into the Indian market and has opened its restaurant operations in Gurgaon, and has vast recognition in India.
11. The Complainant submitted that the domain name <wendys.co.in> is confusingly similar to its mark WENDY'S.
12. The Complainant submitted that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has also put up the domain name <wendys.co.in> for sale to trade upon the goodwill or reputation of the mark WENDY'S.

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13. 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

14. 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 disputed domain name has been registered and is being used in bad faith by the Respondent.

15. The Arbitrator finds that the mark WENDY'S is registered with USPTO in the name of Oldemark LLC Corporation which is a group company of the Complainant. The Complainant has filed sufficient documentary evidence to show that it has been using the mark WENDY'S and has common law rights in the mark in India. The Respondent has not filed any Reply to rebut the Complainant's claim of ownership of the mark WENDY'S. The disputed domain name incorporates the mark WENDY'S in entirety and hence, the disputed domain name is held to be confusingly similar with the Complainant's mark.

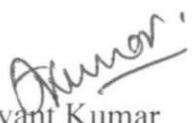
16. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (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.

17. 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 commercially gain from it by selling the same to the highest bidder or by earning from pay per click advertisements. The Arbitrator therefore finds that the Respondent has no right or legitimate interest in the disputed domain name.
18. 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

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


Jayant Kumar
(Sole Arbitrator)

Dated: January 20, 2016