



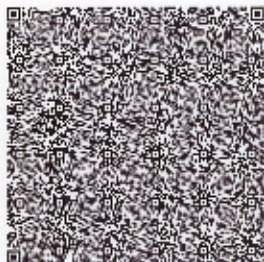
सत्यमेव जयते

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Certificate No.	: IN-DL008024092503880
Certificate Issued Date	: 06-Jan-2016 02:57 PM
Account Reference	: IMPACC (IV)/ dl712203/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL712203999155611017160
Purchased by	: Divya Balasundaram
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: Divya Balasundaram
Second Party	: Not Applicable
Stamp Duty Paid By	: Divya Balasundaram
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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Before the Sole Arbitrator, Divya Balasundaram

C/O National Internet Exchange Of India

In the matter of:

Wendy's International, LLC - vs. - Huaan Holding (HK) Ltd.

Divya Balasundaram

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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ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram

Wendy's International, LLC
One Dave Thomas Boulevard,
Dublin, Ohio 43017
United States of America

...Complainant

Versus

Huaan Holding (HK) Ltd.,
Room 14-05-301,
West Block, North,
Hong Kong 999077

... Respondent

1. The Parties

- 1.1 The Complainant is Wendy's International, LLC, of the address One Dave Thomas Boulevard, Dublin, Ohio 43017, United States of America, represented by its counsel, Amarjit & Associates, Suite 404, Law Arcade, 18, Pusa Road, New Delhi - 110005.
- 1.2 The Respondent is Huaan Holding (HK) Ltd., of the address Room 14-05-301, West Block, North, Hong Kong 999077.

2. The Domain Name and Registrar

- 2.1 The disputed domain name is <wendys.in> registered with IN REGISTRAR d.b.a. inregistrar.com.

3. Procedural History

- 3.1 Arbitrator received an email on November 17, 2015 inquiring if NIXI can avail its services as an arbitrator for the dispute pertaining to the domain name <wendys.in>. Arbitrator confirmed availability by email of November 18, 2015 and also sent the signed Statement of

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Acceptance and Declaration of Impartiality and Independence as required by the Rules.

- 3.2 The .IN Registry appointed Divya Balasundaram as the Sole Arbitrator on November 20, 2015 and Arbitrator received soft copy of the Complaint along with Annexures on November 23, 2015. Hard copy was also received by courier.
 - 3.3 Arbitral proceedings were commenced by Arbitrator on November 23, 2015 by issuance of a notice by email to the Respondent directing him to file his reply to the Complaint within 15 days. Copy of complaint and annexures were also sent to the Respondent vide email, which is the preferred method of communication in these proceedings. The emails sent to the provided email address of the Respondent have not been returned as undelivered.
 - 3.4 The Respondent has not entered appearance nor filed any reply.
 - 3.5 Arbitrator sent email on December 21, 2015 to Respondent notifying it of its default.
 - 3.6 The language of these proceedings in English.
4. Background of the Complainant and its rights in the trademark WENDY'S as stated in the Complaint:
- 4.1 The Complainant is a wholly owned subsidiary of the Wendy's Company. Oldmark LLC is another wholly owned subsidiary of Wendy's Company. Wendy's Company is the common economic entity that owns rights in the trademark WENDY'S and the domain name containing the word Wendy's.
 - 4.2 The Wendy's Company is the world's third largest quick-service hamburger company. It includes more than 6,500 franchise and Company-operated restaurants in the United States and 28 countries and U.S. territories worldwide. The foundation of Wendy's long-term success includes core values that the company embraces every day in its restaurants and restaurant support offices around the world.
 - 4.3 Wendy's core values, including "Quality is our Recipe," "Do the Right Thing" and "Give Something Back," were created by its founder Dave Thomas more than 40 years ago. They are timeless guideposts for its employees and franchisees. Consistent with these values, Wendy's

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believes it has a responsibility to stakeholders to focus on Wendy's business success, while at the same time caring for customers, employees, communities and the world around them.

- 4.4 Wendy's strives for consumers who visit a Wendy's restaurant to be able to count on many things: a friendly crew; a bright, relaxed atmosphere; clean tables; a variety of menu choices; and, the most important thing, great-tasting, quality food. Wendy's restaurant signs display its slogan "QUALITY IS OUR RECIPE®", and its commitment to quality extends to all parts of its business.
- 4.5 Wendy's is committed to the development and execution of quality processes and initiatives that are focused intensely on a safe and wholesome food supply.
- 4.6 More than 6,500 restaurants in the Wendy's system seek to serve millions of consumers every day. Each of these consumers has his or her own reason for coming to Wendy's, and each has his or her own expectation. Wendy's goal is to deliver a great experience to each of those consumers, no matter what brought them to the Wendy's restaurant.
- 4.7 Wendy's expects that new market expansion and further development within existing markets will be drivers of its international growth strategy over the coming years. Wendy's believes that earnings generated from international markets will contribute to Wendy's ability to generate long-term value for its stockholders. Wendy's is excited for the opportunity to bring its quality products to new consumers around the globe.
- 4.8 The Complainant adopted the trademark "WENDY'S" in 1969 respect of Restaurant and Food & Beverage Services. The mark was registered with US Patent and Trademark Office (USPTO) on February 04, 1971 having registration no. 935110, and is registered to Complainant's wholly-owned subsidiary, which grants exclusive license with sole rights to sublicense to Complainant. The said registration was renewed at each renewal date and is still valid. In India, the application for registration of trademark "WENDY'S" has been filed under International classes 16, 25, 29, 30, 32 and 43.
- 4.9 The Complainant is the registered owner/proprietor of the

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trademark(s) WENDY'S, WENDY'S and Device, Wendy's Logo with Old Fashioned Hamburgers, Wendy's (Arabic Characters), Wendy's (Chinese Characters), Wendy's (Cyrillic Characters), Wendy's (Georgian Characters), Wendy's (Wave design), Wendy's (Wave design) (in Cyrillic Characters), Wendy's Big Bacon Classic, Wendy's Frosty Dairy Dessert, Wendy's Old Fashioned Hamburgers and other marks having "WENDY'S" as the distinct features therein. The Complainant holds valid registrations and/or pending applications in different parts of the world.

- 4.10 In Hong Kong, the Wendy's logo with Old Fashioned Hamburgers has been registered in class 25 since the year 1978. The trademark Wendy's Big Bacon Classic has been registered in International classes 29 & 42 in Hong Kong since the year 1995. The trademark Wendy's & Device with Chinese characters in international classes 16, 25, 28, 29, 30, 32, 43 and 45 have also been registered in Hong Kong since the year 1996.
- 4.11 The Complainant operates its corporate website hosted on the Domain Name <wendys.com>, and the Complainant has also registered domain name(s) in different gTLDs and ccTLDs, including <wendysindia.in> and <wendysindia.co.in> in India.
- 4.12 The Complainant has recently entered into the Indian market and has opened its restaurant operations in Gurgaon.
- 4.13 The Complainant and its franchisees have made huge investments in the advertisement and online promotions of the mark WENDY'S in different parts of the world. The mark WENDY'S is a well-known mark associated with the food and beverage industry and is associated with the source of the Complainant and no other source or brand.
- 4.14 The Complaint has vast recognition in India and is also getting lot of internet traffic from India on its corporate website <wendys.com>. The Complainant also operates FACEBOOK pages in different countries.
5. Respondent and its registration of the disputed domain name
 - 5.1 The disputed domain name wendys.in was registered in the name of the Respondent on May 26, 2011 with inregistrar.com.
6. Contentions of the Complainant in establishing the 3 elements required

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under the INDRP

- 6.1 Element 1 - In support of this element, i.e., the disputed domain name is identical or confusingly similar to Complainant's trademark, the Complainant has submitted that:
- 6.1.1 The Disputed Domain Name <wendys.in> is considered identical and/or confusingly similar since the suffix (.in) is not relevant for the purpose of determination of the identity or confusing similarity between Disputed Domain Name and the word "WENDY'S".
- 6.1.2 The Respondent, as per the WHOIS record of the Disputed Domain Name <wendys.in> is resident and/or carrying on business from Hong Kong and has complete knowledge of the Wendy's trademarks and its reputation in Hong Kong and in other parts of the world.
- 6.1.3 The identical and/or similar mark adopted by Respondent as part of the Disputed Domain Name <wendys.in> is likely to confuse the internet consumers/users and the association of the WENDY'S mark with the Respondent.
- 6.1.4 The Complainant has established its registered trademark rights as well as common law rights in the mark WENDY'S in the preceding paragraphs and the use of the same by any other person/organization is bound to create confusion in the mind of the internet consumers/users as to the source and affiliation of the mark other than the Complainant.
- 6.1.5 The bad faith of the Registrant/Respondent is evident from the fact that Respondent has placed the Disputed Domain Name for sale to the highest bidder to Respondent has no legitimate interest in or connection to the mark otherwise.
- 6.2 Element 2 - In support of this element, i.e., the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name, the Complainant has submitted that:
- 6.2.1 The Complainant has no relationship with the Respondent. The Complainant has never authorized the Registrant/Respondent to register and/or use the disputed domain name <wendys.in>.
- 6.2.2 The Disputed Domain Name <wendys.in> resolves to the parking page containing third party links to the website, permitting the

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Respondent to earn pay per click revenue.

- 6.2.3 The Disputed Domain Name <wendys.in> has been put up for sale by the Registrant to trade upon the goodwill or reputation of the well-known mark WENDY'S, for profit. This clearly establishes that the Respondent does not have any legitimate interest in the Disputed Domain Name.
- 6.2.4 There is no evidence to substantiate that Respondent has used or has made any demonstrable preparation of use in respect of the Disputed Domain Name <wendys.in> before the commencement of INDRP proceedings against him or to offer the goods or services or use the Disputed Domain Name for legitimate noncommercial or fair use. The Disputed Domain Name <wendys.in> is registered by the Respondent/Registrant solely to divert the consumers to the third party websites and to disturb the business of the Complainant by tarnishing the reputation of the Complainant's well-known mark WENDY'S. It is clear the Registrant has registered and/or has been using the Disputed Domain Name incorporating the well-known mark WENDY'S with the intent to commercially gain from the Disputed Domain Name by selling the same to the highest bidder or by earning from pay per click advertisements.
- 6.2.5 The Registrant/Respondent is not commonly known by the mark/domain name WENDY'S. There is no justification on part of the Respondent to register the Disputed Domain Name apart from stealing the online identity of the Complainant with intent to profit from the goodwill and reputation of the mark WENDY'S.
- 6.3 Element 3 - in support of this element, that the disputed domain name was registered and is being used in bad faith, the Complainant contends that:
- 6.3.1 The Registrant/Respondent's bad faith is clearly evident from the fact that the Respondent has registered and used a domain name which is identical to the Complainant's well-known mark WENDY'S in which the Complainant has established rights.
- 6.3.2 Taking into account the wide spread Internet presence of the WENDY'S mark and the registration of the domain name <wendys.com> that is much prior to the registration of Disputed

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Domain Name on part of the Respondent, it is unlikely that Respondent/Registrant did not have any knowledge of the mark WENDY'S. The Disputed Domain Name has been registered by the Respondent with full awareness and intent to exploit the reputation and goodwill of Complainant and its mark WENDY'S.

- 6.3.3 Moreover, the Disputed Domain Name is used for pay per click advertising from which the Registrant/Respondent is gaining commercially, and the Disputed Domain Name has been chosen by the Respondent to misled the Internet users/consumers by attracting them to the Disputed Domain Name to create a likelihood of confusion or deception with the Complainant as to the source, affiliation or endorsement of the Registrant/Respondent website.
- 6.3.4 By registering the Disputed Domain Name, the Registrant/Respondent has intentionally infringed upon the trademark rights of the Complainant.

The Complainant has referred to case law in support of its various contentions.

7. Discussions

- 7.1 At the outset, it is to be mentioned that the Arbitral Tribunal has been properly constituted. Under paragraph 4 of the INDRP, the Complainant must prove each of the following three elements of its case - the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith. From a detailed reading of the Complaint and supporting annexures, the Arbitrator finds that the Complainant has established all the three elements. The finding is made keeping in mind these specific aspects:
- 7.2 The Wendy's Company is the world's third largest quick-service hamburger company. It includes more than 6,500 franchise and Company-operated restaurants in the United States and 28 countries and U.S. territories worldwide. The Complainant has recently entered into the Indian market and has opened its restaurant operations in Gurgaon.
- 7.3 The trademark "WENDY'S" has been used by the Complainant since

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1969 in respect of Restaurant and Food & Beverage Services. The Complainant holds valid registrations and/or pending applications for the trademark WENDY'S and several other marks containing the term WENDY'S as the distinct feature therein in different parts of the world including Hong Kong (where the Respondent resides).

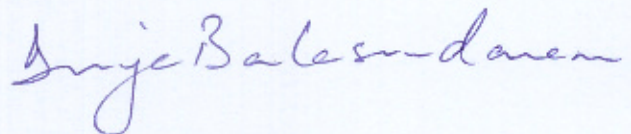
- 7.4 The Complainant operates its corporate website <wendys.com>, and has also registered domain name(s) in different gTLDs and ccTLDs, including <wendysindia.in> and <wendysindia.co.in> in India.
- 7.5 The Complainant and its franchisees have made huge investments in the advertisement and online promotions of the mark WENDY'S in different parts of the world.
- 7.6 The mark WENDY'S is a well-known mark associated with the food and beverage industry and is associated with the source of the Complainant and no other source or brand.
- 7.7 The impugned domain name <wendys.in> is identical to the trademark WENDY'S of the Complainant since the suffix .in is not relevant for the purpose of determination of the identity or confusing similarity between impugned domain name and the word "WENDY'S".
- 7.8 The adoption by the Respondent of the impugned domain name wendys.in in May 2011 is much subsequent to Complainant's adoption and use of the said mark for its business, products and services;
- 7.9 The Respondent is deemed to have knowledge of the Wendy's trademarks and its reputation in Hong Kong and in other parts of the world.
- 7.10 Use of the name wendys.in by the Respondent is bound to create confusion in the mind of the internet consumers/users as to the source and affiliation of the mark other than the Complainant.
- 7.11 The Complainant has no relationship with the Respondent nor has it authorized the Respondent to register and/or use the domain name <wendys.in>.
- 7.12 The Respondent is not commonly known by the name WENDY'S.

Sanjay Balasubramanian

- 7.13 The domain name <wendys.in> resolves to the parking page containing third party links to the website, permitting the Respondent to earn pay per click revenue.
- 7.14 The domain name <wendys.in> has been put up for sale to the highest bidder by the Respondent to trade upon the goodwill or reputation of the well-known mark WENDY'S for profit which is a one of the clear indicators of bad faith adoption.
- 7.15 The Respondent has not used nor made any demonstrable preparation of use in respect of <wendys.in> before the commencement of INDRP proceedings against him or to offer the goods or services or use the impugned domain name for legitimate noncommercial or fair use.
- 7.16 The Respondent was given sufficient time to reply to the Complaint, however, Respondent has chosen not to submit any response.

8. Decision

- 8.1 For all the foregoing reasons, the Complaint is allowed.
- 8.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <wendys.in> be transferred to the Complainant.
- 8.3 The Parties shall bear their own costs.



DIVYA BALASUNDARAM
ARBITRATOR

Date: January 12, 2016

Place: New Delhi, India