



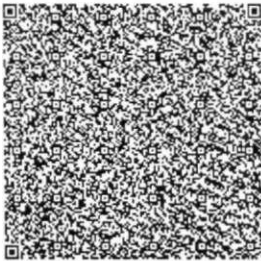
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# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL78639386993083N
Certificate Issued Date	: 12-Mar-2015 05:10 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130354141423148451N
Purchased by	: ASHOK KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ASHOK KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: ASHOK KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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### BEFORE THE SOLE ARBITRATOR UNDER THE .In DOMAIN NAME DISPUTE RESOLUTION POLICY

**IN THE MATTER OF**  
LEGO, INC.  
485 7th Avenue, Suite 507  
New York  
NEW YORK 10018  
United States

...(Complainant)

v.

Zhang Bing  
Henan, Zhengzhou  
Zhengzhou 450000, China

...(Respondent)

**Statutory Alert:**

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3. In case of any discrepancy please inform the Competent Authority.

## **The Parties**

The Complainant in this proceeding is LEGO Juris A/S, a limited company incorporated in Denmark, with its principal place of business at Koldingvej 2, 7190 Billund Denmark

Respondent in this proceeding is: Zhang Bing, Henan, Zhengzhou, Zhengzhou 450000, China, phone: +86.15824887241 and email: webspider66@gmail.com. (available through .IN WHOIS)

## **The Domain Name & Registrant**

The disputed domain name **iLEGO.in** is registered with **Name.com, Inc.**

## **Procedural History**

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name **iLEGO.in**.

.In Registry has supplied the copy of the Complaint and Annexures to me.

On 13.01.2015, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexure to the Respondent and to provide me with the details of the service record. In the interest of Justice I also, directed the Complainant to email a soft copy of the Complaint with all documents in .doc format to the Arbitrator and the Respondent.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 13.01.2014 with the instructions to file his say within 15 days from the receipt of the stated email or the receipt of the copy of Complaint, whichever is later.

NIXI through an email dated 13.01.2015 provided the proof of sending the copy of the complaint to the Respondent by blue dart courier and also stated in the



same email that the Tribunal will be informed about the status of the courier once they receive it from the courier agency.

On 28.01.2015, further directions were issued to the parties on non-compliance with the earlier directions of the Tribunal.

The Tribunal issued the following directions:

1. NIXI to provide the Tribunal with the status of the courier sent to the Respondent, as to whether the copy of the complaint has been served upon the Respondent or not.
2. The complainant to send a soft copy of the Complaint with all documents in .doc format and not in .pdf format to the Arbitrator and the Respondent within next 48 hours.

On 28.01.2015, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal and the Respondent.

On 28.01.2015, NIXI informed the Tribunal that the Copy of the Complaint had been duly served to the Respondent through Blue Dart services as on 12.01.2015.

Furthermore, on 28.01.2015 I informed the Respondent in response to the Respondent's email dated 12.01.2015 requesting for emails to be exchanged in Chinese that as per INDRP Rules of Procedure Rule 9, the Language of the Arbitration proceedings shall be English. Therefore, the request of the Respondent could not be accepted and that the Respondent could get correspondences translated in Chinese at his end, if required.

On 4.02.2015, on the Respondent's failure to file its Reply despite the specific directions given by the Arbitrator, in the Interest of Justice, 3 days time was further given to the Respondent to file its Reply, failing which, the parties were informed that the Arbitrator will proceed with the matter on the basis of the pleadings and documents available on record.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time i.e. 26.01.2015. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted.



I feel that enough opportunities have been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present ex-parte award is passed.

I have perused the entire record and all the annexures / documents.

### **Factual Background**

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

### **COMPLAINANT:**

1. The Complainant LEGO Juris A/S, based in Denmark, is the owner of the LEGO trademark, and all other trademarks used in connection with the famous LEGO brands of construction toys and other LEGO branded products. The Complainant's licensees are authorized to exploit the Complainant's intellectual property rights, including its trademark rights, in and elsewhere. Over the years, the business of making and selling LEGO branded toys has grown remarkably. The Complainant has subsidiaries and branches throughout the world, and LEGO products are sold in more than 130 countries, including in India and China.
2. The Complainant is also the owner of more than 2400 domain names containing the term LEGO.
3. The trademark LEGO is among the best-known trademarks in the world, due to decades of extensive advertising, which prominently depicts the LEGO mark on all products, packaging, displays, advertising, and promotional materials. Indeed, the LEGO trademark and brand have been recognized as being famous.
4. In a list of the official top 500 Superbrands for 2014, provided by Superbrands UK, LEGO is the winner in the category "Child Products - Toys and Education". Moreover, the Reputation Institute nominated the LEGO Group as number 10 on their list of "the World's Most Reputable



Companies" 2013. Recently, TIME also announced LEGO to be the Most Influential Toy of All Time. Thus, as demonstrated, the LEGO trademark is in possession of substantial inherent and acquired distinctiveness, and the LEGO mark and brand are well-recognized by consumers, industry peers, and the broader global community.

5. The LEGO Group has expanded its use of the LEGO trademark to, inter alia, computer hardware and software, books, videos and computer controlled robotic construction sets. The LEGO Group also maintains an extensive website under the domain name **LEGO.com**
6. As shown, the mark LEGO is in possession of substantial inherent and acquired distinctiveness. The awareness of the trademark LEGO is considered in the whole Community to be significant.
7. The Complainant exercises extreme vigilance in protecting its intellectual property rights and guards the Lego Brand zealously.

## **RESPONDENT**

The Respondent in the present proceeding is: Zhang Bing, Henan, Zhengzhou, Zhengzhou 450000, China, phone: +86.15824887241 and email: webspider66@gmail.com.

## **Parties Contentions**

### (a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
2. The Respondent has no rights or legitimate interest in respect of the domain name.
3. The Domain Name was registered and used in bad faith.

### (b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given adequate notification and several opportunities by the Arbitrator.



**Discussions and Findings:**

As previously indicated the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex-parte and hence conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions, and evidence and inference drawn from the Respondent's failure to reply.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "LEGO".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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.



**i) The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.**

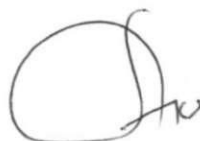
The Complainant has stated in its complaint that domain name of Respondent iLego.in is confusingly similar and identical to his name/mark LEGO.

The dominant part of the Domain Name comprises the term LEGO, identical to the registered trademark LEGO, registered by the Complainant as trademarks and domain names in numerous countries all over the world

It is further stated that the fame of the trademark has been confirmed in numerous previous UDRP decisions: Case No. D2008-1692 *LEGO Juris A/S v. Level 5 Corp*: "The Panel finds that the Complainant has established that LEGO and LEGOLAND are well-recognized and world famous trademarks and that the trademarks are distinctive", case No. D2008-1715 *LEGO Juris A/S v. Michael Longo*: "The Panel finds, as numerous panels have found before, that the Complainant has established that LEGO is a well-known trademark and that the trademark is distinctive and famous", and case No. D2009-0680 *LEGO Juris A/S v. Reginald Hastings Jr*: "LEGO is a mark enjoying high reputation as construction toys popular with children".

Further, the Complainant refers to WIPO Case No. D2012-2133, concerning the domain name <legos.net>, in which the Panel held: "The addition of a simple letter, as here a mere "s" which refers to the plural of LEGO, can exacerbate the confusing similarity between the Complainant's trademark and the Disputed Domain Name and increase the risk of confusion between the Disputed Domain Name and the trademarks."

Anyone who sees the Domain Name is bound to mistake it for a name related to the Complainant. The likelihood of confusion includes an obvious association with the trademark of the Complainant. With reference to the reputation of the trademark LEGO there is a considerable risk that the trade public will perceive the Respondent's Domain Name either as a domain name owned by the Complainant, or that there is some kind of commercial relation with the Complainant. By using the trademark as a dominant part of the Domain Name,



the Respondent exploits the goodwill and the image of the Complainant's trademark, which may result in dilution and other damage for the trademark.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

**ii) The Registrant has no rights or legitimate interests in respect of the domain name**

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)

- 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.*

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name. LEGO is a famous trademark worldwide and in case no. D2001-1314, *Deutsche Bank Aktiengesellschaft v New York TV Tickets Inc.*, it was established that any use of such a trademark in a domain name would violate the rights of the trademark owner.

It is further submitted that it is obvious that it is the fame of the trademark that has motivated the Respondent to register the Domain Name in the first place. That is, the Respondent cannot claim to have been using LEGO, without being aware of the Complainant's rights to it





The complainant also submits that, the Complainant has not found that the Respondent has any registered trademarks or trade names corresponding to the Domain Name. Neither has the Complainant found anything that would suggest that the Respondent has been using LEGO in any other way that would give it any legitimate rights in the name.

It is also submitted that no license or authorization of any other kind, has been given by the Complainant to the Respondent, to use the trademark LEGO.

The Complainant further submits that the Respondent is not an authorized dealer of the Complainant's products and has never had a business relationship with the Complainant. Instead, the following statement is found on the website connected to the Domain Name (English translation) "Copyright © 2014 Philharmonic high, love lego All rights reserved. Create a query based on 179 WordPress Technology", which may give the misleading impression that the Respondent has rights to use the LEGO trademark, when in fact it has not.

It is submitted by the Complainant that the Respondent has intentionally chosen a domain name based on a registered trademark in order to generate traffic and income through an unauthorised website offering LEGO products for sale, by linking to third-party websites such as <amazon.com> and <jd.com>. Also, no evidence has been found that the Respondent uses the name LEGO as a company name or has any other legal rights in the name. The Respondent is simply trying to sponge off the Complainant's world famous trademark.

It is further submitted that the Registrant has had time to demonstrate its rights and/or legitimate interest in the Domain Name but has failed to do so. INDRP paragraph 3 clearly states that it is the responsibility of the Respondent to find out before the registration that the domain name he is going to register does not violate the rights of a third party.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).



**iii) The Registrant domain name has been registered or is being used in bad faith**

The Complainant alleges that the Respondent registered the Domain Name on August 4, 2014. This date is subsequent to when the Complainant registered the trademark LEGO in India, China and elsewhere, by several decades.

The Complainant submits that the LEGO brand has grown remarkably in Asia over the last years and the sales of LEGO products to consumers increased by 35% in this area in 2013, outperforming the Asian toy market by a factor of five.

It is also submitted that considering LEGO is a famous trademark and that the website connected to the Domain Name displays LEGO products, it is clear that the Respondent knew of the Complainant's rights in the name LEGO at the time of the registration.

It is further alleged that on October 22, 2014, a Cease and Desist letter was sent to the Respondent by e-mail. In the Cease and Desist letter, the Respondent was advised that the unauthorised use of the trademark LEGO within the Domain Name violated the rights in the Complainant's trademarks and an immediate transfer of the Domain Name was requested. The Respondent replied by asking the Complainant what was required. When the Complainant requested that the Respondent transferred the Domain Name, the Respondent demanded at least USD 10 000 in monetary compensation. The Complainant informed the Respondent that such compensation would not be given since it was considerably exceeding the out of pocket expenses for the registration of the Domain Name and that such a demand amounted to bad faith use and registration. When the Complainant asked the Respondent to transfer in exchange for out of pocket expenses the Respondent stated that it was willing to transfer if the Complainant was willing to buy the Domain Name for a price that the Respondent felt was suitable. When the Complainant explained that it would not pay such amount for the Domain Name the Respondent claimed that it would remove the sponsored links that are displayed on the website and that the Domain Name would not make any profit. Finally, the Respondent added that the Complainant was a shameless company, taking action regarding third party domain name infringements. Since the efforts of trying to solve the matter



amicably were unsuccessful, the Complainant chose to file a complaint according to the INDRP process.

It is also submitted that the Respondent is today not using the Domain Name in connection with a *bona fide* offering of goods or services. As stated above, the Respondent has intentionally chosen a domain name based on a registered trademark in order to generate traffic to a commercial website by creating a likelihood of confusion with the Complainant and its famous LEGO trademark. Under Paragraph 6 (iii) of the Policy, such use is considered evidence of bad faith.

It is further submitted that at the time when the Complainant's Cease and Desist letter was sent out, the Respondent was using the Complainant's famous LEGO logo on the website connected to the Domain Name without consent and displaying sponsored links to third party websites for example <amazon.com> and <jd.com>. Only after receiving the Complainant's Cease and Desist letter, the Respondent removed the LEGO logo from said website; however, the website is still displaying sponsored links. It is submitted that it is further evidence that the Respondent's intention with the registration was to mislead Internet users by creating a connection to the Complainant and its famous trademark for commercial gain.

It is submitted that by referring to the above-mentioned, the Respondent should be considered to have registered *and* to be using the Domain Name in bad faith.

The Tribunal is of the view that the Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise, the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).



## **DECISION**

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

The Respondent has registered and used the disputed domain name in bad faith. NIXI is hereby directed to transfer the domain name of the Respondent i.e. <iLEGO.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 12<sup>th</sup> day of March 2015.



**A.K. Singh**

**Sole Arbitrator**

**Date:12<sup>th</sup> March, 2015**