

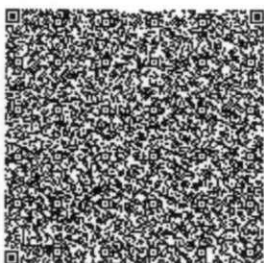
INDIA NON JUDICIAL

Government of National Capital Territory of Delhi



e-Stamp

Certificate No. : IN-DL09136317705761L
Certificate Issued Date : 30-Apr-2013 01:03 PM
Account Reference : IMPACC (IV)/ dl700303/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL70030317657246936468L
Purchased by : DEEPA GUPTA
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : DEEPA GUPTA
Second Party : NIXI
Stamp Duty Paid By : DEEPA GUPTA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure**

ARBITRATION AWARD

DATED: APRIL 19, 2013

In the matter of:

**The Polo/ Lauren Company L.P.
650, Madison Avenue
New York, N.Y.10022, USA**

Complainant

Vs

**Mr. Zhong Zhengtao
Registrant
Lianhua Trading
Room no. 34-32, No. 1
Lianhua Road, Shanghai-200541
China**

Respondent

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is **The Polo/ Lauren Company L.P.,650, Madison Avenue New York, N.Y.10022, USA**
- (b) Respondent firm is: **Mr. Zhong Zhengtao, Registrant Lianhua Trading Room no. 34-32, No. 1, Lianhua Road, Shanghai-200541 China.** It has presence on internet with domain name of www.lotsralphlaurenpolo.in which is subject of dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.lotsralphlaurenpolo.in registered with the DOT IN Registry through the Direct Internet Solutions Pvt. Ltd.
- ii. The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



DEEPA GUPTA
ARBITRATOR

3. BRIEF BACKGROUND

FACTUAL AND LEGAL GROUNDS

In Year 1967 Trade Mark POLO has been created by Mr. Ralph Lauren, a Jewish Sales Man, relation to neckwear: In year 1968 the predecessor of the Complainant namely Polo Fashions, Inc was got incorporated by Mr. Ralph Lauren in order to promote its said Trade Mark in relation to its said goods. Subsequently its name was changed to Polo/Ralph Lauren Corporation in 1978.

It adopted Trade Mark POLO in 1967 & POLO BY RALPH LAUREN in 1978 and was using POLO & RALPH LAUREN formative trade mark words in all manners in conjunction with other marks/words and device of polo player.

Complainant is engaged in the business of manufacture, distribution and sale of a wide range of apparel & fashion accessories for men, women, children, and home décor, sportswear, footwear, fragrances, eyewear, house wares, jewelry, and other related products.

4. PARTIES CONTENTIONS:

A. COMPLAINANTS CONTENTIONS:

a) THAT INFRINGED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH Polo/Lauren Company L.P. HAS RIGHTS CAUSING CONFUSION AMONG INTERNET USERS.

In the year 2000, the Complainant's official online shop on its web site was launched as www.polo.com, and re launched as www.ralphlauren.com. Complainant has domains name registered in its favour; viz: www.polo-ralph-lauren.in, www.pologolf.in, www.prl.in, www.global.polo.com. Complainant is using the said domain name as trade mark, display and tool of business. Complainant has various Indian and worldwide Trade Marks registrations pertaining to its said Trade Mark/Label. Complainant has promoted its distinctive Trade Mark, business through extensive research cum marketing of all kinds like advertisement, publicities, promotions and spent enormous resources financial and non financial. Complainant's products global, trade mark/label/trade name/domain name are distinctive, and have acquired secondary significance with the complainant's said goods and business. Public, trade and industry worldwide identify and distinguish complainant's said goods under the said trade mark/label/trade name/domain. Domain name has during its course acquired valuable trade, goodwill and reputation.

URL of the respondent viz www.lotsralphlaurenpolo.in, is identical, deceptively/confusingly similar (in all respect including in idea, visual and audio mode) to the complainant's POLO & RALPH LAUREN trade mark/trade name/domain name forming part of the complainant's URL / website located at www.ralphlauren.co, www.poloralph-lauren.in, www.pologolf.in, www.prl.in, www.global.polo.com, internet users visiting



complainant's website confusingly enter www.lotsralphlaurenpolo.in. Respondent has registered the disputed domain name with full knowledge of the Complainant's said right and uses it for the purpose of misleading and diverting internet traffic. Internet users in confusion are deceptively induced by the Respondent to his site and made to feel Respondent's site connected to or affiliated with the Complainant or that the Respondent is being endorsed / promoted by the Complainant and that his domain name forms part and parcel of the Complainant.

Complainant is proprietor of POLO & RALPH LAUREN Trade Mark/Label/Trade Name/ Domain Name. Any use of identical/similar domain name/ trade mark/ label by any other party in relation to same/similar business and services does amount to violation of complainant's afore mentioned rights.

b) THAT RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF DOMAIN NAME

Respondent has dishonestly , wrongly, illegally and fraudulently got the disputed domain name namely www.lotsralphlaurenpolo.in registered in its favour. The present complaint is being filed on account of the unauthorized and illegal registration and alleged use of the disputed domain name by the respondent.

Respondent by doing this severely impinges upon the rights of the Complainant and is, thus in contravention of the trademarks rights vesting in the Complainant

c) THE IMPUGNED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH.

That the respondent is guilty of suppression of facts and false suggestions while applying for and obtaining the disputed domain name registration. At the time of applying for and obtaining the disputed domain name registration , the respondent was very much aware that the same was not the owner of the disputed domain name. Respondent has malafide intentions and fraudulently obtained the disputed domain,

& registered in its favor only with view to take advantage of tremendous goodwill and reputation of Complainant's said trade mark/ trade name /domain name/label.

Respondent never used the disputed domain name prior to the registration of the disputed domain name. Impugned adoption and registration of the disputed domain name is dishonest and malafide.



The complainant has spent considerable amount of resources in promoting its brand which is established.

Para 4 B the Respondent has not responded at all.

The allegation made by the Complainant that the traffic of Complainant is bound to be diverted to the Respondents site is not incorrect, similar web names lead to confusion among web surfers cannot be denied.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio and illegality of its operation.

The respondent does not have honorable intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration and has not bothered to do the verification of pre existence of the domain name wishing to be registered. Polo/Ralph Lauren and similar domain names were legally registered at the various registries of internet by the Polo/Lauren Company L.P. much before the Respondent started the process of registration, and were legitimately using the name for business purposes profusely empowers them with the First right to the domain name www.lotsralphlaurenpolo.in and therefore any rights of the Respondent in this regard stand defeated in favor of Polo/Lauren Company L.P.

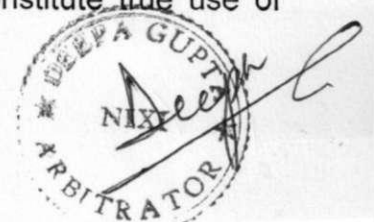
This tribunal holds that such misuse of the names should be checked in most efficient manner the complainant has tried to prove his good faith and right on the domain name in question should be considered as having been registered and being used in bad faith by the respondent.

Complainant has amply demonstrated that he is in the business of value fashion and lifestyle segment of Consumer Market with the trademark for the word Polo/Ralph Lauren and has contributed amply to the popularity of the brand name . Polo/Ralph Lauren.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the products and services provided by the Complainant make this complaint a plausible case of action.

II. Domain name hijacking

This is establish rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder , the tribunal shall declare that the compliant was brought in good faith and constitute true use of administrative proceedings.



Respondent has registered domain name primarily for the purpose selling, renting, or otherwise transferring the domain name registration to a competitor of the Complainant or to the Complainant himself, for a valuable consideration in excess the actual costs incurred by the Respondent directly or indirectly related to the disputed domain name. Respondent has no apparent use for the domain name other than to profit from squatting on the same.

Respondent by holding this domain name is precluding the Complainant from obtaining a domain name registration that is India- Specific, which is invaluable in the marketing and sale of its services in the territories of India.

It is most respectfully prayed to direct the transfer of domain name www.lotsraphlurenpolo.in in favor of the Complainant and award cost of the present proceedings in favor of the Complainant and against the Respondent.

B. Respondents Contentions

Not responded at all.

5. OPINION:

I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in the domain name in question is identical or confusingly similar to a trademark or service mark in mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint .This tribunal is of confirmed opinion that the Complainant has been using the name Polo/Ralph Lauren since 1968 in one form or the other and has made sincere efforts to promote the brand name Polo/Ralph Lauren by consuming various resources available at his end and word Polo/Ralph Lauren has certainly acquired a popular Brand name in the process.

On the basis of the records submitted by the complainant it's proved that the domain name www.lotsralphlaurenpolo.in is related to the business of Complainant, is being used for purpose and related to his work.

It is confirmed that Complainant is user of name or word Polo/Ralph Lauren with or without other words symbols & operates worldwide employing thousands of people all over



As enumerated in para 4 the Complainant ask for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's failure to fully disclose the facts related to allegation against the respondent. Further, in support of this the Complainant submitted documents which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complaint is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove all the necessary conditions. Further, this tribunal bound to conclude with the certainty that the present complaint by the complaint is an attempt by the complaint to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law.

This tribunal further directs the Respondent to pay an amount of 10000 US Dollars to NIXI as punishment and penalty for resorting to illegal means/ cyber squatting and as cost of this proceedings for burdening the administration to fulfill his dirty ulterior motives. In the facts and circumstances of this case this tribunal further directs the registry of NIXI to take adequate precaution in entertaining such complaints and send a copy of this decision to the Hon'ble High Court of Delhi at New Delhi to take further actions against the miscreants as this tribunal cannot go beyond its jurisdiction.

Given under my hand and seal on this **day of 19th April 2013.**



Deepa
Deepa Gupta
Arbitrator