



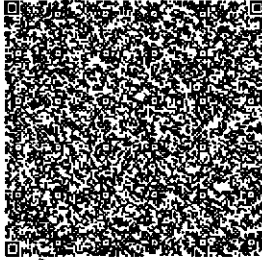
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Purchased by : V K AGARWAL
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V K AGARWAL
Second Party : Not Applicable
Stamp Duty Paid By : V K AGARWAL
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NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025

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Retail Royalty Company v. Folk Brook

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AWARD

1. The Parties

The Complainant is M/s Retail Royalty Company, 101 Convention Center Drive, Las Vegas, Nevada 89109, United States of America.

The Respondent is Mr. Folk Brook, f, Goa 2588, India

2. The Domain Name and Registrar

The disputed domain name is <www.americaneagle.co.in>.

The said domain name is registered with Webiq Domains Solutions Pvt. Ltd.

The details of registration of the disputed domain name are as follows:

- (a) Domain ID: D7802461 – AFIN
- (b) Registrar: Webiq Domains Solutions Pvt. Ltd. (R131-AFIN)
- (c) Date of creation: August 29, 2014
- (d) Expiry date: August 29, 2015

3. Procedural History

- (a) A Complaint dated July 22, 2015 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 24. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The



Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

- (b) In accordance with the Policy and the Rules, an attempt was made to notify the Respondent about the Complaint. However, the courier informed that the address mentioned in the WHOIS record is not clear and asked for the correct and complete postal address. They also informed that no such address exists in India. Therefore, the Complaint could not be served on the Respondent. Hence, the present proceedings have to be ex parte.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant is a company incorporated according to the laws of the State of Nevada, United States of America with the registered office at 101 Convention Center Drive, Las Vegas, Nevada 89109, United States of America. The Complainant came into existence in 1977. However, the Complainant first used the AMERICAN EAGLE mark as a trademark in the year 1985.

According to the Complaint, the Complainant is a retailer that designs markets and sells a variety of goods including readymade clothing and fashion accessories such as leather goods, jewelry, sunglasses, cosmetics, etc. The Complainant has ranked in Fortune 500's list of America's 1000 largest corporations.

The Complainant engages numerous manufacturers located at different parts of India, including Bangalore, Chennai, Delhi and National Capital Region and Mumbai.

The AMERICAN EAGLE mark has acquired a high degree of public recognition and distinctiveness and symbolizes valuable goodwill for the Complainant. The Complainant is well known to its customers as well as in business circles as "AMERICAN EAGLE".

Respondent's Identity and Activities

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Respondent has not provided the correct address. Therefore, the Respondent could not be contacted. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that the AMERICAN EAGLE OUTFITTERS mark is commonly known and referred to as AMERICAN EAGLE. Further that the Complainant has used, and continues to use, AMERICAN EAGLE to identify its goods, including readymade clothing, and related services. The said mark is displaced on clothing, cosmetics, fragrances, eyewear, purses, wallets, jewelry, fashion accessories, and advertising and entertainment services.

The Complainant is also the registrant and proprietor of various domain name registrations at international and domestic levels. Some such illustrations are as follows:

<www.americaneagle.biz>;
<www.americaneagle.info>;
<www.americaneaglegoods.com>;
<www.americaneaglegoods.com>;
<www.americaneaglekids.net>;
<www.americaneaglecloths.com>;
<www.americaneagleshirts.com>
<www.americaneagleshoes.com>
<www.americaneagleweebite.com>
<www.americaneagleoutfitters.com>
<www.americaneagleoutfitters.biz>

COUNTRYWISE DOMAINS

<www.americaneagle.com.au (Australia)
<www.americaneagle.HK (Hong Kong)
<www.americaneagle.co.il (Israel)
<www.americaneagle.JP (Japan)
<www.americaneagle.sg (Singapore)
<www.americaneaglekids.us (United States)

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The Complainant has registered and/or has applied for registration of AMERICAN EAGLE as a trademark in over hundred countries /jurisdictions. They include Australia, European Union, Hong Kong, Singapore, United States of America, etc. The registration of the trademark AMERICAN EAGLE is in various Classes, including Class 3, 25, 35, etc.

So far as India is concerned, the mark AMERICAN EAGLE OUTFITTERS was registered on February 22, 2000 vide registration No. 905098 and the mark AMERICAN EAGLE was registered on January 30, 2008 vide registration No. 1648222.

The Complainant contends that the disputed domain name contains the complete mark, that is, AMERICAN EAGLE. the addition of words "co" or "in" in a domain name is insignificant. They do nothing to distinguish the disputed domain name from the Complainant's mark.

Therefore, the disputed domain name is similar or identical to the registered trademark of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark ""American eagle". The Respondent does not own any trademark registration for AMERICAN EAGLE or a mark that incorporates the American Eagle mark. The Respondent has no authorization or permission from the Complainant to either use or to register the disputed domain name.

Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.americaneagle.co.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Respondent has not demonstrated any preparations to

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use the domain name or a name corresponding to the domain name in connection with any bona fide offering of goods or services. The Respondent is not commonly known by the domain name or is engaged in any business activity associated with the mark AMERICAN EAGLE.

Further that, the Respondent's domain name resolves to a site that has an advisory that the web site to which the domain name will resolve may be unsafe. The disputed domain name has also been listed for sale for an amount of US \$ 2,999 through SEDO.COM.

The Complainant has stated that the use of a domain name that appropriates a well known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.americaneagle.co.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (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's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

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A. Identical or Confusingly Similar

The disputed domain name <AMERICANEAGLE.CO.IN> was registered by the Respondent on August 29, 2014. The registration of the said disputed domain name is due to expire on August 29, 2015. In other words, by the time this Award will be implemented, the registration of the disputed domain name has already expired.

The Complainant is an owner of the registered trademark "AMERICAN EAGLE". The Complainant is also the owner of a large number of domains as stated above and referred to the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is <americaneagle.co.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recent held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <www.americaneagle.co.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the

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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; or

- (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 Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant/Respondent is Mr. Folk Brook. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "AMERICAN EAGLE" or to apply for or use the domain name incorporating said mark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name under INDRP Policy, Paragraph 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the

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Registrant's documented out of pocket costs directly related to the domain name; or

- (ii) the Registrant's has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

The Respondent's registration of the domain name <www.americaneagle.co.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant.

The Complainant has contended that the Registrant/ Respondent belongs to India. However, the Registrant/Respondent has deliberately given an address which does not exist or a wrong address. The, Registrant/ Respondent has not given any e mail address also. Hence, any contact with the Respondent is impossible. Further, as has been mentioned above, the Registrant/Respondent has offered the disputed domain name for sale for a sum of US \$ 2,999 through SEDO.COM..

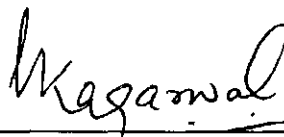
The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

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7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.americaneagle.co.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator
Date: 13th August 2015