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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR

IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

PANTALOON RETAIL (INDIA) LIMITED
THROUGH
CHANDRA PRAKASH TOSHNIWAL
CHIEF FINANCIAL OFFICER
KNOWLEDGE HOUSE, SHYAM NAGAR
OFF JOGESHWARI- VIKHROLI LINK ROAD
JOGESHWARI (EAST), MUMBAI-400060.
E-mail: cp.toshniwal@pantaloon.com

...Complainant

Versus

DOMAIN MANAGER
ON LINE DIRECTORY SERVICES
6TH FLOOR, ACROPOLIS BUSINESS CENTER
MUMBAI, MAHARASHTRA
E-mail: info@onlinedirectoryservices.org

...Respondent

1. THE PARTIES:

The complainant is PANTALOOON RETAIL (INDIA) LIMITED, KNOWLEDGE HOUSE, SHYAM NAGAR, OFF JOGESHWARI- VIKHROLI LINK ROAD, JOGESHWARI (EAST), MUMBAI-400060.

(Complaint has been filed through Authorized representative Chandra Prakash Toshniwal, Chief Financial Officer, Knowledge House, Shyam Nagar, Off Jogeshwari- Vikhroli Link Road, Jogeshwari (East), Mumbai-400060. E-mail address: cp.toshniwal@pantaloon.com)

The Respondent is DOMAIN MANAGER, ON LINE DIRECTORY SERVICES, 6th FLOOR, ACROPOLIS BUSINESS CENTER, MUMBAI, MAHARASHTRA

Email: info@onlinedirectoryservices.org

2. DOMAIN NAME AND TRADEMARK IN DISPUTE:

Domain name of the respondent is "**honey.in**"

The trademark of the complainant is "**HONEY**". The registry is National Internet Exchange of India (NIXI).

3. BRIEF BACKGROUND:

This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.

The complainant submitted his complaint in the registry of NIXI. Shri Sanjay Kumar Singh was appointed as Sole Arbitrator in the matter by NIXI.

A copy of complaint has already been sent to the respondent by the .In Registry through e-mail. Upon receipt of the complaint, the Arbitrator sent a notice dated 03-03-2009 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within 10 days from receipt.

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The complainant has submitted that complainant are the registered proprietors of the trademarks "HONEY FRESH" vide trade mark no. 1472125, date of application- 21/07/2006 in classes 3 and "HONEY SPORT" vide trade mark no. 1472124, date of application- 21/07/2006 in classes 3. The complainant has further submitted that the brand "HONEY" has been used openly continuously and exclusively since its inception during the course of business. The complainant has further submitted that due to the best quality products and varieties according to latest fashion the said brand "HONEY" has acquired formidable reputation and goodwill in relation to the said goods and the said brand "HONEY" has come to be exclusively associated and identified with the complainant. The complainant has further submitted that they have conceived and adopted the distinctive trade mark "HONEY". The complainant has further submitted that by virtue of original, honest adoption continues and extensive use in respect of brand trademark they have acquired actionable Intellectual Property Rights in their trademark and are entitled to protect trademark from being infringed, tarnished, diluted, misused and or falsified by others. The complainant has further submitted that respondent has registered the domain name in bad faith. The complainant has further submitted that the use of the domain name by the respondent is likely to cause confusion and/or deception amongst the members of the trade and public. The complainant has further submitted that registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration.

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The respondent sent his defense / counter to the complaint dated 10-03-2009.

The respondent in the response/reply has stated that the domain name honey.in was registered with a specific business interest and business idea to set up a dating portal similar to other websites such as www.match.com. The respondent has further submitted that the portal will allow the Indian visitors to register with honey.in for a minimal fee and update their profile and expectations. The respondent has further submitted that the word "honey" is a generic word and therefore any trade mark rights are limited. The respondent has further submitted that at the time of registering this domain name they were not aware of any existing trademark for the word "honey". The respondent has relied on various decisions in support of their claim. The respondent has prayed for the ownership of the domain name honey.in.

The complainant sent the rejoinder along with supportive documents / evidence on 26th March 2009.

The complainant has submitted in the rejoinder that complainant has adopted the marks "HONEY FRESH" and "HONEY SPORT" containing "**HONEY**" as essential and prominent feature for use inter alia in respect of cosmetics and apparels and applied for the registration of the said trade mark under the application nos. 1472125 and 1472124 respectively. The complainant has also annexed **Exhibit "A"** as the specimen copies of the

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Trademark Registrations/applications filed by the complainant. The complainant has further submitted that the complainant has applied for the registration of the said trade mark "HONEY FRESH" by filing trade mark application nos. 1472125 and "HONEY SPORT" 1472124 for the work "HONEY" and design respectively in classes 3. The complainant has further submitted in the rejoinder that owing to the long exclusive, continuous and extensive use of the trade mark/brand HONEY, the international standards of the merchandise sold there under and the far reaching publicity and promotion of the said merchandise, trade mark/brand HONEY has acquired tremendous distinctiveness and the same is exclusively associated and/or identified with the complainant. The complainant has further submitted in the rejoinder that the said trade mark/brand also features exclusively on the internet and is associated with the complainant. The complainant has annexed Exhibit " B " as some of the internet search results for the said trade mark 'HONEY'. The complainant has further submitted that complainant has made tremendous efforts and has spent considerable amounts of money for the publicity and promotion of the merchandise bearing the mark/brand 'HONEY'. The complainant has annexed Exhibit " C " to substantiate the claim. The complainant has annexed Exhibit " D " as copies of the news paper and web articles etc featuring the well known mark 'HONEY' of the complainant. The complainant has relied on the decision of the Hon'ble Supreme Court of India in case of "Satyam Infoway Ltd Vs Sifynet Solutions Pvt. Ltd. AIR 2004 sc 3540.

The complainant as such has prayed for transfer of the domain name "honey.in" in favour of the complainant.

Therefore, this matter is being decided in view of the complaint of the complainant, reply/response to the complaint sent by respondent, the rejoinder to the reply/response sent by the complainant and as per law of the land.

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4. FINDINGS

After going through the submission made by both the parties and considering the reply/response of respondent and rejoinder of the complainant and the decisions relied up on by them, I find that the complainant has been able to produce evidence in support of his claim over the mark 'HONEY'. The respondent however has not produced any reliable evidence to support his right over the said domain name for whatever purpose he has registered the same. The respondent failed to substantiate the claim over the said domain name "**honey.in**". As such the complainant has established the right over the above domain name "**honey.in**".

5. CONCLUSION:

The complainant has thus established his right over the mark 'HONEY' and is entitled to transfer of domain name "**honey.in**". Hence I allow the complaint in favour of the complainant and against the respondent. I direct that the Domain name "**honey.in**" be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

Delhi

Date: 20-04-2009

Sanjay Kumar Singh

(Sanjay Kumar Singh)

Arbitrator