



भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100



ONE  
HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIAN NON JUDICIAL

हरियाणा HARYANA

R 940027

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

iHerb, Inc.  
15535 Sand Canyon Avenue  
Irvine, CA 92618  
United States

....Complainant

Shi bangjiqi,  
Street 1: gaoxinjishukaifaqu  
Zhengzhou, Henan, 450000  
China

....Respondent

Disputed Domain Name: [www.iherb.co.in](http://www.iherb.co.in)

## AWARD

### **1) The Parties:**

The Complainant in this arbitration proceeding is iHerb, Inc. whose address is 15535 Sand Canyon Avenue, Irvine, CA 92618, United States. The Complainant is represented by its authorized representatives P.S Davar & Co., of N-220, Greater Kailash-1, New Delhi – 110048.

The Respondent in this arbitration proceeding is shi bangjiqi, Street1: gaoxinjishukaifu Zhengzhou, Henan, 450000, China as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name is [www.iherb.co.in](http://www.iherb.co.in). The Registrar is Webiq Domains Solutions Pvt. Ltd., 1<sup>st</sup> Floor, Directi Plex, ACME I-Tech Park, Next to Andheri subway, Old Nagardar Road, Andheri (East), Mumbai, Maharashtra, India - 400069

The Registrant is shi bangjiqi, Street1: gaoxinjishukaifu Zhengzhou, Henan, 450000, China

### **3) Procedural History: :**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.





- The complaint was produced before the Arbitrator on April 29, 2016, and the notice was issued to the Respondent on April 29, 2016 at his email address with a deadline of 10 days to submit his reply to the arbitration.
- The Arbitrator also directed the Complainant to provide by email copy of the complaint and Annexures to the Respondent which was duly complied.
- As the Respondent did not submit any response. Vide email dated May 16, 2016 the Arbitrator granted further opportunity to the Respondent to submit its response on or before May 22, 2016.
- Vide email dated May 6, 2016; NIXI informed that the DTDC courier agency requires contact details of the Respondent to hand over the Complaint along with Annexures to Respondent.
- Vide email dated May 6, 2016; the Arbitrator on checking the whois record provided the contact details of Respondent to NIXI.
- Vide email dated May 6, 2016; NIXI informed that the courier was actually sent to the said address and the contact number reflected in WHOIS search. This appears incorrect and NIXI requested for further guidance proceed further.
- Vide email dated May 6, 2016; the Arbitrator mentioned that he has not received delivery failure of emails from the Respondent. Thus, the Respondent is called upon to provide his complete and correct address. In the absence of response by May 9, 2016 (from the Respondent), NIXI can instruct courier agency to destroy the packet. In the absence of response it will be treated as deemed service and complaint will be decided/ processed.
- Vide email dated May 16, 2016; NIXI informed that as they did not receive any information from the respondent about the correct address till 9th May 2016. Hence NIXI had directed DTDC, the courier agency to destroy the packet.
- Vide email dated May 16, 2016; learned Arbitrator requested NIXI to provide a letter from the courier company to confirm that the address was incomplete or non-existent and thus service could not be completed.
- Vide email dated May 20, 2016; NIXI had provided the proof of delivery on the letterhead of DTDC mentioning non delivery of courier due to insufficient address.
- No response was received from the Respondent even after extending the time period for response to 22<sup>nd</sup> May, 2016.

In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

**Grounds for administrative proceedings:**

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions:**

- a) The Complainant's company was founded in 1996 and has striven to enhance the online shopping experience. The applicant has over 900 employees, has been in business over 19 years and has over 35, 000 products on its website, [www.iherb.com](http://www.iherb.com) and related international sites, including [www.in.iherb.com](http://www.in.iherb.com), which is a site specifically designed for customers in India. The applicant ships products to over 150 countries including India.
- b) The complainant sells a variety of products online, including nutrition supplements and health products, groceries, bath and beauty products around the world. A constantly expanding business, iHerb carries one of the largest selections of the highest quality nutritional products in the world. iHerb offers the best overall value for health products everywhere.
- c) The Complainant Company is a reputed and renowned company. It is not just a company which sells a vast range of products from nutritional and health products, groceries, bath and beauty products, it is also a company that looks after its employees, gives back to society, and has contributed to numerous charitable causes around the world.
- d) The Complainant is ranked globally 1,141 as an Internet site. This is a significantly high ranking provided by Alexia.com, which is a renowned third party Internet data company. The total number sites which link to the Complainant's website are 8,359 and which include eBay, Amazon, etc.
- e) The Complainant's website is ranked 2<sup>nd</sup> on a world basis for health products being sold and offered for sale online. Further, the Complainant's website <http://in.iherb.com> allows customers in India to buy products and purchase them in Indian Rupees as well.
- f) The Complainant, **iHerb, Inc.**, is the registered proprietor of trademark "IHERB" and its variants on the worldwide basis including USA, Canada, Europe, Russia, Korea, China, Singapore, Hong Kong, Japan, New Zealand, Australia, Taiwan, Brazil, Indonesia, Philippines and Macau. Further, the Complainant has also applied for trademark Registration in India which is pending with Trade Marks Registry.
- g) Further, the Complainant submitted that it has registered the domain name [iherb.in](http://iherb.in) on 16/2/2009, [iherb.gen.in](http://iherb.gen.in) on 4/6/2014 and [iherb.com](http://iherb.com) on 28/7/1997, whereas the disputed domain name [www.iherb.co.in](http://www.iherb.co.in) was registered by the Respondent on 9/6/2015. Hence, such subsequent adoption and registration of the disputed domain





name shows that the Respondent has no right or legitimate interest in the domain name [www.iherb.co.in](http://www.iherb.co.in)

- h) The Complainant also submitted that it is also the owner of several domain names and websites are accessible to the world over and are available for use by users globally including those in India. The said websites contain extensive information about the Complainant and its products marketed and sold under the renowned and well known trademark and corporate name "iHerb". The Complainant's business is only over the internet and therefore the present violation/infringement has even more severe implications.
- i) The Complainant submits that it has painstakingly built up a good reputation worldwide and has invested substantial amounts of resources in advertising its products under the trademark "IHERB" in various international magazines, brochures, catalogues, Internet, other print and visual media and also through fairs, exhibitions and events.
- j) The Complainant claims that trademark IHERB is a well-known trademark in favour of the Complainant and is associated and synonymous with the highest standard of quality, reliability and value of products which the Complainant is selling and offering for sale online. The Complainant has successfully protected and enforced its rights in respect of the trademark IHERB.
- k) The Complainant adopted the trademark IHERB two decades ago. The Complainant has extensively used the mark all over the world, including India and also has registered in numerous countries of the world. The trademark IHERB has been successfully protected and regarded well-known trademark by Authorities. Further, the Complainant only conducts its business activities through the internet and therefore the present violation/infringement has even more severe consequences for the Complainant and its customers.
- l) The Complainant submits that the disputed domain name [www.iherb.co.in](http://www.iherb.co.in) contains the Complainant's complete trademark and trade name registered in numerous countries around the world. The disputed domain name is visually and phonetically identical and/or confusingly similar to the trademark and trade name and further several domain names of the Complainant.
- m) Further, the Complainant submits that upon perusal of the Respondent's website [www.iherb.co.in](http://www.iherb.co.in) it seems that the respondent is a cyber-squatter/cyber pirate and has registered the disputed domain name merely due to the fact that the Complainant's trademark and domain names are well known and reputed. Such a fact will make customers/prospective customers and general public to believe that the respondent domain name and activities are those of the Complainant's.
- n) The Complainant submits that a cease & desist letter was sent to the respondent SHI BANGJIQI by the Complainant's counsel in Hong Kong for infringing their website on 2<sup>nd</sup> February, 2016. No reply was received from the respondent. This clearly shows the bad faith and malafide intention of the respondent.



- o) The Complainant submits that it has legitimate interest in the "IHERB" trademark in India as used and registered extensively throughout the world by the Complainant for over 19 years. In fact the trademark IHERB was adopted two decades ago. By virtue of long and extensive use, excellence in quality of products sold, worldwide registrations, extensive advertising, the "IHERB" trademark and domain name has become a well known mark around the world and such reputation and notoriety of the Complainant has extended into India as well. Further, the Complainant has registered several domain names in its favour comprising IHERB.
- p) The Complainant submits that the Respondent is neither commonly/popularly known in the public nor has applied for any registration of the mark "IHERB" or any similar mark or has registered his business under the said name with the Ministry of Corporate Affairs, India and therefore has no legitimate rights and interest in the said domain name.
- q) The Complainant submits that the disputed domain name was intentionally adopted by the Respondent for commercial gain to misleadingly divert the consumers or traders of the Complainant to the disputed domain name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant.
- r) The adoption of the disputed domain name by the Respondent is dishonest and is in bad faith and is and will cause irreparable damage to the complainant's reputation and business. The Respondent has no justification whatsoever to adopt the identical domain name [www.iherb.co.in](http://www.iherb.co.in) other than to mislead the customers of the Complainant and general public at large to believe that the Respondent is the same entity as the Complainant.
- s) The Respondent registration of IHERB is an dishonest and willful and merely to redirect the customers of the Complainant and internet users at large to its website and cause damage to the Complainant, its customers and repute. The respondent's history and conduct as already stated in the preceding paragraphs clearly establishes his bad faith and that he has no legitimate rights or interest in the disputed domain name.
- t) The Complainant submits that by registering the disputed domain name the Respondent has intentionally attempted to attract internet users to its website by creating a likelihood of confusion with the Complainant's name and mark as to the source of sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered/available on the Respondent's website.
- u) Further, the Complainant submits that the Respondent has deliberately registered the disputed domain name with the intention of preventing the Complainant who is the owner of the trademark IHERB from reflecting said mark in its domain name in India. The wrongful adoption of [www.iherb.co.in](http://www.iherb.co.in) domain name by the respondents is weakening and tarnishing the impeccable reputation and goodwill accruing in favour of the Complainant's products and services. The respondent has no justification in registering the disputed domain name and the same is in bad faith.

##### 5) **Respondent**

The Respondent has not filed any response to the Complaint. In the absence of any response to the allegations and submissions of the complainant and considering





several opportunities granted, the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

**6) Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark IHERB leads to the conclusion that the Complainant has superior and prior rights in the mark containing the word 'IHERB'. Thus it can be said a) the web users are likely to associate the word 'IHERB' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the [www.iherb.co.in](http://www.iherb.co.in).

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has statutory rights and common law rights on account of prior and longstanding use of the mark 'IHERB'. The Complainant has in support submitted substantial documents. The disputed domain name contains the Complainant's 'IHERB' mark in its entirety that has been registered in several countries including China where the Respondent is based. Further, these registrations are prior to domain name registration by the Respondent.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'IHERB' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose of registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. The domain name is currently inactive.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.iherb.co.in'.



- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. In particular, the Respondent has not rebutted the contentions of the complainant that it had knowledge of the complainant's mark IHERB when it registered the disputed domain name. Furthermore, the Respondent provided wrong/incomplete address to hide its identity and had not come forward to explain its adoption of the domain name.

Based on the documents filed by the Complainant, and considering the conduct of the Respondents, it can be concluded that adoption of the domain name/mark 'www.iherb.co.in' shows 'opportunistic bad faith'.

**7. Decision:**

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name [www.iherb.co.in](http://www.iherb.co.in) is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In addition, the Respondent by providing incorrect address at the time of registration, which is evident from non-delivery of courier containing the Complaint. This is corroborated by the report provided by NIXI dated May 20, 2016 from DTDC courier. The Respondent has therefore violated clause 3 (a) of .IN Domain Dispute Resolution policy.

In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name 'www.iherb.co.in' be transferred to the Complainant.



**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**June 22, 2016**