



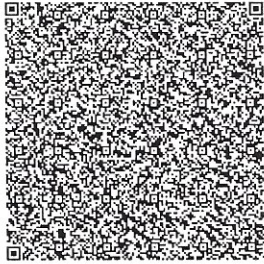
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL672237011296720
Certificate Issued Date : 06-Jul-2016 11:12 AM
Account Reference : IMPACC (IV)/ dl820103/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL820103338478690535610
Purchased by : LUCY RANA
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : LUCY RANA
Second Party : Not Applicable
Stamp Duty Paid By : LUCY RANA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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**BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry - National Internet Exchange of India)**

ARBITRATION AWARD

Disputed Domain Name: <NIKE.CO.IN>

IN THE MATTER OF:

Nike Inc and Nike Innovative C.V.,
One Bowerman Drive,
Beaverton, OR 97005
Telephone: 213-430-3400
Fax: 213-430-3409
Email: domains100@tuckerellis.com

Versus

Complainant

Zhaxia
Pfister Hotel
Milwaukee, WI 53214, USA
Milwaukee, 53202, US
Telephone: +414.2710840
Fax: +414.2710840
Email: ymgroup@msn.com

Respondent

Statutory Alert:

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2. The onus of checking the legitimacy is on the users of the certificate.
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1. **The Parties:**

The Complainants in this arbitration proceeding are NIKE, Inc. and Nike Innovate C.V of the address One Bowerman Drive, Beaverton Drive, OR 97005.

The Respondents in this arbitration proceeding are Zhaxia and Pfister Hotel of the address Milwaukee, WI 53214, USA, Milwaukee, 53202, US.

2. **The Domain Name, Registrar and Registrant:**

The present arbitration proceeding pertains to a dispute concerning the registration of the domain name <nike.co.in> with the .IN Registry. The Registrant in the present matter is Zhaxia. Further as evident from the WHOIS search results as attached the Registrar of the said domain name is Business Solutions (R54-AFIN).

3. **Procedural History:**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated May 30, 2016, sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of its availability and consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure on the same day.

The Arbitrator received the Complaint dated May 09, 2016, from NIXI on June 09, 2016. Thereafter, the Arbitrator sent a notice to the Respondents vide email on June 10, 2016, informing that copy of the complaint along with annexures has already been forwarded to the Respondents by NIXI on June 10, 2016. Therefore, a period of **21 days (Twenty One Days)** was given to the Respondents from the receipt of the notice to file its response to the Complaint in both hard as well as soft copy.

Arbitrator vide email dated July 01, 2016, requested NIXI to apprise her with the delivery status of the courier as sent to the Respondents forwarding a hard copy of the Complaint along with the Annexures.

NIXI vide email dated July 02, 2016, informed that the courier has been duly received by the Respondents on June 17, 2016.

Despite receipt of the domain complaint the Respondents have not filed any reply to the complaint as filed.

Accordingly, in view of the facts and circumstances in the matter, the Arbitrator has proceeded with the arbitration proceedings on the basis of the material submitted and put on record by the Complainants.



4. Factual Background

The Complainant i.e., Nike Innovate C.V is a wholly owned subsidiary of Nike Inc. (collectively known as Complainants). The Complainants state that they own exclusive rights to use the **NIKE** trade mark and service mark and has used the same in connection with its highly successful and widely known lines of sports shoes, apparel and sports equipment since the last 40 years.

The Complainants state that their business has grown from a small athletic footwear business with one retail store to a global provider of athletic footwear, apparel, electronic devices, digital applications and equipment that is unrivaled in the world. The Complainants further state that they are operating in more than 160 countries across the globe and their revenues have exceeded \$ 20 billion (USD) each for the year 2012, 2013 and 2014 and in this regard has also attached Nike's 2014 Letter to Shareholders.

The Complainants further states that they directly or indirectly employs nearly one million people, including more than 30,000 NIKE employees across six continents.

The Complainants state that they have continuously and exclusively used the NIKE mark in the United States and in countries around the world, since 1971. The Complainants further state that because of such extensive global use the said mark has become distinctive and famous.

The Complainants state that it extensively promotes its **NIKE** marks and incurs several billion dollars (USD) for such promotion. The Complainants have also stated that total expenditure since inception are in excess of \$34 billion (USD). The Complainants state that the NIKE mark is promoted through various high profile channels, including print ads, television, online and also by sponsoring athletes at major sporting events such as Olympics etc. The Complainants further state that they are the official uniform outfitter of the Indian Cricket Team and has been the official kit supplier of numerous national football teams.

The Complainants state that **NIKE** consistently ranks among the highest valued brands in the world as per Interbrand's annual publication of the 100 "Best Global Brands". The Complainants also state that NIKE consistently ranks among the top apparel brands in the world in Brand'z annual publication.

The Complainants also state that their primary website www.nike.com attracts between two to three million unique visitors per month. Further the Complainants have also mentioned that the said website provide online retail store services where consumers can directly purchase the Complainants goods. The Complainants have also attached a screen capture from the said website.

The Complainants have further stated that in the year 2007 the Hon'ble High Court of Delhi in the matter of Nike International Ltd. v. Variety Enterprises held that "NIKE Mark has become [a] well known trade mark". Further the Complainants have also stated that in Nike International Ltd v. GR Fragrances India Pvt Ltd it has been held by

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the Assistant Registrar Trade Marks New Delhi that the “word NIKE is internationally well known”. The Complainants have also stated that similar conclusions were also reached within the European Community and have also provided the details of the matters in this regard.

The Complainants also state that they own hundreds of separate trade mark registrations worldwide (in 150 countries of the world) for its NIKE mark and have also provided a list of such registrations which is reiterated below:

United States

Mark	Registration No.	Registration Date	Class
NIKE	978952	Feb-19-1974	25
NIKE	1153938	May-12- 1981	18
NIKE	1243248	Jun-21-1983	42
NIKE	1214930	Nov-02-1982	25
NIKE	1277066	May-08-1984	25
NIKE	1924353	Oct-03- 1995	18
NIKE	2025926	Dec-24-1996	28
NIKE	2239077	Apr-13-1999	9, 28
NIKE	1945654	Jan-02-1996	25
NIKE	2196735	Oct-13-1998	14
NIKE	3081688	Apr-18 -2006	09
NIKE	3389746	Feb-26-2008	28
NIKE	3406594	Apr-01-2008	09

European Community Trade Mark

Mark	Registration No.	Filing Date	Class
NIKE	278028	07/08/1996	9,14,18,25,28,42
NIKE	8871915	02/10/2010	35
NIKE	01210 1689	08/30/2013	9
NIKE 6.0	5725346	03/01/2007	18,25,28
NIKE and Swoosh Design	277889	07/08/1996	9,14,18,25,28,42
NIKE in Script	827824	05/19/1998	18,25,28

Indian Registrations

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Mark	Registration No.	Filing Date	Class
NIKE	526647	03/22/1990	25
NIKE	1058162	11/09/2001	9
NIKE	1058161	11/09/2001	14
NIKE	1058160	11/09/2001	28
NIKE	1240800	10/01/2003	35
NIKE	593592	03/29/1993	18
NIK	346173	02/21/1979	25
NIK	349453	05/23/1979	18
NIKE	1418321	02/01/2006	3
NIKE AIR and Swoosh Design	561076	10/29/1991	18
NIKE and Swoosh Design	453267	04/30/1986	18
NIKE and Swoosh Design	453268	04/30/1986	25
NIKE and Swoosh Design	566685	01/31/1992	28
NIKE and Swoosh Design	1211922	07/07/2003	28

5. **Parties Contentions**

A. **Complainant**

i. **The Subject Domain Name is identical to Complainant's Nike Marks.**

The Complainants have stated that the domain name <nike.co.in> is identical to Complainants NIKE mark except for the '.co.in' TLD. Further the Complainants have also referred to judgements wherein it has been held that "where the disputed domain name incorporates the complainant's well-known, prior used trademark ... in its entirety ... merely affixing a ccTLD (i.e., .in) as a suffix will not remove the distinctiveness of the trade mark". (Williams-Sonoma, Inc. v. Jiaai (EAC International), Case No. INDRP/773, Bharti Airtel Limited v. Aparna Somasundaran, Case No. INDRP/727 and Houzz Inc. vs. Ravi Shan, Case No. INDRP/749). Further the Complainants have also referred to a number of WIPO cases in this regard. (Awesome Kids LLC v. Selavy Comm., D2001-02 10 (WIPO Apr. 16, 2001), CloudFlare, Inc v. [Registrant], FA 624251 (Nat. Arb. Forum Aug.1, 2015)

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ii. Respondent has registered and is using the subject domain name in bad faith

The Complainants have stated that the Respondents registration of a domain name that is identical to Complainant's famous **NIKE** mark, is plainly for commercial use and evidences Respondent's bad faith under Policy.

The Complainants have further stated that Respondents have registered a domain name that is confusingly similar or identical to Complainants **NIKE** mark to intentionally attract internet users who mistakenly believe that the domain name is related to Complainant or its products and services.

Further the Complainants have also referred to a number of matters in this regard such as Google Inc. v. Pablo Riga, Case No. INDRP/693 (respondent's use of a domain name confusingly similar to a complainant 's mark to redirect internet users to respondent's own commercial website evidences bad faith registration and use under the Policy); Williams-Sonoma, Inc. v. Jiaai (EAC International), Case No. INDRP/773 (same); Dollar Financial Group, Inc. v. Bankshire Corp., FA 13686 (Nat. Arb. Forum Jul. 30, 2007) (same under UDRP 4(b)(iv)); S. Exposure v. S. Exposure, Inc., FA 94864 (Nat. Arb. Forum Jul. 18, 2000) (finding the respondent acted in bad faith by attracting internet users to a website that competes with the complainant's business).

The Complainants have further stated that the Respondents registered the subject domain name with actual knowledge of Complainant's rights in the **NIKE** mark. The Complainants further states that the domain name <nike.co.in> is redirected to other commercial websites offering directly competitive goods. Further the Complainants have also attached a screen capture showing the redirection. The Complainants have also stated that while the ultimate landing page changes each time a user navigates to the page, but Respondents still earns revenue from redirecting consumers searching for Complainants and its **NIKE** mark.

Further the Complainants have also stated that the Respondents have clearly engaged in a pattern of conduct designed to prevent trademark owners from reflecting their marks in corresponding domain names. The Complainants have also stated that the Respondents has registered hundreds of domain names

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incorporating famous and well-known trademarks and service marks and has also mentioned a few such as amoldpalmer.in , bankofamerica.in, colgate.in, dowchemical.co.in, epicor.co.in, fordcredit.in, guinness.co.in, haagen-dazs.in, iberia.in, jockeyinternational.in, kswiss.co.in, louis-vuitton.in, marlboro.co.in, newbalance.in, oshkosh.in, perkinelmer.co.in, renault-trucks.co.in, sofitel.co.in, tdameritrade.co.in, ubisoft.co.in, wyndham.in, xyleminc.co.in, zillow.in. Further the Complainants have also attached WHOIS data for each of these domain names. The Complainants have stated that such activity plainly demonstrates bad faith of the Respondent.

The Complainants further state that it is settled law that registration of a confusingly similar domain name that is obviously connected with a particular trademark owner by someone with no connection with the trademark owner suggests bad faith. In this regard the Complainants have referred to (Lululemon Athletica Canada, Inc. vs. Liheng, Just Traffic Supervision Consulting, Case No. INDRP/725 (that "the respondent could not have ignored, but rather [was] influenced by" complainant's trademark at the time the disputed domain name was registered evidenced respondent's bad faith); Household Int'l, Inc. v. Cyntom Enters., FA 096784 (Nat. Arb. Forum Nov. 7, 2000) (inferring that the respondent registered a well-known business name with hopes of attracting the complainant's customers).

Further the Complainants state that because the **NIKE** mark is so obviously connected with them, and because the subject domain name so clearly refers to Complainant's famous NIKE Mark, registration by Respondents, who has no connection with Complainant, supports a finding of bad faith under the Policy.

iii. **Respondent has no rights or legitimate interest in the subject domain name**

The Complainants have stated that the Respondents have no rights or legitimate interest in the subject domain name. The Complainants have further stated that the Respondents are not known by the subject domain name, nor does Respondents lawfully conduct any business using the name reflected in the subject domain name. Moreover, Respondents are not licensed to use Complainants **NIKE** mark, nor does Respondents have any legal relationship with Complainants.

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Respondent is not making a bonafide offering of goods or services at the subject domain name

The Complainants have stated that Respondents are using the subject domain name to direct consumers to commercial websites offering goods directly competitive with goods offered under Complainant's NIKE Mark. Further the Complainants have also stated that commercial use of the subject domain name "in the absence of any license or permission from Complainant to use any of its trademarks or to apply for or use any domain name incorporating its trademarks" is not a use in connection with a bona fide offering of goods or services pursuant to Policy. The Complainants have stated that this has been held in *Google Inc. v. Pablo Riga*, Case No. INDRP/693; *Vapor Blast Mfg. Co. v. R & S Tech., Inc.*, FA 96577 (Nat. Arb. Forum Feb. 27, 2001) (finding that Respondent's commercial use of the domain name to confuse and divert Internet traffic is not a legitimate use of the domain name).

Respondent is not commonly known by the subject domain name

The Complainants have stated that Respondents, referred to in the WHOIS data for the subject domain name as "Zhaxia" and "Pfister Hotel," is not commonly known by the subject domain name.

The Complainants have further stated that they have not given Respondents permission to use its famous NIKE mark and that Respondents unauthorized use of Complainants trademarks reinforces that Respondents are not commonly known by the disputed domain name. In this regard Complainants have referred to *Google Inc. v. Pablo Riga*, Case No. INDRP/693; *Lululemon Athletica Canada, Inc. vs. Liheng, Just Traffic Supervision Consulting*, Case No. INDRP/725; *Solstice Marketing Corp. v. Marc Salkovitz d/b/a Image Media, LLC*, FA 040087 (Nat. Arb. Forum Aug. 31, 2007) (respondent was not commonly known by the disputed domain name because, in part, respondent lacked authorization to use complainant's registered service mark); *American Girl, LLV v. George Rau*, FA 308206 (Nat. Arb. Forum Apr. 2, 2010) (respondent was not commonly known by the disputed domain name when respondent was "not licensed or otherwise authorized to use" complainant's mark).

Respondent is not making legitimate noncommercial or fair use of the subject domain name

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The Complainants have stated that Respondents have made a plain commercial use of the subject domain name. The Complainants have further stated that the subject domain name is clearly used to direct users to commercial websites offering directly competitive goods.

B. Respondent

Despite receipt of the complaint both in hard and soft copy and adequate notification from the Arbitrator, the Respondent has not filed any response and submissions to the complaint. Therefore, the Arbitrator has proceeded with the arbitration proceedings on the basis of the material submitted and put on record by the Complainant.

6. Discussion and Findings:

In the present circumstances, the decision of the Arbitrator is based on the documents as filed by the Complainant.

After perusing the Complaint and annexures as filed, the Arbitrator is of the view that the Complainant has satisfied all the three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.,:-

- i. The Registrant's domain name is identical and confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interests in respect of the domain name;
- 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, trademark or service mark in which the Complainant has rights (paragraph 4 (i) of .IN Domain Name Dispute Resolution Policy)

The Complainants are the registered proprietor of the trade/service mark "NIKE" per se along with various prefixes and suffixes in various classes in India as well as other countries.

The disputed domain name <nike.co.in> completely incorporates the trade/service mark NIKE of the Complainants. It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*. Therefore, it is observed that the domain name <nike.co.in> is similar to the Complainant's trade/service mark NIKE.

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'CO.IN' is an essential part of any top level Indian domain name, therefore, it does not distinguish the Respondents domain name <nike.co.in> from the Complainants trade/service mark NIKE. This has also been held by prior panels in *Lego Juris A/S v. Robert Martin INDRP/125* and *AB Electrolux v. GaoGou of Yerec, INDRP/630*.

Therefore, the disputed domain name <nike.co.in> is confusingly similar/identical to the trade mark of the Complainant and the Complainant has satisfied the requirement paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

ii. The Registrant has no rights and legitimate interests in respect of the domain name (Paragraph 4 (ii); paragraph 7 of .IN Domain Name Dispute Resolution Policy)

The Complainants state that the Respondents does not lawfully conduct any business using the name reflected in the subject domain name. Further the Complainants have not licensed the Respondents to use the NIKE mark, nor do the Respondents have any legal relationship with the Complainants that would entitle the Respondents to use the said mark. Further in *Consorzio del Prosciutto di Parma of Via Marco dell' Arpa v. Jim Muller, INDRP/218*, it was held that "misleading users by incorporating other's trademarks in a domain name gives a false impression to users and does not constitute a *bonafide* offering of goods and services."

The Respondents website is not bonafide as the Respondents are using the disputed domain name to divert/redirect internet users seeking Complainants goods to commercial websites offering goods directly competitive with goods offered under Complainants NIKE marks. In *Dell Inc. v. Mani, Soniya, INDRP/765*, it was held that "Respondent's websites are not bonafide since the Respondent is using the disputed domain name to divert/redirect internet users and Consumer's seeking the Complainant's goods and services to its own websites, which offers the Complainant's products and services and also of those in direct competition with the Complainant."

The Respondents are not commonly known by the domain name. In this case the Respondent referred to in the WHOIS data is "Zhaxia" and "Pfister Hotel".

In view of the aforesaid, the Arbitrator accepts the Complainants claim that the Respondents are not authorized, licensed or permitted to use the trade mark NIKE per se or any mark similar/identical to the said mark and therefore, the Respondents have no rights or legitimate interests in the domain name <nike.co.in> and the conditions under paragraph 4 (ii) and paragraph 7 of the .IN Domain Name Dispute Resolution Policy, have been satisfied.

iii. The Domain Name was registered or is being used in bad faith (Paragraph 4 (iii) and paragraph 6 of the .IN Policy)

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In the present case, the Respondents have registered the domain name <nike.co.in> that is similar/identical to Complainants **NIKE** mark to intentionally attract internet users who mistakenly believe that the domain name is related to the Complainant or its product and services, to Respondents commercial offering of directly competitive goods.

Further registration of a confusingly similar domain name that is obviously connected with a particular trade mark by someone with no connection with trade mark owner suggests bad faith.

In view thereof, the Arbitrator concludes the Complainants have proved the requirements under Paragraph 4 (iii) and paragraph 6 of the .IN Dispute Resolution Policy).

Despite being given adequate notification the Respondent has not filed any reply till date hence, the facts are deemed to be admitted by them. Therefore, in absence of any response received from the Respondent, the Arbitrator has proceeded with the award ex parte. (As held in *Intercontinental Corporation v. Jaswinder Singh, INDRP/265* and *Park Hospitality Worldwide LLC v Kristin Frakfurter, INDRP/659*).

7. **Decision**

Based upon the facts and circumstances and further relying on the documents as annexed with the complaint, the Arbitrator is of the view that Complainants have statutory and proprietary rights over the trade mark **NIKE** per se and along with prefixes and suffixes. The disputed domain name <nike.co.in> is similar/identical to the trade mark of the Complainants. The Complainants have proved to the satisfaction of the Arbitrator that the Respondents have no right or legitimate interest to use the aforesaid domain name and the said domain name has been registered and is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainants and directs the .IN Registry to transfer the domain <nike.co.in > to the Complainants. The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana
Sole Arbitrator

Date: July 12, 2016
Place: New Delhi, India