

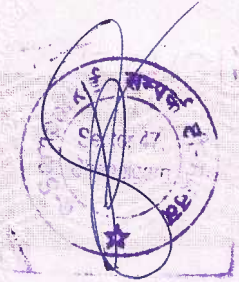
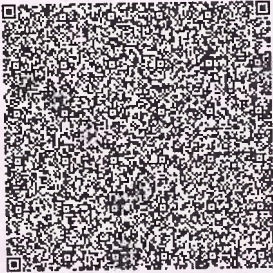


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No. : IN-CH08986183747657P
Certificate Issued Date : 25-Aug-2017 10:53 AM
Certificate Issued By : chankshai
Account Reference : IMPACC (GV)/ chimpssp07/ E-SAMPARK SEC-47/ CH-CH
Unique Doc. Reference : SUBIN-CHCHIMPSP0717915723042284P
Purchased by : SANDIP MISHRA
Description of Document : Article 12 Award
Property Description : # 187 ADVOCATE SOCIETY SEC 49 CHD
Consideration Price (Rs.) : 0
(Zero)
First Party : DR ASHWINIE KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : DR ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



-----Please write or type below this line-----

ARBITRATION AWARD

Ashwini B

UP 0002239021

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shellestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

ARBITRATION AWARD

(On Stamp Paper)

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

**ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR:**

DR. ASHWINIE KUMAR BANSAL, L.L.B, Ph.D.

Advocate, Punjab & Haryana High Court,

House No: 187, Sector- 49A, Advocate Society,

Chandigarh

Email:akbansaladvocate@gmail.com

Mobile: +919915004500

In the matter of:

The Singer Company Limited,
S.A.R.L, 1, Rue De Glacis,
L-1628, Luxembourg

...Complainant

VERSUS

Novation In Limited
Flat 5, Chippenham House,
Southacre Drive,
City: Cambridge,
State/Province: Cambridgeshire,
Postal Code:CB2 7TX
Country: GB (Great Britain)
Emails: pratiknaik@gmail.com and postmaster@singer.co.in

...Respondent

Ashwinie B

REGARDING: DISPUTED DOMAIN NAME: WWW.SINGER.CO.IN

1. The Parties:

Complainant:

Complainant in the arbitration proceedings is: The Singer Company Limited, S.A.R.L, 1, Rue De Glacis, L-1628, Luxembourg. Complainant is represented by Mr. Rahul Chaudhary, New Delhi.

Respondent:

Respondent in the arbitration proceedings is: Novation In Limited Flat 5, Chippenham House, Southacre Drive, City: Cambridge, State / Province: Cambridgeshire, Postal Code:CB2 7TX, Country: GB (Great Britain) emails: pratiknaik@gmail.com and postmaster@singer.co.in

2. The Domain Name and the Registrar:

The disputed domain name <singer.co.in> is registered with Endurance Domains Technology Pvt. Ltd., Unit no. 501, 5th Floor, IT Building 3, Nesco IT Park Nesco Complex, Western Express Highway, Goregaon (E) Mumbai, Maharashtra - 400063 (the "Registrar").

3. Procedural History [Arbitration Proceedings]

A Complaint has been filed with the National Internet Exchange of India (NIXI) by Complainant. At present Respondent is listed as the Registrant and provided the administrative details for administrative, billing and

Ashwini B. L.

technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI has already sent soft copy as well as the hard copy of the Complaint and annexures to Respondent.

In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed Respondent on 12.07.2017 to give his response within 10 days. As no response was filed by Respondent within 10 days hence arbitrator had granted one more opportunity to Respondent to file his response within 7 days but Respondent has failed to file formal response to the Complaint. However Respondent had sent two emails on 06.07.2017 and 31.07.2017.

The Arbitrator has examined the pleadings and the documentary evidence produced by Complainant and two emails of Respondent.

4. Factual Background

Complainant is a company organized and existing under the laws of Luxembourg and the owner of SINGER Trademark, as well as an affiliated company of the leading manufacturer and distributor of SINGER sewing machines. Complainant has a licensed/permitted under-Singer India Limited which is a company duly incorporated in India.

Ashwinie B T

Respondent has registered the disputed domain name <singer.co.in> on 16.05.2005 which incorporates Trademark of Complainant. Hence, present Complaint has been filed by Complainant against Respondent for transferring the disputed domain name to him.

5. Parties Contentions

A. Complainant

Complainant's Indian business is being managed by Singer India Limited which was incorporated as the India Sewing Machine Company Limited in the year 1977 and changed its name to the present name Singer India Limited in 1993. The principal purpose of the incorporation of Singer India Limited was to take over the business of the Indian branch of Complainant which was doing business under the SINGER name in India from at least the year 1870. Singer India Limited is the licensed/permitted user of Complainant SINGER Trademarks in India and deals in a range of goods including but not limited to water purifiers, fans, geysers, television sets, washing machines, refrigerators, power tools and furniture, microwaves, mixer grinders, heaters, iron Toaster, and Cookers.

The work SINGER was adopted by the predecessor-in-interest of Complainant as a Trademark for sewing machines and trading style in the year 1851 and has been in continuous and uninterrupted use since its adoption in relation to sewing machines worldwide. The use of the Trademark SINGER was extended from sewing machine to household appliances including but not limited to vacuum cleaners, juicer mixer

Ashwini B

grinders, heaters, fans, irons, microwaves, television, refrigerators from the year 1929 onwards.

There are more than 1500 Trademark registrations world-wide consisting of the word SINGER and owned by Complainant in number of jurisdiction all over the world including but not limited to Afghanistan, Albania, Argentina, Australia, Austria, Bangladesh, Benelux, Brazil, Bulgaria, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Finland, France, Germany, Ghana, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Latvia, Lebanon, Liberia, Libya, Liechtenstein, Lithuania, Madagascar,, Malawi, Malaya, Malaysia, Malta, Mexico, Morocco, Myanmar, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Singapore, Spain, Sri Lanka, Taiwan, Thailand, United Kingdom, Uruguay, Yemen, Zanzibar, etc.

In June, 2017 Complainant became aware of the domain name www.singer.co.in. Complainant is vigilant in protecting its Trademark SINGER and has previously taken actions against the misuse of the its renowned and well-known mark SINGER and obtained injunctions against the use of the Trademark SINGER by different parties.

B. Respondent

Respondent has failed to file formal response to the Complaint inspite of two opportunities given to him by the arbitrator. However Respondent has

Ashme B

sent two emails on 06.07.2017 and 31.07.2017. The email of Respondent sent on 06.07.2017 reads as under:

"I had no idea singer was interested in the domain. What's the best way to settle this? I don't want to waste everyone's time."

Another email of Respondent sent on 31.07.2017 reads as under:

"Respected Sir,

Sorry for the delayed response. I am the current owner of the domain singer.co.in. I also own sing.co.in and singers.co.in. The reason I purchased these domains are because my wife is an hobbyist singer and she wants to put out her songs in the internet. We have no connection with any sewing related activities.

Having said that, I understand that the company Singer owns the Trademark. I'd be happy to sell the domain singer.co.in to them directly and save everyone the hassle of a legal battle.

Thanks,

Pratik"

6. Discussion and Findings

Arbitrator has carefully considered Complaint and documents enclosed therewith besides two emails received from Respondent.

It remains incumbent on Complainant to make out its case in all respects under Paragraph 4 of the .IN Domain Name Dispute Resolution Policy ('the Policy'), which sets out the three elements that must be present for

Ashwin B

the proceeding to be brought against Respondent, which Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Registrant's domain name is identical or confusingly similar to a name, Trademark or service mark in which Complainant has rights;

(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and

(iii) the Registrant's domain name has been registered or is being used in bad faith.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

Complainant's mark SINGER as part of the trading style, has been used in India since the year 1870 and the earliest registrations for the Trademark SINGER date back to the year 1942 in respect of a wide variety of goods

Ashwini B

including goods falling in class 7. The aforesaid registrations have been renewed from time to time and are valid and subsisting. By virtue of the aforementioned registrations, Complainant has the exclusive right to use the Trademark SINGER in relation to the goods for which it is registered and take action for infringement of its Trademark.

Singer India Limited has been selling its goods under the Trademark SINGER across India through a wide network of dealers and company owned showrooms. There are many showrooms and dealers for products of Complainant across India. These dealers and showrooms ensure that the highest quality products of Complainant reach its customers across India and also provide excellent services in relation to these products. Complainant has produced documents supporting Trademark of complainant.

The Trademark SINGER has become associated by the general public exclusively with Complainant. Complainant also has domain name registrations as well as website incorporating the Trademark SINGER.

A Trademark registered with the Registrar of Trademarks is *prima facie* evidence of Trademark rights for the purposes of the Policy.¹ Internet users may be confused about the association or affiliation of the disputed domain name with Complainant.

Respondent has registered the disputed domain name <singer.co.in> wholly incorporating the Trademark SINGER of Complainant, which the

¹ See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 1.1.

Agline B

Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the registration of the Trademark SINGER is *prima facie* evidence of Complainant's Trademark rights for the purposes of the Policy². Internet users who enter the disputed domain name <singer.co.in> being aware of the reputation of Complainant may be confused about its association or affiliation with Complainant.

The Arbitrator finds that the disputed domain name <singer.co.in> is confusingly similar to the website and Trademark SINGER of Complainant.

B. Rights or Legitimate Interests

Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name³.

² See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

³ See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

Ashne B. l

The widespread use of the Trademark SINGER in almost every country of the world for over 163 years has ensured that the mark SINGER has become well-known in relation to sewing machines and associated in almost every household with Complainant. The Trademark SINGER is also the most distinguishing feature of the corporate name and trading style of Complainant and its affiliate companies worldwide including that of the Singer India Limited in India. Complainant also maintains a website having its Trademark SINGER, located at the domain name www.singer.com since June 8, 1995 and is being currently used by Complainant. Further Complainant also owns multiple domain names having its Trademark SINGER as a distinctive part of the domain names. Additionally Complainant's licensed/permitted user-Singer India Limited also maintains a website having the Trademark SINGER located as a distinctive part www.singerindia.net since October 29, 2004.

Respondent has not filed a formal Response to rebut Complainant's *prima facie* case and Respondent has only sent two brief emails. Respondent has admitted in his email dated 31.07.2017 that complainant owns the Trademark. He has shown his willingness to settle the matter but instead of transferring the domain name he has raised frivolous ground that he purchased the domain name because his wife is a hobbyist singer and she wanted to put her songs on the internet. No evidence has been produced by the respondent to support his contentions nor he filed a formal response to the allegations made in Complaint. The Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name <singer.co.in> as per Paragraph 7 of the Policy. In view of above,

Agave B

the Arbitrator finds that Complainant has made out a *prima facie* case.

Based on the facts as stated above, the Arbitrator finds that Respondent has no rights or legitimate interests in respect of the disputed domain name <singer.co.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith.

Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a 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 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 Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to

Ashne B

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 (iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with 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."

Each of the three circumstances in Paragraph 6 of the Policy, if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that Respondent is continuing to act in bad faith.

Respondent has registered the disputed domain name <singer.co.in>. In June, 2017 Complainant became aware of the disputed domain name and filed Complaint.

The web page of Respondent under the disputed domain name contains references to Singer Sewing Machine which are not related to the hobby of

Ashme B

singing. Respondent uses the domain name www.singer.co.in to operate links farms that provide links to website promoting products, services and websites of Complainants as well as the competitors to Complainant. Respondent is using the disputed domain name having automated 'pay per click ads' targeting Complainant's Trademark SINGER. Further Respondent has listed the domain name www. singer.co.in for sale. It is clear that the said domain name has not been purchased for any lawful activities. Further Respondent has shown his interest in his email dated 31.07.2017 to sell the disputed domain name to save every one (complainant) from legal battle.

Complainant has not granted Respondent permission, or, a license of any kind to use its Trademark SINGER and register the disputed domain name <singer.co.in>. Such unauthorized registration of the Trademark by Respondent suggests opportunistic bad faith. Respondent's true intention and purpose of the registration of the disputed domain name <singer.co.in> which incorporates the Trademark of Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark SINGER.

The Arbitrator therefore finds that the disputed domain name <singer.co.in> has been registered by Respondent in bad faith.

The Trademark SINGER has been a well-known name. The domain disputed name <singer.co.in> is confusingly similar to Complainant's Trademark SINGER, and Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the

Ashme B

domain name <singer.co.in> in bad faith. These facts entitle Complainant to an award transferring the domain name <singer.co.in> from Respondent.

The Arbitrator allows the Complaint and directs that Respondent's domain name <singer.co.in> be transferred in favour of Complainant.

7. Decision

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.singer.co.in> be transferred to Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 09.09.2017



Dr. Ashwinie Kumar Bansal

Sole Arbitrator

Advocate, Punjab and Haryana High Court

#187, Advocates Society, Sector 49-A

Chandigarh, India

Email: akbansaladvocate@gmail.com

Mob: +919915004500