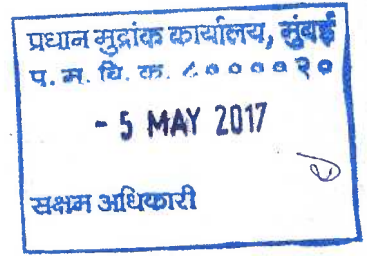


महाराष्ट्र MAHARASHTRA

● 2017 ●

RY 449583



श्री. प्र. ना. चिंचघरे

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

Williams-Sonoma, Inc.

...Complainant

v/s

GaoGou, YERCT International Limited

...Respondent

In the matter of Disputed Domain Name 'POTTERYBARNKIDS.IN'.

1 **The Parties**

The Complainant is Williams-Sonoma, Inc., 3250 Van Ness Avenue, San Francisco, California 94109, USA, represented by P. S. Davar & Co., New Delhi, India.

The Respondent is GaoGou, YERCT International Limited, 56. C. P. Rama Road, Hongkong.

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2 Procedural History

- 2.1 A Complaint dated July 27, 2017 has been filed with the National Internet Exchange of India (hereinafter referred to as the 'Exchange'). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently 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 (hereinafter referred to as the 'INDRP') and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On August 11, 2017, the Arbitrator had directed the Respondent to file his reply to the Complaint on or before August 26, 2017. On August 28, 2017, the Arbitrator had extended the deadline for submission of reply to September 2, 2017. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed ex-parte.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

From the Complaint and its annexures, the Arbitrator has found the following facts:

- 3.1 The Complainant is a company incorporated under the Laws of Delaware, USA. The Complainant is the manufacturer and seller inter alia of a wide range and array of goods including furniture, home accessories, upholstery, beddings, bath, rugs and windows, lighting, storage, decor, toys etc. The Complainant has numerous subsidiaries around the world, including a subsidiary registered in India.
- 3.2 The Complainant coined the trademark 'POTTERY BARN KIDS' in 1999 and continuously using it since then. Products of the Complainant under the trademark 'POTTERY BARN KIDS' and services rendered thereto are sold in over 90 countries around the world including India. The Complainant's trademark 'POTTERY BARN KIDS' is a registered trademark in India and several other countries around the world.
- 3.3 The Complainant is the registrant of the domain name <Potterybarnkids.com> and other generic and country code top level domain names which, inter alia, includes <Potterybarnkids.us>, <Potterybarnkids.nl>, <Potterybarnkids.ru>, <Potterybarnkids.eg>, <Potterybarnkids.jp>, <Potterybarnkids.dk>, <Potterybarnkids.at>, <Potterybarnkids.it> etc.

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3.4 The Complainant has expended a great amount of time, money and effort to promote and advertise the trademark 'POTTERY BARN KIDS' in offline (through magazines, brochures etc.), online (through their websites) and social media.

3.5 The Disputed Domain Name <POTTERYBARNKIDS.in> was registered by the Respondent on September 21, 2015.

4 **Parties' Contentions**

4.1 **Complainant**

The Complainant contends that the Disputed Domain Name is identical and/or confusingly similar to their trademark 'POTTERY BARN KIDS'; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered.

4.2 **Respondent**

The Respondent did not file reply to the Complaint.

5. **Discussion and Findings**

5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act. 1996, the Rules and other applicable rules and principles of law.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 **Identical or Confusingly Similar**

The Complainant is the registered proprietor of the trademark 'POTTERY BARN KIDS' in various countries including India. The Complainant is also the registrant of various domain names which, inter alia, includes <Potterybarnkids.com>, <Potterybarnkids.us>, <Potterybarnkids.nl>, <Potterybarnkids.ru>, <Potterybarnkids.eg>, <Potterybarnkids.jp>, <Potterybarnkids.dk>, <Potterybarnkids.at>, <Potterybarnkids.it> etc. The Disputed Domain Name <POTTERYBARNKIDS.in> incorporated the Complainant's trademark

'POTTERY BARN KIDS' in its entirety without any other word or letter. It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains and Country Code Top Level Domains, such as '.com', '.us', '.in' etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The '.in' suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Therefore, the Arbitrator finds that the Disputed Domain Name <POTTERYBARNKIDS.in> is identical to the Complainant's trademark 'POTTERY BARN KIDS'.

5.4 **Rights or Legitimate Interests**

The Complainant asserts that it has not licensed or otherwise permitted the Respondent to use the trademark 'POTTERY BARN KIDS'. The Complainant asserts that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name nor the trademark 'POTTERY BARN KIDS', in which the Complainant has sole and exclusive interest. The Respondent is not commonly known as 'POTTERY BARN KIDS'. The Disputed Domain Name was substantially subsequently adopted by the Respondent for commercial gain, to misleadingly divert internet traffic to its website. The Complainant asserts that the Respondent is not using the Disputed Domain Name in connection with a bona fide offering of goods or services as is evident from his website. The Arbitrator has found that the Disputed Domain Name does not resolve to a web page. In line with the previous UDRP and INDRP decisions, the Arbitrator concludes that the Complainant has made out a *prima facie* case that of the Respondent has no right or legitimate interest in the Disputed Domain Name and as such the burden of proof shifts to the Respondent. The Respondent chosen not to challenge the Complainant's allegations¹. There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <POTTERYBARNKIDS.in>.

5.5 **Registered and Used in Bad Faith**

At the time of registration of the Disputed Domain Name, the Complainant's trademark 'POTTERY BARN KIDS' was registered and used in various countries, including India. The Respondent knew or should have known of the Complainant's rights in the trademark 'POTTERY BARN KIDS' at the time of registration. The Respondent had registered the Disputed Domain Name with intention to attract users to its website by creating likelihood of confusion with the Complainant's trademark 'POTTERY BARN KIDS'. Such fact

¹In the absence of a response, it is appropriate to accept as true all allegations of the Complaint. Talk City, Inc. v. Michael Robertson, WIPO Case no. D2000-0009



constitutes bad faith under paragraph 6 of the INDRP. Further, the Respondent did not put forward any justification for choosing and using the Complainant's trademark 'POTTERY BARN KIDS' in the Disputed Domain Name. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. Decision

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <POTTERYBARNKIDS.in> be transferred to the Complainant.



Dipak G. Parmar
Sole Arbitrator

Date: September 12, 2017