

தமிழ்நாடு தமில்நாடு TAMILNADU

Mr. D. Saravanan
CH.

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4 SEP 2014

AT 245792

P.S. SHANMUGA SUNDARAM
STAMP VENDOR,
L No B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: www.reebok.co.in

REEBOK International Limited
4th Floor 11-12 Pall Mall
London SW 1Y 5LU
United Kingdom

Complainant

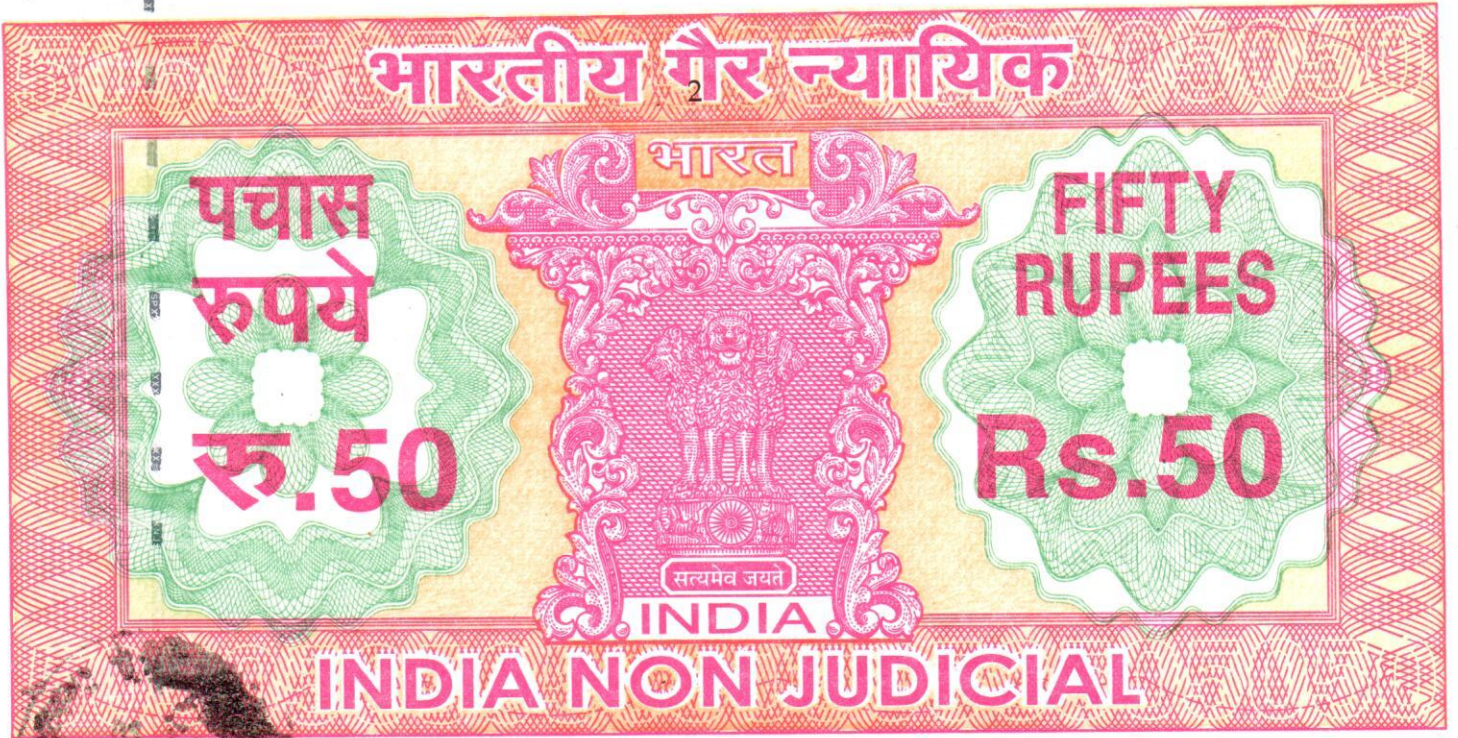
Vs.

ZHAXIA
Pfister Hotel
Milwaukee, WI 53214
USA 53202
yngroup@msn.co

Respondent

..2.





AG 918092

Mr. D. Saravanan
CH.

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STAMP VENDOR,
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1. The Parties:

The Complainant is REEBOK International Limited, 4th Floor 11-12 Pall Mall, London, SW 1Y 5LU, United Kingdom, represented by its representative M/s.RNA, Intellectual Property Attorneys, Gurgaon, Haryana.

The Respondent is ZHAXIA, Pfister Hotel, Milwaukee, WI 53214, USA 53202. Neither the Respondent represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name is www.reebok.co.in. The domain name has been registered with .IN REGISTRY

..3.



3. Procedural History:

August 01, 2014	:	Date of Complaint.
August 07, 2014	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
August 07, 2014	:	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
August 16, 2014	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator.
August 19, 2014	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
August 29, 2014	:	Due date for filing response.
September 13, 2014	:	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background:

4.1 The Complainant:

The Complainant is REEBOK International Limited, 4th Floor 11-12 Pall Mall, London, SW 1Y 5LU, United Kingdom, represented by its representative M/s.RNA, Intellectual Property Attorneys, Gurgaon, Haryana.

4.2 Complainant's Activities:

The Complainant states *inter-alia* that they are one of the world's leading athletic footwear and apparel makers, the Complainant was founded in 1895 in



England; in 2006, German Group adidas AG acquired the business of the Complainant and it became subsidiary company of adidas AG; the global headquarters of the Complainant are located in USA with regional offices across the globe including Amsterdam, Canada, Hong Kong and Mexico city. The Complainant's products are distributed in various countries across the world including India and the Complainant has spent very large sums of money in promoting its products in India bearing its trademark since 1984.

4.3 Complainant's Trading Name:

The Complainant states *inter-alia* that it is the prior adopter, user and registered owner of the trademark REEBOK; the trademark REEBOK serves as their trade identity and also serves as the sign of origin of their goods and services; the Complainant has various REEBOK marks around the world standing in the name of its subsidiaries/affiliate companies as marked under **Exhibit – B** and the Complainant is the registered proprietor of the Trademark "REEBOK" vide Registration Nos. 424212, 539081, 488591, 488590, 1644218 and 2116072 under the Classes 25, 9, 18, 28, 25, 35 registered in the year 1984, 1990, 1988, 1988, 2008 and 2011 respectively, certificates of which are marked under **Exhibit - C**; the trademark registrations are valid and subsisting; they are also the owner of a number of domain names, such as, www.reebok.com, www.reebok.co, www.reebok.ca, www.reebok.dk, www.reebok.es, www.reebok.nl, www.reebok.ie, www.reebok.ru which support their dedicated and official websites for its consumers and other visitors from different countries and jurisdictions.

4.4 Respondent's Identity and activities:

The Complainant states that the Respondent is Zhaxia. A printout of the WHOIS record associated with the disputed domain name is marked as **Exhibit A**. As per the WHOIS record, the Respondent is based in USA.



5. Dispute

The dispute arose when the respondent registered the disputed domain name on May 16, 2011. The Complainant states that the Respondent has registered the indetical domain name incorporating the Complainant's well-known, prior used marks 'REEBOK' in totality and identity and is identical to previously registered domain names.

6. Parties contentions:

A. Complainant:

(i) The domain name www.reebok.co.in is indetical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant states that the Respondent has applied for domain name that is indetical with Complainant's name and mark REEBOK; the Complainant has established its prior adoption of the mark/name REEBOK by virtue of its prior adoption and use and several registrations around the world including in India. Therefore, the Respondent can have no plausible explanation for adoption of a domain name phonetically, visually and conceptually identical to the Complainant's well-known and highly distinctive trade mark and domain name REEBOK.

(ii) The Respondent has no rights or legitimate interest in the domain name REEBOK.CO.IN:

The Complainant states that the domain name www.reebok.co.in was registered by the Respondent on May 16, 2011; at this time, the Complainant had already made use of mark/domain names REEBOK as a trade mark and corporate name in several parts of the world including India; Complainant had also registered the domain name www.reebok.com on July 08, 1994 and enjoys considerable reputation in the REEBOK mark and domain name; therefore it is obvious that the Respondent was aware of the Complainant's trade mark rights in the REEBOK mark/name; the Respondent is not and has never known by the REEBOK name or by any similar name; the Respondent does not have any active business in the name REEBOK; the Complainant has not licensed or otherwise authorized or given consent



to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known trademarks in any manner; the mark/domain name "REEBOK" has no dictionary meaning in English language other than its African origin; the name REEBOK is misspelling for Afrikaans/Dutch spelling of rhebok; it is certainly not a name that is used and common to consumers in India; the Respondent was clearly aware of the existence of prior trade mark/domain name rights in favour of the Complainant when it adopted the said domain name in the year 2011; the registration of the disputed domain name by the Respondent is thus a typical example of "cyber squatting"; the fact that the Respondent's website is up for sale and contains sponsored links providing associated variety of products and services like REEBOK products of the Complainant which are available on sale on various shopping websites, further proves that the Respondent is just a cyber-squatter.

(iii) The domain name was registered and is being used by the Respondent in bad faith:

The Complainant states that at the time of registration of the domain name by the Respondent i.e. on May 16, 2011 the Complainant's name/mark REEBOK and domain name www.reebok.com were well-known; the Complainant is the prior user of the mark/name REEBOK and prior owner of domain name registration www.reebok.com; registration of domain name www.reebok.com serves as a constructive notice to the Respondent of Complainant's rights in the REEBOK trademark and domain name; thus, the adoption of an indetical mark/domain name by the Respondent is bad faith; the word 'REEBOK' which is the main distinctive component of the Complainant's mark and domain name is not an English language word/expression and is highly distinctive in nature; particularly in relation to products and services; various marketing services that include advertising; branding and identity; shopper and retail marketing; promotion, and relationship marketing; the Respondent is not carrying out any legitimate business activities through the domain name and its registration is only to divert internet traffic by using a well-known and established domain name; the Respondent's domain name/web-site appears to be a parked website and there is no active use of the website other than offering it for sale to the potential buyer; the domain name therefore been merely



blocked/registered with an intention to attract internet traffic and benefit from the sale of a famous domain name; the web-site contains 'sponsored listings' of the Complainant's products like Shoes for women and kids and therefore there is no legitimate business interest of the Respondent in the said domain name; the disputed domain name is up for sale and the same redirects to the webpage of BODIS LLC displaying that "reebok.co.in" is FOR SALE and same provides feature to submit an enquiry, a screenshot of the same is marked as **Exhibit-E**; the sole purpose of registering the domain name is to derive benefits illegally by the Respondent; there is strong likelihood that a web browser looking for REEBOK services in India would mistake the website www.reebok.co.in for Complainant's India specific website, and once there, would be directed to the other links on this website in search of service and product offerings of the Complainant; therefore, chances of confusion and deception owing to identical disputed domain name are evident; the Complainant will suffer incalculable harm and injury to its goodwill, reputation and business in general if the Respondent is allowed to maintain its domain name; the loss and damage will not only be to the Complainant's reputation but also result in confusion and deception among the trade and public who will visit the Respondent's website assuming it to be sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant; the trade and public may also assume that there exists connection between the Complainant and the Respondent which is likely to further harm the reputation enjoyed by the Complainant; the intention of the Respondent is clearly to take a free ride on the goodwill and the unique sales appeal that the Complainant's goods/services under the name/mark/domain REEBOK and REEBOK International have achieved over a period of time; the intention of the Respondent is therefore to attract internet traffic by using .co.in ccTLD and gain advantage from Complainant's business and reputation; thus, it is obvious that the registration of the domain name by the Respondent is in bad faith.

B. Respondent:

The Respondent, in spite of notice dated August 19, 2014 and default notice dated September 13, 2014 did not submit any response.

6. Discussion and Findings:



It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on September 13, 2014.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or are being used in bad faith.

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark "REEBOK" around the world, including in India; apart from the domain name www.reebok.com and various other domain names. The Tribunal finds that the business product of the complainant under the trademark "REEBOK" and the disputed domain are exactly identical in its entirety. Thus, this Arbitral Tribunal finds that the disputed domain name **<reebok.co.in>** is identical to the Complainant's mark.



ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the mark "REEBOK". The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:



i) **Exhibit – E** being a screenshot of the Respondent's website which features that the disputed domain name is for sale and the same redirects to the webpage of BODIS LLC displaying that "**reebok.co.in**" is FOR SALE. In the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

ii) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. **Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name **<reebok.co.in>** be transferred to the Complainant.



D.SARAVANAN

Sole Arbitrator

September 15, 2014
Chennai, INDIA.