

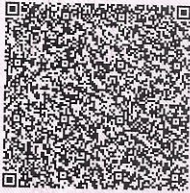


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INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No.	: IN-CH17890855861220R
Certificate Issued Date	: 23-May-2019 06:03 PM
Certificate Issued By	: chvandani
Account Reference	: IMPACC (GV)/ chimp07/ E-SMP MANIMAJRA/ CH-CH
Unique Doc. Reference	: SUBIN-CHCHIMPSP0735741706755656R
Purchased by	: MOHIT SINGH
Description of Document	: Article 12 Award
Property Description	: KOTHI NO.6 SHIVALIK ENCLAVE NAC MANIMAJRA 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)



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ARBITRATION AWARD

(On Stamp Paper)

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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,
Chandigarh

In the matter of:

Lifestyle Equities C. V., Prins, Bernharplein 00, 1097 J.B.
Amsterdam, Netherlands **(Complainant)**

Vs.

Arvind Mudaliyar, 38 Village Rd, Chennai, Tamil Nadu-600034, India
(Respondent)

COMPLAINT REGARDING: DISPUTED DOMAIN NAME:
BHPC.IN

1. The Parties:

Complainant: Lifestyle Equities C. V., Prins, Bernharplein 200,
1097 J.B. Amsterdam, Netherlands.

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Respondent:

Arvind Mudaliyar, 38 Village Rd, Chennai, Tamil Nadu-600034,
India.

2. **The Domain Name and the Registrar:** The disputed domain name <bhpc.in> is registered with GoDaddy.com LLC (Registrar IANA ID: 146) 14455 N Hayden Road Ste 22, Scottsdale, AZ 85260-6993 (the "Registrar").

3. **Procedural History [Arbitration Proceedings]**

A Complaint has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the Registrar verification in connection with the disputed domain name <bhpc.in>. It is confirmed that at present the Respondent No. 1 is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, Chandigarh 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 sent the Complaint with Annexures to the Respondent. The Respondent has filed the Response to the Complaint vide e-mail dated 01.05.2019 along with annexures in which certain

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new averments were made hence opportunity was granted to the Complainant to file the Rejoinder. The Complainant has filled Rejoinder along with few Annexures vide his email dated 29.05.2019.

4. Factual Background

The Complainant is a Dutch Limited Partnership organized and existing under the laws of Netherlands. The Complainant has registered its Trademarks in various countries. The Complainant has registered Beverly Hills Polo Club as well as BHPC Trademarks in India. The application for registration of Trademark BHPC was filed on 31.08.2010 and the Trademark was registered on 17.04.2012 in India.

The Respondent has registered the disputed domain name <bhpc.in> on 15.10.2012 wholly incorporating Trademark BHPC of the Complainant. Hence, present Complaint has been filed by the Complainant against the Respondent.

5. Parties Contentions

A. Complainant

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The Complainant, along with its various group companies and affiliates, is one of the world's leading and renowned manufacturers and sellers of clothing, apparel and related fashion accessories. The products of the Complainant are manufactured and sold under the marks BEVERLY HILLS POLO CLUB (hereinafter, the "BHPC Word Mark"), the logo (hereinafter, the "BHPC Logo Mark") and the acronym BHPC (hereinafter, the "BHPC Letter Mark"). The BHPC Letter Mark is the acronym for the BHPC Word Mark and the Complainant is commonly referred to in the trade by the BHPC Letter Mark.

The Complainant's BHPC Mark (including the BHPC Letter Mark) captures the excitement and aura of the sport of polo along with the exclusivity of membership in a private club. Against this backdrop, the products manufactured and sold by the Complainant are of the highest quality and standard that appeals to the global audience across ages. The products offered by the Complainant under the BHPC Marks include all types of clothing for men, women and children (including but not limited to Formal Shirts, Casual Shirts, T-Shirts, Formal Pants, Casual pants, Jeans, Shorts etc.) and accessories there to (including but not limited to scarves, hats, caps, belt etc.). In addition to the clothing accessories, the Complainant also offers fashion accessories such as sunglasses, shoes, watches, perfumes & fragrances, foulard etc. It is pertinent to state here that all of the

products of the Complainant, whether clothing or clothing accessories or fashion accessories, prominently bear the BHPC Marks (including the BHPC Letter Mark).

The Complainant, apart from adopting and launching the BHPC Word Mark and BHPC Letter Mark in 1982, has also created and developed the unique and catchy BHPC Logo Mark. It is relevant to state here that the Complainant has used and depicted the BHPC Logo.

The Complainant has also entered into contractual arrangements with licensees across the world, wherein the latter is contracted to sell and distribute the Complainant's goods under and bearing the BHPC Logo Mark. Currently, the Complainant's has 27 licensees around the world located in 50 countries around the world, including the middle East, Turkey, India, Pakistan, European Union, Africa South America.

Ever since first adoption of the BHPC Letter Mark thirty six (36) years back, the same has become a global lifestyle brand. The image of the BHPC Letter Mark brings together the relaxed elegance of Beverly Hills with the added dimensions of the heritage of the sport of polo. The goodwill and reputation of the BHPC Letter Mark can be gauged from the fact that it is regarded as one the leading brands in the world.

The Complainant is also the registered proprietor of its BHPC Marks around the World. The Complainant has approximately obtained 120

trademarks. These Countries include Canada, Mexico, South American countries, European Countries, Asian Countries, GCC and Middle East countries, amongst other. In addition to the above registrations, the Complainant also has a number of pending applications for its BHPC Marks in several countries.

The earliest global registration of the Complainant dates back to 16 April 1986, being registration number 1365413 obtained in France. In addition, the Complainant also owns a registration in the United States of America, dating back to 17 February 1987, being registration number 1,423,311.

The Complainant is also the registered proprietor of its BHPC Mark in India, with the earliest registration dating back to the year 1992.

Brief details of some such registrations are set-out here in below:

S.No	Mark	Registration	Class	Date of Filing
1.	BHPC	2016567	25	31 August 2010
2.	BEVERLY HILLS POLO CLUB	586142	25	03/12/1992
3.	BEVERLY HILLS POLO CLUB	1501954	3,9,18,24	7/11/2006
4.	BEVERLY HILLS POLO CLUB	1593674	35	22/08/2007
5.	BEVERLY HILLS POLO CLUB	2740492	9	20/05/2014

6.	BEVERLY HILLS POLO CLUB	2740493	18	20/05/2014
7.	BEVERLY HILLS POLO CLUB	2740494	24	20/05/2014
8.	BEVERLY HILLS POLO CLUB	3551746	36	18/05/2017
9.	BEVERLY HILLS POLO CLUB	3551747	42	18/05/2017
10.	BEVERLY HILLS POLO CLUB	3665684	03	30/10/2017
11.	BEVERLY HILLS POLO CLUB	3665685	09	30/10/2017
12.	BEVERLY HILLS POLO CLUB	3665686	14	30/10/2017
13.	BEVERLY HILLS POLO CLUB	3665688	18	30/10/2017
14.	BEVERLY HILLS POLO CLUB	3665689	24	30/10/2017
15.	BEVERLY HILLS	3665690	25	30/10/2017
16.	BEVERLY HILLS POLO CLUB	3665690	35	30/10/2017
17.	BEVERLY HILLS POLO CLUB	3665692	45	30/10/2017

In addition to the above registrations, the Complainant also has a number of pending application for its BHPC Marks in India, which the Complainant is actively prosecuting.

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The impugned Domain, which is the subject of this Complaint, is identical to the BHPC Letter Mark, in which Letter Mark the Complainant has extensive and substantial statutory and common law rights, as has been demonstrated hereinabove. The Impugned Domain is nothing but the BHPC Letter Mark itself. The Impugned Domain is identical to the BHPC Letter Mark. The Registrant does not have any rights of legitimate interests in the Impugned Domain. The Complainant has not licensed or otherwise permitted or authorized the Registrant to use the BHPC Letter Mark, whether as part of a domain name or otherwise. The Impugned Domain was registered much after the Complainant commenced its business under the BHPC Letter Mark and much after the Complainant launched its products under the BHPC Letter Mark in India. As the Impugned Domain consists of the BHPC Letter Mark itself, it is reasonable to assume that the Registrant did not independently conceive of the name "BHPC" and was aware of the Complainant and its rights and reputation in the BHPC Letter Mark at the time the Impugned Domain was registered. The Impugned Domain was registered and is being used in bad faith.

Respondent

The Respondent has opposed the Complaint vide his Response filed on 01.05.2019. The Respondent has stated that he handles IT

related work for QDSeatoman Design Pvt. Ltd. (hereinafter referred to as 'QDS') for whom the disputed domain name was registered by him. The Complainant has further stated that QDS had dealings with the Respondent since 2012 and he was aware of registration of the domain name. The Respondent has alleged in the Response that material facts have been concealed by the Complainant in its Complaint. The Complainant has not used the Letter mark 'BHPC' as a trademark. Complainant's trademarks are the words 'Beverly Hills Polo Club' and logo comprising words 'Beverly Hills Polo Club'. The Complainant by use of 'Beverly Hills Polo Club' cannot claim exclusive rights in the letters BHPC. There was an agreement dated 30.06.2014 between QDS and the Complainant for management services by QDS. Certain disputes had arisen between the Complainant and QDS which are subject matter of arbitration proceedings between the said parties. The disputed domain name was registered on 15.10.2012 to facilitate smooth functioning and communication with knowledge of the Complainant. The Respondent did not put any parking page on the disputed domain name. GoDaddy.com has independently has directly without any instruction or direction from the Respondent stated that the webpage is parked for free courtesy of GoDaddy.com. The Respondent has denied allegations made in the Complaint and requested for dismissal of the same.

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6. Discussion and Findings:-

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the 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 the 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 has examined the Complaint, response and rejoinder along with documents filed by the parties and he will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant owns the Trademark BEVERLY HILL POLO CLUB as well as the Trademark BHPC. The Complainant has registered his trademarks in number of countries including India. He has secured trademark registrations from the Registrar of Trade Marks. The application was filed for registration of Trademark BHPC on 31.08.2010 and it was registered on 17.04.2012 in India.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy¹. Internet users who enter the disputed domain name <bhpc.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Respondent has registered the disputed domain name <bhpc.in> incorporating the Trademark BHPC of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the disputed domain name <bhpc.in> is

¹ 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)).

confusingly similar to the website and Trademark BHPC of the Complainant.

B. Rights or Legitimate Interests

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name².

QDSeatoman Designs Pvt Ltd for whom Respondent is working, in agreement dated 30.06.2014 with the Complainant, has admitted the fact that the Complainant is owner of the Trademark BEVERLEY HILLS POLO CLUB and that he was acting on behalf of the Complainant for the said Brand. BHPC is acronym of the said Trademark BEVERLEY HILLS POLO CLUB. Acronym BHPC is also Trademark of the Complainant registered vide registration certificate dated 17.04.2012 which was applied on 31.08.2010. The Respondent has failed to produce license or any other document authorizing him to register the disputed domain name incorporating the Trademark BHPC of the Complaint. The Complainant has not

² See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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authorized or permitted the Respondent to use the Trademark BHPC. In these circumstances, registration of disputed domain name by the Respondent incorporating entire Trademark BHPC is not considered as a bona fide act.

The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark BHPC of the Complainant with the intention to create an impression of an association with the Complainant. The Arbitrator finds that the Complainant has made out a prima facie case. Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <bhpc.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

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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 the 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 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 the 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 (which are non-exclusive), 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. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The fact of filing of application for registration of Trademark BHPC was in knowledge of the Respondent and he has admitted in para 10 of the Response as under:

"The Complainant has filed a trademark application under application number 2016567 on 31.08.2010 for the BHPC letter mark claiming that they "Proposed to use" the same."

Hence, the Respondent has admitted specific knowledge of rights of the Complainant in the Trademark BHPC for which an application was filed on 31.08.2010. The Trademark BHPC of the Complainant is also abbreviation of its other trademark BEVERLY HILLS POLO CLUB. The Trademark BHPC has become associated by the general public exclusively with the Complainant. The disputed domain name was registered on 15.10.2012 by the Respondent subsequent to filing of the application for registration of Trademark, which wholly incorporates Trademark BHPC of the Complainant.

The Respondent has registered disputed domain name <bhpc.in> with the .IN Registry incorporating the Complainant's well-known, prior used and registered Trademark BHPC. 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 Trademark BHPC in any manner. The disputed domain name clearly incorporates the Complainant's

Trademark BHPC in its entirety. Such unauthorized registration of the domain name by the Respondent incorporating the Trademark of the Complainant suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <bhpc.in> which incorporates the Trademark BHPC of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

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

The Trademark BHPC has been a well-known name. The domain disputed name <bhpc.in> is confusingly similar to the Complainant's Trademark BHPC, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <bhpc.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <bhpc.in> from the Respondent.

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

7. Decision

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <bhpc.in> is

similar to the Trademark BHPC in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <bhpc.in> be transferred to the Complainant.

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

Place: Chandigarh

Dated: 31.05.2019



Dr. Ashwinie Kumar Bansal
Sole Arbitrator

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