



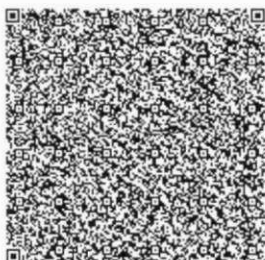
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL09938661420678K  
Certificate Issued Date : 31-Jul-2012 06:47 PM  
Account Reference : IMPACC (IV)/ dl722803/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL72280319921831836708K  
Purchased by : Dr V K Agarwal  
Description of Document : Article 12 Award  
Property Description : M- 104 Dharma Apts, Patparganj Delhi  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : Dr V K Agarwal  
Second Party : Dr V K Agarwal  
Stamp Duty Paid By : Dr V K Agarwal  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



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In the matter of LUXEYARD Inc., vs.  
Annie Young.

Kagansol

#### Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
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**NATIONAL INTERNET EXCHANGE OF INDIA**  
**Incube Business Centre, 5<sup>th</sup> Floor,**  
**18, Nehru Place,**  
**NEW DELHI – 110 019**

LUXEYARD INC., v. ANNIE YOUNG

**AWARD**

**1. The Parties**

The Complainant is Luxeyard, Inc., 8884, Venice Boulevard, Los Angeles, CA 90034, United States.

The Respondent is Annie Young, Pudong, Shanghai, 210016 SHANGHAI, CHINA.

**2. The Domain Name and Registrar**

The disputed domain name is <www.luxeyard.co.in>. The said domain name is registered with Directi Web Services Pvt. Limited d/b/a PublicDomainRegistry.com.

**3. Procedural History**

- (a) A Complaint dated June 25, 2012 has been filed with the National Internet Exchange of India, New Delhi. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are annexed as Annexure 1 with the Complaint. It is confirmed that the Respondent is listed as the Registrant of the disputed domain name and provided the contact details for the administrative, billing, and technical contact. The National Internet Exchange of India verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.

*Kagawal*

- (b) The National Internet Exchange of India appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as sole arbitrator in this matter on July 18, 2012. The arbitrator received the Complaint on July 24, 2012. 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.
- (c) In accordance with the Rules, on July 30, 2012 the Sole Arbitrator through registered letter formally notified the Registrant/Respondent of the Complaint. The Registrant/Respondent was required to submit his defence within 15 days from the date of receipt of the letter, that is, by August 26, 2012 (including 10 days for postal requirements). The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will proceed ex-parte.
- (d) No response has been received from the Respondent/Registrant so far.

#### **4. Factual Background**

From the Complaint and the various annexure to it, the Sole Arbitrator has found the following facts:

##### **Complainant's activities**

The Complainant Luxeyard, Inc., 8884, Venice Boulevard, Los Angeles, CA 90034, United States is a limited company incorporated according to the laws of the United States of America. According to the Complainant, it manages online retail store services selling luxury goods at a reduced price to members only through flash sales, group purchases and/or limited inventory sales.

##### **Respondent's Identity and Activities**

According to the Complainant, the disputed domain name is owned by Annie Young. The Respondent did not file any reply. Hence, the Respondent's activities are not known.

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## 5. Parties Contentions

### A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

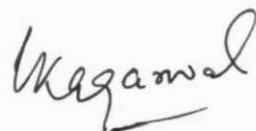
In relation to element (i), the Complainant contends that its name is LUXEYARD, Inc. The disputed domain name is <www.luxeyard.co.in>. Thus, the disputed domain name contains the complete name of the Complainant. The deletion of the word “Inc.” or addition of the words “co” and “in” is insignificant.

It appears from the Annexure 2 and Annexure 3 that originally M/s LY Retail LLC, (a Texas limited liability company), 4063 Glencoe Avenue – Suite A, Marina Del Rey, California 90292, United States has submitted an Application dated February 15, 2012 with the Principal Registrar for the registration of the trademark/Service Mark LUXEYARD. By a Trademark Assignment Agreement dated June 6, 2012 the said owners transferred all their rights, title and interest in respect of the said mark LUXEYARD to the Complainant.

In relation to element (ii), the Complainant contends that the Registrant/Respondent (as an individual, business, or other organization) has not been commonly known by the mark or name “Luxeyard”. Further, the Registrant/Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of sale and creating confusion and misleading the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.luxeyard.co.in> by the Registrant/Respondent is to mislead the general public and the customers of the Complainant.

The Complainant has further contended that in response to its e mail dated June 2, 2012, on June 3, 2012 the Complainant received an e mail from the email Hao haoany@yahoo.com offering the for sale the domain names <luxeyard.in> and <luxeyard.co.in>, both for a sum of \$ 50,000. Thus, the registrant/Respondent registered the disputed domain name in bad faith and for making profit out of the same by selling it to the Complainant or his competitors.



The Complainant has stated that the use of a domain name that appropriates a well known name to promote competing or infringing products or for making profit by offering to sell it cannot be considered a “*bona fide offering of goods and services*”.

## **B. Registrant/Respondent**

The Registrant/Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.luxeyard.co.in> or any trademark right, domain name right or contractual right. Therefore, the Respondent has no legal right or interest in the disputed domain name.

## **6. Discussion and Findings**

The Rules instruct this Arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the IN Domain Name Dispute Resolution Policy (INDRP), the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to paragraph 4 of the said Policy, the Complainant must prove that:

- (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 that is the subject of Complaint; and
- (iii) The Registrant’s domain name has been registered and is being used in bad faith;

### **A. Identical or Confusingly Similar**

As per the whois information, the Registrant/Respondent has created the disputed domain name <www.luxeyard.co.in> on January 28, 2012. The expiration date is January 28, 2013.

The disputed domain name <www.luxeyard.co.in> contains the entire name of the Complainant, which is LUXEYARD, INC. Merely by creating a domain name with “co” and “in” is not sufficient to make the domain name

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distinct, independent or of separate identity.

The Complainant is the owner of the mark “LUXE YARD”. Further, the Complainant also owns other domain names with the words “luxeyard”. The Registrant/Respondent has also used the same words. Thus, the Respondent’s domain name is phonetically, visually and conceptually identical as that of the Complainant.

In the case of *Farouk Systems Inc., v. Yishi*, WIPO Case No. D2010-0006 it has been held that the domain name wholly incorporating a complainant’s registered mark may be sufficient to establish identity or confusing similarity, despite the addition or deletion of other words to such marks.

Therefore, I hold that the domain name <[www.luxeyard.co.in](http://www.luxeyard.co.in)> is confusingly similar to the Complainant’s marks.

#### **B. Rights or Legitimate Interests**

According to paragraph 7 of the INDRP, the Registrant may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Registrant’s response is not available in this case. There is no evidence to suggest that the Registrant/Respondent has become known by the disputed domain name anywhere in the world. There does not exist any relationship between the Respondent and the words “luxeyard” used in the disputed domain name. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Registrant/Respondent has no rights or legitimate interests in the disputed





domain name.

The arbitrator is of the view that the Registrant/Respondent registered the disputed domain name mainly for the purpose of misusing it, or transferring it to the Complainant or selling it in the market at a high price or for providing it to the competitor of the Complainant for valuable consideration.

Further, the Complainant has not licensed or otherwise permitted the Registrant/Respondent to use its name or to apply for or use the domain name incorporating the said name. The Registrant/Respondent is not offering any goods or services under the disputed domain name.

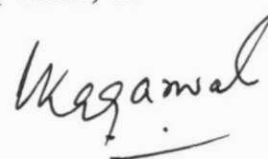
Therefore, the Registrant is not using the disputed domain name for bona fide offering of goods or services.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain name.

### **C. Registered and Used in Bad Faith**

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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 is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of 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 it has engaged in a pattern of such conduct; or
- (iii) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or



- (iv) By using the domain name, the Registrant has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

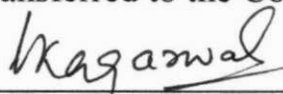
The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Registrant/Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's name.

There is evidence that the Registrant/Respondent offered the disputed domain name for sale to the Complainant on June 3, 2012 through an email. Thus, the registrant/Respondent registered the disputed domain name in bad faith and for making profit out of the same by selling it to the Complainant or his competitors.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Registrant/Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Registrant/Respondent in bad faith.

## **7. Decision**

In light of the foregoing findings, namely, that the domain name is confusingly similar to the name in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that, as prayed by the Complainant, the disputed domain name <www.luxeyard.co.in> be transferred to the Complainant.



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Vinod K. Agarwal

Sole Arbitrator

Date: September 4, 2012