



हरियाणा HARYANA

L 915558

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

H & M Hennes & Mauritz AB  
Master Samuelsgatan 46A,  
10638 Stockholm,  
Sweden

..... Complainant

Apex Laboratories Limited  
Yitao  
76, C.P Rama Road,  
Hong Kong 999077  
HK

..... Respondent

Disputed Domain Name: [www.hennes-mauritz.co.in](http://www.hennes-mauritz.co.in)

## **AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is H & M Hennes & Mauritz AB, of Master Samuelsgatan 46A, 10638, Stockholm, Sweden. The Complainant is represented by its authorized representatives Cecilia Borgenstam, Melbourne IT Digital Brand Services, Saltmatargatan 7, SE-113 59, Stockholm, Sweden who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Apex Laboratories Limited, Yitao, 76, C.P Rama Road, Hongkong, 999077, HK as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name is [www.hennes-mauritz.co.in](http://www.hennes-mauritz.co.in). The Registrar is Business Solutions.

### **3) Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on May 09, 2013 and the notice was issued to the Respondent on May 16, 2013 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. On May 27, 2013 the Arbitrator granted further opportunity to the Respondent to submit its response on or before June 06, 2013. However, no response was submitted by the Respondent within the stipulated time of thereafter.





In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

It may be apt to mention that vide email dated 28<sup>th</sup> May, 2013, NIXI informed the Arbitrator that they could not serve the Complaint upon the Respondent and provided a letter from Blue Dart Courier Service dated 24<sup>th</sup> May, 2013 informing that the address of the Respondent is incomplete or incorrect.

**Grounds for administrative proceedings:**

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions**

- a) The Complainant, H & M Hennes & Mauritz AB is well known for their trademark registration in Hong Kong. Hennes & Mauritz was founded in Sweden in 1947 and is quoted on NASDAQ OMX Stockholm.
- b) The Complainant is also the owner of more than hundreds of domain names containing the term H&M, among these hennesandmauritz.com and hm.com etc. In 2008 H & M was seen as Europe's most powerful brand. In 2010 the complainant's brand H&M was ranked as number 22 among the best global brands in the world. The ranking was published in Interbrand.
- c) The Complainants trademark is famous in India and Hong Kong as well as in other jurisdictions. The complainant opened first Asian stores in Hong Kong and Shanghai in 2007 and there is a designated website for Hong Kong i.e <http://www.hm.com/hk/>.
- d) The Respondent's mark is identical to the Complainant's registered trademark HENNES & MAURITZ except for the country code top level domain (cc TLD) ".co.in" identifier and the hyphen. The ccTLD can be disregarded for the purposes of assessing similarity of the domain name to the trade mark.
- e) The Respondent has not use or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services and is not making legitimate, non-commercial or fair use of the Domain name.
- f) The Respondent is misleading Internet users to a commercial website and consequently, the Respondent is tarnishing the trademark HENNES &



MAURITZ. Thus it is clear that the Respondent has no right or legitimate interest in respect of the Domain name.

- g) As the Complainant's mark HENNES & MAURITZ is famous and well known mark and is registered in many countries including the country of the Respondent, it is unlikely that the Respondent did not know about the Complainant's rights in the mark or the Domain name. The Respondent registered the Domain name on February 19, 2012 which is subsequent to when the trademark for HENNES & MAURITZ was registered.
- h) The Respondent is using the domain name for a page with pay per click links on it and has also put the domain for sale. At the top left it says "Inquire about the domain name". This sort of behavior is not considered to be legitimate and consequently damaging the goodwill of the brands HENNES & MAURITZ. Moreover, the Respondent offered to sell the domain name to the Complainant for a substantial amount (USD 1590) following a cease & desist letter which further shows that the only interest of the Respondent has in the domain name is to profit from it.
- i) The domain name is currently connected to a pay per click website with links related to third party websites not associated with the Complainant, but in fact their competitors such as Jack and Jones, Nelly etc. The Respondent is using the domain name intentionally to create a likelihood of confusion with the Complainant's mark.
- j) The Respondent claimed that the website was created by the Registrar, that he had no knowledge of the content and that he had actually not received any money from the website. Through advertising programs, the Registrars place contextually relevant advertisements on a parked domain name. Each time a visitor clicks on one of the advertisements displayed on the page, the advertising partners pay a certain amount. That revenue is split between the service provider and the domain owner, in accordance with the applicable revenue-sharing plan.
- k) Thus it is clear that there is no connection between Complainant and Respondent. By using the domain name the Respondent is not making a legitimate non-commercial or fair use without intent for commercial gain but is misleadingly diverting consumers for his own commercial gain.

## **5) Respondent**

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.



## 6) **Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark 'HENNES & MAURTIZ' leads to the conclusion that the Complainant has superior and prior rights in the mark 'HENNES & MAURTIZ'. Thus it can be said a) the web users associate the word 'HENNES & MAURTIZ' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the hennes-mauritz.co.in and c) they may believe it is a website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the complainant. In addition, the Respondent by providing a wrong address at the time of registration, which is evidence from non-delivery of courier, violated clause 3 (a) of .IN Domain Dispute Resolution policy.

The clause 3 (a) is reproduced below

### ***The Registrant's Representations***

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:*

- (a) *the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;*
- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'HENNES & MAURTIZ'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'HENNES & MAURTIZ' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'hennes-mauritz.co.in domain name. Further, the Respondent has never used the disputed





The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. The domain name is being monetized by diverting internet traffic through pay per click links. The fact that the Respondent offered to sell the domain name shows that they have no legitimate interest in maintaining the domain name.


(3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'HENNES & MAURTIZ' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

#### **7. Decision:**

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name [www.hennes-mauritz.co.in](http://www.hennes-mauritz.co.in) is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name [www.hennes-mauritz.co.in](http://www.hennes-mauritz.co.in) be transferred to the Complainant.



**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**June 10, 2013**