



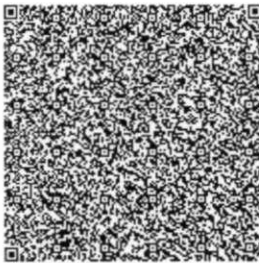
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL77538744753014L
Certificate Issued Date	: 17-Oct-2013 12:45 PM
Account Reference	: IMPACC (IV)/ dl890903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL89090353181582455719L
Purchased by	: MR V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: MR V SHRIVASTAV
Second Party	: Not Applicable
Stamp Duty Paid By	: MR V SHRIVASTAV
Stamp Duty Amount(Rs.)	: 100
	(One Hundred only)



Please write or type below this line.

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"h-m.co.in"

between

H & M HENNES & MAURITZ AB

PFISTER HOTEL

AND

AWARD

...COMPLAINANT

...RESPONDENT

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 19/09/2013. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .

2. That compliance of the order was not done by the Complainants hence vide order dated 25/09/2013 this Tribunal had to give "*Last and Final Opportunity*" to the complainants for compliance of the order dated 19/09/2013. The complainants vide their email dated 25/09/2013 complied with the order dated 19/09/2013 but they did not mark the same to the Respondent. Hence by order dated 26/09/2013 this Tribunal directed the

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Complainants to mark all correspondence sent to this Tribunal to NIXI as well as the Respondents. The said compliance was done by the complainants vide email dated 26/09/2013 which had a scanned copy of courier receipt of M/s DHL Courier waybill No.7065978776. On tracking it showed address incomplete hence the shipment is on hold at Cincinnati hub USA by the courier company. This Tribunal vide order dated 01/10/2013 directed the Respondent to send their correct and complete postal address by 05/10/2013 as they were in receipt of the emails and were aware of the present Arbitration proceedings.

3. That this Tribunal noticed that the Respondents have not sent any email / communication notifying their new address hence on 07/10/2013 vide its order the Tribunal reserved the award.
4. In view of above, this Tribunal holds that the Respondents are fully aware of the present proceedings and are deliberately not joining the same.



5. This Tribunal keeping in mind the peculiar facts and circumstances of the present matter and also in view of INDRP, proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:
- A. That Hennes & Mauritz AB (publ) (hereinafter referred to as the Complainant) was founded in Sweden in 1947 and is quoted on NASDAQ OMX Stockholm. Reliance is placed on **Annexure 1**.
- B. It is claimed that M/s H&M Group has approximately 2,300 stores in 40 markets including franchise markets and as per **Annexure 5**, in the year 2010, sales including VAT were SEK 126,966 million and the number of employees was more than 87,000. It is claimed further that H&M has approximately over 300 stores around the United States

and recently they have also launched their online store in the US.

C. It is also claimed by placing reliance on **ANNEX 4** that 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 .

D. It is stated that in 2010 the Complainant's brand H&M was ranked as number 22 among the best global brands in the world and its ranking was published by Interbrand. Further it is stated that in 2008 H&M was seen as Europe's most powerful brand as per <http://www.newser.com/story/24160/hm-named-europes-most-valuable-brand.html> & <http://www.ft.com/cms/s/2/9bb725de-0574-11dd-a9e0-0000779fd2ac.html#axzz1SRUINGUv>



E. It is alleged that the impugned Domain Name is identical to the Complainant's registered trademark H&M which are famous in India and Hong Kong as well as in other major jurisdictions. Moreover, the Domain Name incorporates the Complainant's trademark H&M in their entirety besides being identical to the Complainant's trade mark except for the country code top level domain (cc TLD) ".co.in" identifier and the hyphen and as such, consumers looking for HENNES & MAURITZ may instead reach the Respondent's website.

F. It is emphatically stated that the Respondent has no rights or legitimate interests in the Domain Name, as the Respondent has not been given any authorisation to use the Complainant's mark. Reliance is placed on the WIPO Case No. D2004-0312 *Dr. Ing. h.c. F. Porsche AG v. Ron Anderson*.


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G. It is alleged that the Respondent is using the Domain Name for a page with pay per click links on it and has also put the Domain Name for sale and has used the term *"Inquire about this Domain Name"*. It is also alleged that as per the whois Respondent is located in a hotel called Pfister Hotel, which shows that he has registered the domain name by using a fake address.

H. It is further alleged that there is no evidence that the Respondent has become known by the Domain Name anywhere in the world. Further it is alleged that the Respondent has no legitimate interest in the impugned Domain Name. Moreover, he has not been licensed nor permitted by the Complainant to use its name or trade mark or to apply for or use the Domain Name incorporating H&M.

I. It is alleged that on March 12, 2012 a person sent an email to the Complainant's email address dnscontact@hm.com;

and the email was forwarded on to the Complainant's representative who sent a formal Cease & Desist notice. In the cease and desist letter, the Respondent was advised that the unauthorised use of the trademark HENNES & MAURITZ and H&M within the Domain Name violated the rights in the Complainant's trademarks and to immediately transfer of the Domain Name. The Respondent stated they would be willing to sell the Domain Name for EUR 900. Reliance is placed on **Annexure 8**.

- J. It is alleged that 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 Lekmer, Motesplatsen, and Zalando etc. thus the Respondent is using the Domain Name to intentionally create a likelihood of confusion with the Complainant's mark. Reliance is placed on **Annexure 9**.
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ORDER

7. This Tribunal has considered the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his correct and complete postal address and take further steps in the present proceedings chose not to give any and hence the allegations of the complainants remain un rebutted/ admitted.
8. In view of the undisputed documentary evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <h-m.co.in>, hence this Tribunal directs the Registry to transfer the domain name <h-m.co.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. There is no order as to the cost. The original copy of the Award is being sent along with the records of this proceeding to National Internet Exchange of India (NIXI) for their record and a



copy of the Award is being sent to both the parties for their records.

Signed this 17th day of October, 2013.

NEW DELHI
17/10/2013

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V. SHRIVASTAV
ARBITRATOR