

Bond



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Haryana Government**



Date : 10/02/2017

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Penalty : ₹ 0
(Rs. Zero Only)

Deponent

Name: Rna Ip Attorneys

H.No/Floor : Na

Sector/Ward : 65

Landmark : Na

City/Village : Gurgaon

District : Gurgaon

State : Haryana

Phone : 0

Purpose : OTHERS to be submitted at Any where india

RANJAN NARULA

ARBITRATOR

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

In the matter of:

Easton Corp Pty Ltd.

PO Box 1002, Hamilton

QLD 4007, Australia

....Complainant

Mr. Dean Chandler

Treadall Inc.

32 Goulbourn St., Stittsville

Ontario K2S 1P4

Canada

..... Respondent

Disputed Domain Name: www.hottie.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is **Easton Corp Pty Ltd.** of PO Box 1002, Hamilton, QLD 4007, Australia also having an address in India i.e., Hottie Distribution India of DS 464, New Rajinder Nagar, New Delhi 110060, India.

The Respondent in this arbitration proceeding is **Mr. Dean Chandler** c/o Treadall Inc. of 32 Goulbourn St., Stittsville, Ontario K2S 1P4, Canada, 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.hottie.in**. The Registrar is Netlynx Technologies Pvt. Ltd. (R62-AFIN).

The Registrant is **Mr. Dean Chandler** c/o Treadall Inc. of 32 Goulbourn St., Stittsville, Ontario K2S 1P4, Canada.

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 28th 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.



1. The complaint was produced before the Arbitrator on December 26, 2016 and the notice was issued to the Respondent on the same day i.e. December 26, 2016 at his e-mail address with a deadline of 10 days to submit his reply to the arbitration.
2. Vide e-mail dated December 27, 2016 the Respondent requested to allow him to submit his response by January 11, 2017 as he was away on Christmas holidays. The Arbitrator extended the time to file response by January 11, 2017.
3. Vide e-mail dated January 11, 2017 the Respondent, Mr. Dean filed his detailed response summarizing that "*the complainant has no rights to this domain and is merely trying to take advantage of the INDRP system to take the domain away from its rightful owner*".
4. Vide e-mail dated January 17, 2017, in order to decide the complaint the Arbitrator issued notices to the Complainant and Respondent to seek further information latest by January 29, 2017.
5. Vide email dated January 26, 2017 the Complainant filed reply to the queries raised by the Arbitrator.
6. Vide email dated January 27, 2017 the Respondent filed his response to the queries raised by the Arbitrator

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

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 is an Australian based company namely Easton Corp Pty Ltd. that sells lingerie, beachwear, and fashion accessories online at www.hottie.com.au to customers in Australia, New Zealand, and worldwide. According to the Complainant's website, it was established in 2004.

- b. The Complainant claims that the domain name www.hottie.in is identical to a business and trademark in which the Complainant has rights. The domain was originally registered on May 9th 2013 and is registered until May 9th 2017.
- c. It is further submitted that the Complainant holds registration for the trademark 'Hottie' in Australia since 2004 under trademark nos. 1033852 (registered from December 10, 2004) and 1117710 (registered from June 7, 2006). The Complainant has also registration for the said mark in New Zealand (750525) and applied for in the United States (86735856).
- d. The Complainant also has the Trade Mark Clearinghouse for Hottie (1033852).
- e. The Complainant relied on the awards that Hottie products have won over the past twelve years and also claimed that Hottie product has been manufactured in India for almost nine years and he has recently signed a deal with Amazon India to sell in India.
- f. The Complainant has submitted that the Respondent has parked the domain name www.hottie.in which is a place to search ads and use links to adult sites that are not owned by the Respondent. None of the activity, as far the Complainant is aware is original or proprietary content. The Respondent does not appear to be connected with a bona fide offering of goods or services in relation to the domain name www.hottie.in.
- g. The Complainant further state that domain name is being used in bad faith though it is uncertain that the Respondent is aware of the business and trademark of the Complainant, however, it is certain that the domain name www.hottie.in was purchased by the "Respondent solely to on-sell advertising or procure a high domain re-sell rate".
- h. The Complainant requested to transfer the domain name www.hottie.in to the Complainant.

5) Summary of the Respondent's submission:

The Respondent in support of its case has made the following submissions:

- a. The Respondent is Mr. Dean Chandler, c/o Treadall Inc, of 32 Goulbourn St., Stittsville Ontario K2S 1P4, Canada.
- b. The Respondent company i.e., Treadall Inc. is a flooring company with numerous websites including matsflooring.com, horsematscanada.com, horsematsusa.com, gymfitnessmatscanada.com, gymfitnessmatsusa.com and others.



- c. The Respondent is also the Co-owner of LuxuryApartmentsNYC.com – Connecting people searching for apartments in New York with real estate agents. The Respondent has the most popular real estate Instagram accounts in New York– <https://www.instagram.com/luxuryapartmentsnyc/>
- d. The Respondent currently owns a number of generic domain names under .ca, .in and .com.
- e. The Respondent contended that the domain name www.hottie.in was not registered in bad faith and was not aware of the Complainant's company, Easton Corp, its Hottie brand, or any other brands or related products.
- f. The Respondent submitted that the domain name www.hottie.in was purchased with the business plan of building a dating site that is similar to a combination of Tinder and Facebook of India in which users can create a profile, rate each other's pictures and choose whether they are interested in other users.
- g. The Respondent further submitted that they have not had time to develop the site yet and claimed that domain parking is a standard practice and parking pages are shown by default when a domain is registered by most registrars.
- h. The Respondent mentioned that the Complainant has a trademark in Australia and New Zealand is unrelated to doing business in India. Further, mere manufacturing the products in India does not indicate that it is an established brand in India just as thousands of products are manufactured in China and shipped to the United States. There is no evidence whatsoever of any past or current establishment of the Complainant's company or brand in India.
- i. The Respondent submitted that there can be no likelihood of confusion as there is no sale presence in India.
- j. The Respondent further relied upon the UDRP decision in which the Complainant was ruled as an attempted Reverse Domain Name Hijacking.
- k. The Respondent argued that the Complainant has no rights to this domain and is merely trying to take advantage of the INDRP system to take the domain away from its rightful owner.

6) Response filed by Complainant to the queries raised by the Arbitrator

- The Complainant submits: *"In 2009, Kunchals in New Delhi made a purchase of a few hundred products from Hottie. This was a once-off sale, as the product (silicon purse packs) were quite heavy and the shipping costs made continued sales unprofitable. Hottie.com.au website: Hottie receives sales from Indian individuals directly, but the postage fees and time to deliver are quite a*



deterrent. After much research, it appears the best way to start selling into India, is to work with my Indian-based freight forwarder and have Amazon India send individual products to customers locally. I have been working with Mr. Kapur from Aerofly Group since 2009. Hottie is working with Amazon India and I hoped to provide product in time for Valentine's Day, however, our paperwork has been slow. Hottie's first Amazon sales representative, Mr. Aggarwal has moved on and our new sales representative, Mr. Khan is working through VAT and CST certificates and this is taking some time. Feel free to contact him if you would like more information on the amount of Hottie product Amazon India plans to sell".

- The Complainant further submits "Because of the quantity of manufacturing Hottie does with India, I was invited as a guest to the 43rd IIGF (India International Garment Fair) in New Delhi in 2009. The invitation was sent to me by the Ministry of Commerce, Government of India and my contact was Pritam Goel. This invitation included paid flights, accommodation, transport, meals, meetings and entertainment. I attended the fair and significantly broadened my list of Indian manufacturers, not only for clothing, but also for labels, gift wrap and jewelry. have recently been invited to 58th IIGF this year by Lalit Thukral, Chairman (EAC) AEPC - again the invitation includes the same generous accommodation/transport etc offers. If you are familiar with the IIGF, then you will know they work with the government of India and monitor the import and export numbers of their guests/buyers."
- The Complainant also provided the links of few HOTTIE items which are made in India:

<https://www.hottie.com.au/collections/fashion/products/mowgli-swing-jacket-black?variant=20229710529>

<https://www.hottie.com.au/collections/fashion/products/talitha>

<https://www.hottie.com.au/collections/fashion/products/sanjula>

<https://www.hottie.com.au/collections/fashion/products/sienna>

- On UDRP decision, the Complainant states "The Chinese company that owns hottie.com hired a very well known Canadian attorney who specializes in UDRP cases. This was my first case and I represented my company (this INDRP is my second and only other case). I maintain that my trademarks and active business properly represent the valid reasons to set out a UDRP claim. I am very disappointed with the verdict and have been reminded, once again, that the pornography industry really does hold much of the power and wealth of the internet".
- The Complainant also mentions "Amazon conducts a rigorous process when registering a brand to their platform. Hottie is a registered brand in the United States, Canada, Mexico, England, Japan, Spain, Germany, Italy, and France, and we have applied for, but have not yet gained our brand registration from India

(Hottie has not been rejected, we are still in the process). Hottie is a registered business in Australia."

7) Response filed by Respondent to the queries raised by the Arbitrator

- The Respondent claimed that he currently has a number websites/businesses including:
 - Treadall Inc – a specialty flooring company with numerous websites including: matsflooring.com, horsematscanada.com, horsematsusa.com, gymfitnessmatscanada.com, gymfitnessmatsusa.com and 8 more
 - LuxuryApartmentsNYC.com – Co-owner - Connecting people searching for apartments in NYC with real estate agents. We have one of the most popular real estate Instagram accounts in NYC - <https://www.instagram.com/luxuryapartmentsnyc/>
 - With the aim of developing a number of my domains into revenue generating websites, the Complainant hired a team of developers from India. Unfortunately, things did not work out with this group and he is seeking a new development group to continue this work. Sites developed (or in process) from this include:
 - CruisePackages.in
 - HoneymoonDestinations.in
 - AllInsurance.in
 - SeoChecker.in
 - USNews.in
- The Respondent further states that he owns a number of generic domain names mostly .ca, .in and .com. He is looking to hire a team of developers to build out his domains and take over where the last developers left off.
- The Respondent also claimed that he does not own other domains with generic term "hottie".

8) Discussion and Findings:

Based on the submissions and documents submitted by both the sides, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below.



- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

The Respondent contended that the Complainant has registered trademark in Australia and New Zealand which is unrelated to doing business in India. However, according to several INDRP and WIPO decisions, if the Complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights. The location of the trademark, its date of registration (or first use), and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element. The Complainant has successfully established its statutory trademark rights in the mark HOTTIE. The Complainant holds registration for the trademark 'Hottie' in Australia since 2004 under trademark nos. 1033852 (registered from December 10, 2004) and 1117710 (registered from June 7, 2006). The Complainant has also registration for the said mark in New Zealand (750525) and applied for in the United States (86735856).

As a next step, it has to be ascertained if the domain name www.hottie.in is identical to or confusingly similar to the Complainant's mark. For a domain name to be regarded as confusingly similar to the Complainant's trademark; there must be a risk that Internet users may actually believe there to be a real connection between the domain name and the Complainant and/or its goods and services. This risk can be assessed keeping in mind, factors such as the overall impression created by the domain name, letters or numbers in the domain name additional to the relied-upon mark, etc. The applicable top-level domain (e.g., ".com", ".in" wherein .in is the Internet country code top-level domain (ccTLD) for India) would usually be disregarded under the confusing similarity test (as it is a technical requirement of registration). In view of the above, I hold, the disputed domain name www.hottie.in is identical to the Complainant's domain name www.hottie.com.au and registered trademark 'HOTTIE'.

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

According to consensus view that has emerged from the earlier decisions by WIPO Panelists, it has come out that while the overall burden of proof rests with the Complainant to prove that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, a Complainant is generally deemed to have satisfied paragraph 4(ii) of the INDRP policy.

Paragraph 7 of INDRP Policy lists three non-exhaustive factors by which the Respondent may show that it has rights or legitimate interests in the Disputed Domain Names which includes



"(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; or

(ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if you have 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 domain name www.hottie.in is identical to the Complainant's trademark, and the Respondent intends to make commercial rather than non-commercial use of the domain name. Further, it is not the case of the Respondent that he is commonly known by the domain name or offering goods or services itself under such a name. However, the Respondent claims a legitimate interest in the domain name for its generic value to commence a dating site that is combination of Tinder and Facebook. It may however be noted that the Respondent has not taken any steps to do so since its registration in 2013. Further all its other domains are either in Flooring Industry and travel related industry.

The difficulty in this case lies in the fact that the domain name www.hottie.in, although descriptive or generic in relation to certain services or goods, may be a valid trademark for others. This difficulty is expounded by the fact that, while hottie may be considered a common word in English speaking countries, this may not be the case in non English speaking countries.

It is further to be highlighted that the Respondent claims to be in flooring business and many of its domain names contain the word "mats". The Respondent has no other domain registered containing the word 'HOTTIE'.

I have considered the following factors in deciding this issue:

1. Use of the mark by Complainant and Respondent;
2. Meaning of the word 'hottie' in Indian context; and
3. Registration obtained by Complainant in Australia and New Zealand much earlier to the domain registration by the Respondent; and
4. No business plans shared by the Respondent to show their definite intention to use domain name; and
5. No other dating site being run by them and it appears their primary business is that of flooring; and
6. The claim of use by the Complainant of goods sourced from India bearing the mark 'Hottie' and his travel to India to explore business opportunities.



In conclusion, under the circumstances of this case, I hold that Respondent has no legitimate interest in the domain name www.hottie.in.

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

Paragraph 6 of the INDRP policy states that "**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 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.

The Complainant has an established business which sells lingerie, beachwear, and fashion accessories online at www.hottiee.com.au in Australia, New Zealand and few other countries. The company was established in the year 2004. Moreover, the Complainant holds registration for the trademark 'Hottie' in Australia since 2004 under trademark nos. 1033852 (registered from December 10, 2004) and 1117710 (registered from June 7, 2006). The Complainant has also registration for the said mark in New Zealand (750525) and applied for in the United States (86735856). Thus, based on prior adoption, continuous use of the trademark and domain name 'hottie', it can be inferred that the Respondent is likely to be aware of the Complainant's business, its products and services, its reputation and rights in the trade mark HOTTIE when it registered the domain name in 2013.

Furthermore, the Complainant claims to have won several awards for the products bearing the mark 'HOTTIE' which can be considered to have caused the mark to attract media attention and achieve reputation in the market.



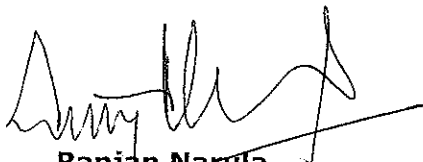
The Complainant also initiated to sell their HOTTIE products in India with the help of Indian-based freight forwarder, claims to have sourced goods from India and in the process of negotiating with Amazon India to sell its products to the customers in India.

The Respondent has registered the domain name www.hottie.in on May 9th 2013. It has been more than three years since the domain name was registered, however, the Respondent has not yet started commercializing the product/service. In other words, the domain name www.hottie.in is merely parked by the Respondent to generate advertising revenue by "click-through" or "pay per click" business model.

This business model though legitimate may be done with a legitimate domain name. If, on the other hand, another's trademark is used without authorisation for the purpose of attracting visitors, then some visitors may be confused into thinking, at least initially, that the website they have reached is in some way endorsed by the Complainant, when it is not. I find that in this case that the Respondent has attracted viewers for commercial gain by confusion, constituting registration and use in bad faith.

7. Decision:

In view of the foregoing, I am convinced that the Complainant has satisfied all three conditions set out in paragraph 4 of the Policy. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name 'www.hottie.in' be transferred from the Respondent to the Complainant.



Ranjan Narula
SOLE ARBITRATOR
NIXI
INDIA

February 21st 2017