



महाराष्ट्र MAHARASHTRA

FA 169275

अनुक्रमांक ६००३ दिनांक २६/११/११ रुपये १००/-  
मुद्रांक कोणत्या कारणासाठी वापरावयाचा आहे. R.O.C.  
मुंबई मुद्रांक अधिनियम १९५८ चे अनुच्छेद क्र. ....  
मुद्रांक वापरणाराचे संपूर्ण नाव. श्री. जयश्री मि. देलसरे  
संपूर्ण पत्ता. २७४१५, शनिवार पेठ, पुणे  
हस्ते व्यक्तीचे संपूर्ण नांव. श्री. जयश्री मि. देलसरे  
पत्ता. ४२५ ब, शनिवार पेठ, पुणे-४०.

मुद्रांक धारकाची/हस्ते व्यक्तीची सही

स्वाक्षरी  
(सौ. जयश्री मि. देलसरे)

मुद्रांक विक्रेता  
परवाना क्र. हवेली I/३६/१९९५  
परवान्याची मुदत ३१/३/२०१५  
पत्ता- ४२५ ब, शनिवार पेठ, पुणे-४०.



## AWARD IN ARBITRATION

MR. JEAN HEITZ  
Laboratoire Argiletz S.A.  
1, Chemin de la Glaciere, 77910  
Germigny Leveque, FRANCE

THE COMPLAINANT

AND

**JACK SUN**  
Domainjet Inc.  
1800 Amphitheatre Parkway  
Mountain View  
California 94043  
U.S.A.

**THE RESPONDENT /  
THE REGISTRANT**

**IN THE MATTER OF DISPUTED DOMAIN NAME: - argiletz.co.in**

**BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.  
SOLE ARBITRATOR**

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**DELIVERED ON THIS TWENTY NINTH DAY OF NOVEMBER TWO  
THOUSAND ELEVEN AT PUNE, INDIA.**

**SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

**01. Names and addresses**

Of the Complainant: -

**Mr.Jean Heitz.**

(Laboratoire Argiletz S.A.)  
1, Chemin de la Glaciere  
77910 Germigny Leveque  
France.

Through its authorized  
representative

Sudhir D.Ahuja.  
D.P. Ahuja & Co.  
14/2, Palm Avenue, Kolkata. 700019  
India

**02. Name and address of  
The Respondent: -**

**Jack Sun**

Domain jet, Inc.  
1800, Amphitheatre Parkway,  
Mountain View  
California. 94043 U.S.A.

**03. Calendar of Major events:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date (Communications in electronic mode)</b>
01	Arbitration case referred to me	05/11/2011
02	Acceptance given by me	05/11/2011
03	Hard copy of the complaint received & Notice of Arbitration issued	14/11/2011
04	Reminder notice sent to the Respondent	23/11/2011



05	Reply submitted by the Respondent	23/11/2011
06	Award passed	29/11/2011

#### I] PRELIMINARY: -

- 1) Mr.Jean Heitz, (Laboratoire Argiletz S.A.) having office at 1 Chemin de la Glaciere 77910 Germigny Leveque, France (**The Complainant**) have filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name '**argiletz.co.in**' (**the disputed domain name / domain name**), through its authorised representative **Sushir D. Ahuja of D.P.Ahuja & co., 14/2, Palm Avenue, Kolkata, 700019, India.**
- 2) The Complainant has disputed registration of domain name '**argiletz.co.in**' in the name of **Mr.Jack Sun, Domainjet Inc., 1800 Amphitheatre Parkway, Mountain View, California 94043, U.S.A. (The Respondent).**
- 3) Major events took place as enumerated in the above table.

#### II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 14<sup>th</sup> November 2011 with the instructions to file his say latest by 23<sup>rd</sup> November 2011.
02. The Respondent filed reply to the Complaint on 23<sup>rd</sup> November 2011.
03. In view of suggestive reply by the Respondent no rejoinders were called for.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.



### III] SUMMARY OF THE COMPLAINT: -

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

- a) The Complainant is the founder – owner of the internationally well known company, Laboratoire Argiletz S.A. formed in 1963. The company specializes in the extraction and production of natural sun-dried coloured clay, which is extensively used in the cosmetics, skin care, health care and the well being industries around the world. It is the first manufacturer of natural and organic products to be granted ISO 9001 certification in 2007.
- b) The Complainant is the owner of a number of domain names viz argiletz.com, argiletz.fr, argiletz.com.cn, argiletz.info and argiletz.us.
- c) The Complainant owns several registrations for the Argiletz trademarks and variants. Apart from registered trademarks in various other countries, the Complainant has international registration No.865411 dated 27.07.2005, French registration NO.97679211 dated 23.05.2007, US registration No.3159324 dated 17.10.2006 and Indian registration No.1450678 dated 11.05.2006. The Complainant has attached copies of these registrations.
- d) The disputed domain name is identical to the Complainant's registered trademarks. There is a strong likelihood that a web browser in India would mistake the offending website [www.argiletz.co.in](http://www.argiletz.co.in) as the Complainant's website.
- e) A number of international arbitration panels, including WIPO Arbitration & Mediation Panels and have decided the issue of the ownership of trademark viz-a-viz in favour of the Complainant. The Complainant has furnished several such decisions in support of his claim to the disputed domain name.
- f) The Complaint is based on the INDRP Rules and Policies on the following main contentions of the Complainant: -
  1. That the disputed domain name is identical to its trademark 'ARGILETZ'.
  2. It has very strong likelihood of confusion between the disputed domain name and the Complainant, its trademarks and its other domain names associated.





4. ARGILETZ is a well-known brand in manufacturing natural sun-dried coloured clay, which is extensively used in the cosmetics, skin care, health care and the well being industries around the world.
5. The disputed domain name has been put up for sale immediately after registration on Domain for Sale' page parked at 4.cn a known market place for buying and selling domain names.
6. The Registrant has no rights or legitimate interests in the disputed domain name.
7. The Respondent has acquired the subject domain purely to make illegal profit therefrom.
8. The Respondent does not use the domain name for his business purpose, for offering bona fide goods, services etc.
9. The Respondent does not use nor has provided a bona fide offering of goods or services or legitimate use of the domain names.
10. The Registrant has registered domain name merely to profit on worldwide recognition and goodwill of the Complainant.
11. In response to the cease and desist letter sent by the Complainant's counsel, the Respondent replied that he was ready for 'friendly transfer of the disputed domain name through Sedo.com'. In response to another letter asking for authorisation code the Respondent asked for payment of 800 EUROS. It clearly establishes that domain name has been registered and is being used in bad faith.
12. The Complainant has ascertained that the present Registrant of the disputed domain name is a habitual and known cyber-squatter. In support the Complainant has submitted various cases wherein the Respondent was involved as Registrant of disputed domain names. For example morganstanleyaustralia.com, missionifragrance.com, manulife.in, lazard.co.in and danonino.co.in.
13. The Complainant has neither authorised nor consented to the present Respondent's adoption and use of the Complainant's well known and registered ARGILETZ trademark.
14. Paragraph 6 of INDRP provides that circumstances indicating that the Registrant has registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name to the Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the domain name, are deemed to be in evidence that the Registrant has registered and used domain name in bad faith. In support of this the Complainant has produced copies of various decisions like in those of rediff.in, siemens.in and intesa.in.

15. On the basis of the Complaint and supporting documents, the Complainant has requested for transfer of disputed domain name in his favour with costs.

#### **IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

In response to the contentions of the Complainant, the Respondent / Registrant has filed say / reply. In his reply the Respondent has submitted saying 'I m willing to amicably take this matter, but I don't know the ideas by the other side'.

#### **V] REJOINDERS OF THE PARTIES: -**

In view of suggestive reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

#### **VII] ISSUES & FINDINGS: -**

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

<b>SR. NO.</b>	<b>ISSUE</b>	<b>FINDING</b>
01	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	<b>Yes</b>
02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	<b>Yes</b>
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	<b>No</b>
04	Whether the Registrant has commonly been known by the domain name?	<b>No</b>
05	Whether the Registrant has any legitimate interests in the disputed domain name?	<b>No</b>
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	<b>Yes</b>



07	Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?	<b>Yes</b>
08	Has the Registrant 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?	<b>Yes</b>
09	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	<b>Yes</b>
10	Whether the Registrant has established the usage or demonstrable preparations to use, the domain name before any notice?	<b>No</b>

#### VIII] BASIS OF FINDINGS: -

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'argiletz' is an integral / prominent component of subject domain name and also is an integral / prominent component of the Indian registered Trademark of the Complainant which was registered vide No.1450678 dated 11<sup>th</sup> May 2006 among other registered trademarks, world over.

Against this the Respondent has no registered trade mark or service mark consisting of the word 'argiletz'.

Therefore my finding on the first issue is affirmative.

2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

Yes. Already discussed in issue (A) above.  
Therefore my finding on this issue is in affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has been commonly known by the domain name?

The name of the Registrant, as available in the records is Jack Sun. As such he is not commonly known by the domain name 'argiletz'.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interests in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'argiletz'. He is not commonly known by that name. He has not established that he has taken all reasonable steps to use the registered domain name. Against this he has offered it for sell to the Complainant for 800 Euros. He has made similar suggestion in his single reply to the Complaint submitted to this Arbitral panel. Obviously his intention is to make money by selling the disputed domain name to the Complainant for valuable consideration not matching with documented costs of registration. He has not shown any other nexus of his business with the domain name.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The Registrant is yet to commence use of domain name. As per the Complainant, the site is for sale. However when I attempted to visit the site, it could not be displayed.

Therefore my finding on this issue is affirmative.

7. Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?

Yes. The Registrant has offered to sell the domain name to the Complainant for Euro 800.

Therefore my finding on this issue is affirmative.

8. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has cited various cases in confirmation of the fact that the Registrant / Respondent is a habitual cyber squatter.



Therefore my finding on this issue is in affirmative.

9. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

Though the Registrant has not used the site for his own purposes, it will definitely create confusion in the minds of internet users due to exact reproduction of the registered trademark in its entirety in the domain name.

Therefore my finding on this issue is affirmative.

10. Whether the Registrant has established the usage or demonstrable preparations to use, the domain name before any notice?

The Registrant has not established site fully. It is not being displayed also. The Complainant has established that it is for sale.

Therefore my finding on this issue is in negative.

## **IX] CONCLUSION AND BASIS OF AWARD: -**

From above discussion I have reached the conclusion that: -

- a. The Respondent does not have any registered trade mark / service mark in his name containing the words 'argiletz' and hence does not have any legitimate interest in the same.
- b. In terms of Para 7 of INDRP the Respondent has not shown any demonstrable preparations to use the disputed domain name.
- c. The Registrant has not been commonly known by the disputed domain name.
- d. The Registrant is not making any non-commercial or fair use of the disputed domain name.
- e. The Respondent / Registrant has completely failed to establish his nexus with the disputed domain name in any way.
- f. On the contrary he has offered to sell the disputed domain to the Complainant. The Complainant has also cited examples establishing that the Registrant / Respondent is habitual cyber-squatter and registers various domain names for the purpose of making money illegally.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name with the purpose of selling the same to the Complainant or to his competitors for monetary benefits.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name – www.argiletz.co.in and hence the same be transferred to the Complainant immediately.
02. The Registrant shall pay to the Complainant all documented costs of these arbitral proceedings as well as cost for transferring domain name in favor of the Complainant.

Dated: - 29.11.2011  
Place: - Pune

  
(S.C.INAMDAR)  
SOLE ARBITRATOR