

AND

India Portals
Narayan Dhruv Lane,
Off Abdul Rehman Street,
Mumbai. 400003.
INDIA

- THE RESPONDENT

IN THE MATTER OF DISPUTED DOMAIN NAME: -

champagne.in

BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

DELIVERED ON THIS 8TH DAY OF MAY TWO THOUSAND TWELVE.

I] SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. Names and addresses

Of the Complainant: -

Comité Interprofessionnel du Vin de
Champagne
5, rue Henri Martin
F-51204, Epernay, Cedex
FRANCE

02. Name of the Authorised

Representative of Complainant: -

K & S Partners
109, Sector 44
Gurgaon. 122 003. India
National Capital Region
Phone No.:- +91 (124) 4708700 (B)
Email: - postmaster@knspartners.com
radhika@knspartners.com

03. Name and address of

The Respondent: -

India Portals
16A, Narayan Dhruv Lane
Off Abdul Rehman Street
Mumbai. 400 003. India.
Phone No. +91 9619628312
Email: - info@indiaportals.org

05. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case was referred to me	22/03/2012
02	Acceptance was given by me	22/03/2012
03	Hard copy of the Complaint received by me	20/04/2012
04	Notice of arbitration was issued	23/04/2012
05	Submission of reply by the Respondent	NIL
06	Issue of notice to the Respondent to submit his reply within extended period	03/05/2012
07	Submission of reply by the Respondent	NIL
08	Issue of notice of closure of arbitration proceedings	08/05/2012
09	Issue of award	08/05/2012

I] PRELIMINARY: -

- 1) Comité Interprofessionnel du Vin de Champagne (CIVC) is a public service body having certain public authority prerogatives, created by an Act of the French Parliament, namely Act of April 12, 1941 to manage, promote and protect the interests of persons involved in the production of wines sold under the geographical indication 'CHAMPAGNE' with powers to sue and be sued. The Complainant has its office at 5, rue Henri Martin, F-51204, Epernay, Cedex, France. **(The Complainant)**
- 2) Since the Complainant is holder of various trademarks / service marks with the word **CHAMPAGNE** it has disputed registration of domain name '**champagne.in**' (the disputed / domain name) in the name of India Portals, 16A, Narayan Dhruv Lane, Off Abdul Rehman Street, Mumbai. 400 003. **(The Respondent)**.
- 3) Major events took place as enumerated in the above table.

III PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, copies of all communications between me and parties and vice-versa were marked to each other including copy to NIXI.

02. Sufficient opportunities were given to the Respondent to submit their say. However the Respondent / Registrant has failed to file any say / reply to the Complaint, even within the extended period. Nor there is any communication from him in any manner.
03. The Complainant was represented by Ms. Radhika Singh, Advoce of M/s K & S Partners, 109, Sector 44, Gurgaon 122003. A copy of duly executed Letter of Authority in favour of K & S Partners has been filed by the Complainant.

III] SUMMARY OF THE COMPLAINT: -

- (A) 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 a public service body which has come into existence by passing an Act in French Parliament on 12th April, 1941 with the main object and power to manage, promote and protect the interests of persons involved in the production of wines sold under the geographical indication 'Champagne'. The powers include power to sue and be sued. The Complainant is not involved in the manufacture of any product but is an administrative authority to take decisions and sanctions relating to its members. Its powers and duties involve the responsibility to manage and defend the rights in the geographical indication 'champagne' in France and overseas.
 - b) Champagne is a naturally sparkling wine produced in a defined region of the Champagne district of France by double fermentation from grapes grown in the district.
 - c) Appeal Court of Angers held in 1887 that 'by the name champagne or champagne wine, one may only refer to a wine that is both harvested and manufactured in Champagne, the former province of France, which is geographically determined.'
 - d) Champagne has also been acknowledged and protected at the European community level through EC regulation No. 1493/99 of the European Council.
 - e) The uniqueness and distinct characteristics of Champagne wines are influenced by an inter play of the agro-cliamatic conditions, soil, ocean, rainfall, temperature, sunlight etc. and human skills involved in selection of grape varieties, method of pruning, harvesting and production of champagne wines.

- f) The Complainant is the registered proprietor of the geographical indication 'Champagne' in a number of countries such as 27 Member states of the European Union, 16 member state of the African Intellectual Property Organisation, Bolivia, Chile, Colombia, South Korea, India, Japan etc. In India the Complainant is the registered proprietor of 'Champagne' under the Geographical Indication of Goods (Registration & Protection) Act, 1999 bearing registration No.140 dating back September 2008.
- g) Additionally the Complainant is the owner of a number of domain names totaling to about 32 in various countries.
- h) The Complainant has been vigilant and active in protecting the name and product Champagne against any unauthorized use of the same. The Complainant has attached copies of some of the orders passed in such matters including those passed by the Indian Trade Marks Registry in favour of the Complainant.
- i) The Complainant has successfully obtained orders for the transfer / cancellation of the domains champagne.ie, champagnes.fr, champagnes.be, cmapagne.com.ar and champagne.co.uk. The copies of these orders are attached by the Complainant.
- j) In November 2010 the Complainant learnt that the impugned domain name champagne.in had been registered in the name of the Domain Manager, India Portals. On visiting the website the Complainant that there is no such website being hosted.
- k) The Complainant addressed several emails to the Respondent with a view to purchasing the impugned domain. However there has been no response from the Respondent. The Copies of the said emails are attached by the Complainant.
- l) The impugned domain name is identical to the registered geographical indication CHAMPAGNE in which the Complainant has worldwide rights: -
- a) The impugned domain name includes the word Champagne which was registered in February 2005 while the champagne wines have been produced since 1600.
 - b) The name and product champagne is a registered geographical indication in India and abroad.
 - c) The impugned domain name is identical to the registered geographical indication and is likely to confuse internet users

into believing that the Respondent has some nexus with the Complainant, when it is not so.

- m) The Respondent has no rights or legitimate interest in the impugned domain name: -
 - a) The Respondent is not commonly known by the impugned domain name.
 - b) The Respondent is not using the impugned domain name in connection with a bona fide offering of goods or services.
 - c) The Respondent is not making any legitimate non-commercial use or fair use of the impugned domain name. The impugned domain name has been held passively and there is no evidence available on the internet or otherwise to suggest any use.

- n) The registration and use of the impugned domain name by the Respondent lacks good faith: -
 - a) The Respondent has registered impugned domain name in order to prevent the Complainant from using the same for its purposes.
 - b) The Respondent has a pattern of registering multiple domain names, both proprietary names and common words, with no intention of using them. Presently the Respondent has over 530 of such domain names, a list of which has been furnished by the Complainant.
 - c) It is not possible to conceive a plausible situation in which the Respondent would have been unaware of the reputation enjoyed by the Champagne.
 - d) Though the Respondent registered the impugned domain name in February 2005 there has been no use of the same.
 - e) Holding of impugned domain name for over six years by the Respondent amounts to a continual denial to the Complainant to exercise its legitimate statutory and common law rights in the same.
 - f) There is a potential danger that the Respondent may sell the impugned domain name to third parties for use since any such sale to third parties could result in confusion arising from unauthorized use by such third parties of the name Champagne including in respect of similar or dissimilar goods or services.

- o) The Complainant has cited decisions in Telstra Corporation Limited V Nuclear Marshmallows, WIPO Case No. D2000-003 in support of its contentions.

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

In response to the contentions of the Complainant, the Respondent has NOT submitted any reply / say even after suo-moto extension granted for that purpose.

VI] DOCUMENTS FURNISHED BY THE RESPONDENT: -

In support of its contentions the Respondent has furnished, inter-alia, copies of the following documents: -

NIL

VII] REJOINDERS: - In view of non-submission of any say / reply by the Respondent no rejoinders were called for.

VIII] 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.

SR. NO.	ISSUE	FINDING
01	Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?	YES
02	Whether the Registrant registered domain name primarily for selling, renting or otherwise transferring it?	CAN'T SAY
03	Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in which the Complainant has rights?	YES
04	Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?	NO
05	Whether the Registrant has any right or legitimate interest in respect of the disputed domain name?	NO
06	Whether the Registrant / Respondent has registered domain name in bad faith?	YES
07	Whether the Registrant is using the domain name before notice to him / has demonstrated considerable preparation to use in good faith?	NO

08	Whether the Registrant has commonly been known by the domain name?	NO
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VII] BASIS OF FINDINGS: -

ISSUE NO.1: -

Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?

FINDING: -

The Complainant is a public service body established by a law passed by the French Parliament. It has and owns geographical indications registered in various countries including India, containing the word champagne.

A plain reading of INDRP 6(ii) it can be seen that the words used are REGISTERED TRADEMARK OR SERVICEMARK. It does not include geographical indication. Strictly speaking the Complainant does not have registered Trademark or Service mark. However going by the legislative intentions and looking beyond the literal meaning or interpretation of the said policy, similar weightage or importance can be assigned to geographical indication as is attached to trademark or service mark. Moreover whenever a third party has attempted to register any trademark containing the words 'champagne' the same is successfully opposed by the Complainant before Trademark Registry in India. The said third parties have withdrawn their applications after such opposition by the Complainant. It can be therefore said that at least negatively the Complainant has established its rights and interests in the word Champagne and resultantly in the disputed domain name.

My findings therefore on this issue are in affirmative.

ISSUE NO.2: -

Whether the Registrant registered domain name primarily for selling, renting or otherwise transferring it?

FINDING: -

The Respondent has failed to file any say / reply to the Complainant and hence his contentions have not been brought before me. On the other hand the Complainant has brought on record that it attempted at least 4-5 times to contact the Registrant with the intention to seek his offer for purchasing the disputed domain name, to which the Registrant has not responded at all. There is no document on record to prove that the

Registrant has intentions of selling or renting or otherwise transferring the disputed domain name. Therefore my findings on this are on neither side.

ISSUE NO.3: -

Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?

FINDING: -

The Complainant has established very clearly his rights by way of registered geographical indication which I have treated at par the registered trademark(s) in various countries including India.

My findings on this issue are therefore are affirmative.

ISSUE NO.4: -

Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?

FINDING: -

The Respondent has neither claimed nor established that he is holder of any registered trademark or service mark and therefore has no right or legitimate interest in respect of disputed domain name.

My findings on this issue are therefore are negative.

ISSUE NO.5: -

Whether the Registrant has any right or legitimate interest in respect of the disputed domain name?

FINDING: -

The Registrant has neither claimed nor proved any right or legitimate interest in respect of the disputed domain name.

My finding on this issue therefore are in negative.

ISSUE NO.6: -

Whether the Registrant / Respondent has registered domain name in bad faith?

FINDING: -

The Complainant has brought on record that the Registrant is in habit of registering various domain names without having any legitimate interest or right therein. Such domain names contain both proprietary and common words without any intention of using them.

My finding on this issue therefore is in affirmative.

ISSUE NO.7: -

Whether the Registrant is using the domain name before notice to him / has demonstrated considerable preparation to use in good faith?

FINDING: -

When we attempt to visit the website containing disputed domain name an error is displayed with the words 'internet explorer cannot display the website.' Even on Google search the search does not return any result. In other words the Registrant has not uploaded any website with the disputed domain name ever after six years of its registration.

Therefore my finding on this issue is in negative.

ISSUE NO.8: -

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

FINDING

No. The name of the Registrant / Respondent has nothing to do with the disputed domain name. He has neither claimed the same nor has furnished any evidence to that effect.

Therefore my finding on this issue is in negative.

VIII] CONCLUSION AND BASIS OF AWARD: -

From the above discussion and on the basis of documents filed by the Complainant I am of the opinion that: -

1. The Complainant has legitimate interest / right in the disputed domain name by way of registered geographical indication.



2. The Registrant does not have anything to say in response to the Complaint since he has not bothered to file any say / reply even within the extended period, nor any response has been given by him.

3. The disputed domain name has not been used for a long period of six years or more after its registration. This indicates that the Registrant is neither serious in using it nor it has any definite plan for using it.

4. If the website is uploaded by the Registrant, it is very likely that it would create confusion in the minds of internet users. Similarly the Registrant would be in a position to attract internet users by misrepresentation.

5. The balance of convenience in the matter of this disputed domain name containing the word 'champagne' is more in favour of the Complainant.

IX] AWARD: -

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

01. The Complainant is entitled to the disputed domain name – 'champagne.in'. The Respondent shall transfer the same to the Complainant immediately.
02. The parties will bear their respective costs of arbitration.

Pune.

Dated: - 08.05.2012


(S.C.INAMDAR)
ARBITRATOR