



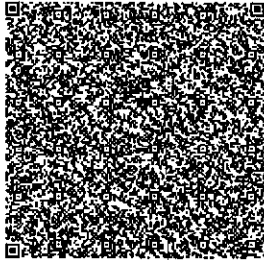
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INDIA NON JUDICIAL

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ARBITRATION AWARD
.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF
INDIA
.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure

IN THE MATTER OF:

E. REMY MARTIN

20 rue de la societe vinicole
16100 COGNAC (FR)
France

...Complainant

VERSUS

Oversea Domain Management
Ye Genrong
Chaoyaomen Street 1080 KM.
Beijing 100008

.....Respondent

Disputed Domain Name: <LOUISXIII.CO.IN>

1. **THE PARTIES:**

The Complainant in this arbitration proceeding is E. Remy Martin, 20 rue de la societe vinicole, 16100 COGNAC (FR), France.

The Respondent in the arbitration proceedings Domain Solutions, oversee Domain Management, Ye Genrong, Chaoyaomen Street, 1080 Km, Beijing 100008, China.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <LOUISXIII.CO.IN> has been registered by the Respondent(s). The Registrar with whom the disputed domain is registered is Directi Internet Solutions Pvt. Ltd. d/b/a Public_Domain_Registry.com

3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against



Domain Solutions, oversee Domain Management, Ye Genrong, Chaoyaomen Street, 1080 Km, Beijing 100008, China. Ye Genrong, Choyaomen Street 1080 KM., Beijing 100008, CN. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).

- 3.1 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).
- 3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **9th November, 2012**. The parties were notified about the appointment of an Arbitrator on **9^h November, 2012**.
- 3.3 In accordance with the rules, paragraph 5(c), the Respondent was notified by me about the commencement of arbitration proceedings on 9th November, 2012 and the due date for filing his response.

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3.4 The Respondent(s) failed and/or neglected and/or omitted to file formal response to the Complaint within 10 days as was granted to him by notice dated **9th November, 2012.**

3.5 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

4. **FACTUAL BACKGROUND**

4.1 The Complainant in these administrative proceedings is E. Remy Martin, 20 rue de la societe vincole,16100, FOGNAC (FR), France.

4.2 "Louis XIII" is a cognac produced by E. REMY MARTIN. E. REMY MARTIN is a branch of the company CLS REMY COINTREAU.

The Brand "Louis XIII" is composed of three limited collections:

Louis XIII

Louis XIII Rare Cask

Louis XIII Black Pearl

4.3 The present dispute fall within the scope of INDRP and the Constituted Panel appointed by INDRP has the jurisdiction to decide the same. The Registrar of the disputed Domain Name has adopted the INDRP Rules, as per its Registrar Accreditation Agreement.

4.4 The complainant objects to the registrar of disputed domain name www LOUISXIII.co.in in

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the name of the respondent and seek the relief of cancellation or transfer thereof.

5. PARTIES CONTENTIONS

5A COMPLAINANT

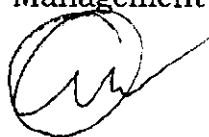
5A(1) The Complainant claims to be the owner and Registered Proprietor of the Trade Mark LOUIS XIII in several countries including India.

The Complainant owns registration for the Trade Mark "LOUIS XIII DE". Remy Martin in India vide registration no. 641400 dated 25th Septmeber, 1994.

5A(2) The Complainant further claims to own and communicate on the Internet, through various websites worldwide, the primary domain being, "www.louis-xiii.com" which was registered on 21/01/2003, but E. REMY MARTIN has also registered numerous domain names incorporating Trademark "Louis XIII" such as:

louis-xiii.fr	registered on 28/03/2007
louisxiii.fr	registered on 25/04/2007
louisxiii.in	registered on 24/05/2010
louis-xiii.co.in	registered on 13/09/2010
louisxiii.cn	registered on 17/09/2007
louis-xiii.cn	registered on 23/03/2007
louisxiii.com.cn	registered on 17/09/2007
louisxiii.asia	registered on 04/12/2007
louis-xii.asia	registered on 10/12/2007
louisxiii.net	registered on 04/05/2011
louisxiii.de	registered on 11/03/2008

5A(3) The disputed domain name <louisxiii.co.in> has been registered on 08/01/2012 by "Overseas Domain Management". The domain



name is for sale on the website hosted on domain <www.louisxiii.co.in>

B. RESPONDENT

5B(1) The Respondent was given an opportunity to file his/her response to the Complaint by the panel by its notice dated November 9, 2012. However, the respondent has failed to file any response within the prescribed time or to seek any extension of time. The case of the complainant, therefore, remained unrebutted.

6. DISCUSSIONS AND FINDINGS

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed there under in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration &



Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 In accordance with the principles laid down under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.
- 6.5 The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.
- 6.6 The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain un rebutted and unchallenged. There is no dispute raised to the authenticity of the documents filed by the Complainant.



- 6.7 The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <louisxiii.co.in > and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.
- 6.8 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.9 The decision of Hon'ble Supreme Court of India in the matter of **JahuriSah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).
- 6.10 The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.11 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.
- 6.12 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:



A. IDENTICAL OR CONFUSINGLY SIMILAR

- 6.A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.
- 6.A.2 The Respondent registered the Disputed Domain Name on January 8th, 2012.
- 6.A.3 The contention of the Complainant that by registering the impugned domain name <louisxiii.co.in> by the Respondent, the likelihood of confusion between the trademark of the disputed domain name cannot be avoided is upheld by this panel.
- 6.A.4 The Complainant is also the registered proprietor of the Trade Mark incorporation the word "LOUIS XIII" in various countries including India, and the Respondent has not challenged the said registration in any manner.
- 6.A.5 The addition of a ccTLD "CO.IN" is not sufficient to escape the finding that the domain is confusingly similar to the Trademark and does not change the overall impression of the designation as being connected to the Complainant's trademark.
- 6.A.6 The Complainant's use of their well-known and prior trademarks has been extensive, exclusive and continuous all across the world. Given the nature of the Complainant's use of its trade marks, anyone with access to a computer and the Internet, has access to the Complainant's web site wherein the



Complainant's trademarks are featured throughout the website.

- 6.A.7 The Complainant maintains a website at the domain <www.louis-xiii.com> which was registered on 21.1.2003.
- 6.A.8. The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name <**louisxiii.co.in** > is identical and/or deceptively similar to the earlier registered trade marks and Domain names of the Complainant. The whole of Complainant's trade mark /domain name has been incorporated in the disputed domain name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name <**louisxiii.co.in**> is identical and/or confusingly similar to the Trademark of the Complainant.

B Registered and used in Bad Faith

- 6B.1 The Respondents have no interest or legitimate right with respect to the Disputed Domain Name.
- 6.B.2. In the matter of "Croatia Airlines d.d.v. Modern Empire Internet Ltd.", a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in



the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

6.B.3 The trademark incorporating the word LOUIS XIII has not been licensed by the complainant to the respondent.

6.B.4 The fact that the domain has been put on sale by the respondent which in the absence of any response seems to be the only purpose for acquiring disputed Domain Name, in itself demonstrates that the Respondent has no rights or legitimate interest in respect of the disputed Domain Name.

6.B.5 The respondent has not rebutted claims of the complainant.

Therefore, this panel is satisfied that the respondent has no rights or legitimate interest in respect of the disputed domain name.

C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

6C.3 The bad faith in registering the impugned domain name by the respondent is apparent from the fact that the same has been registered for the sole purpose of sale as discussed in the preceding paragraphs. Numerous decisions support this proposition in favour of the complainant.



6C.4 The complainant inference that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic is also valid since the domain <louisxiii.co.in> was registered by the Respondent on 8th January, 2012 much prior to the adoption and use of the Trade Mark/Domain Name on part of the Complainant.

6.C.5 The decision of WIPO Case No. D2000-1016 titled Playboy Enterprises International, Inc. Vs. Hector Rodriguez reads "People, who manifest an intent to traffic in domain names that incorporate well-known or famous trademarks, as the Respondents do here, simply do not expand their efforts with the sole intention of relinquishing those domain names for just their out-of-pocket registration costs. The goal of their efforts, simply put, is an expectation of receiving an adequate reward, i.e. sufficient profit, from this trafficking" transfer awarded.

The bad faith use of the Disputed Domain Name is quite clear in this case, given the content on the Respondent's web site and his intent to sell the Disputed Domain Name to the highest bidder.

6.C.6 The Respondents do not dispute any of the contentions raised by the Complainant. The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name <louisxiii.co.in> was registered by the



respondents in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.

- 6.C.7 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. **DECISION**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

Transfer of the domain name **louisxiii.co.in** to the Complainant.


AMARJIT SINGH
Sole Arbitrator

Dated: February 18, 2013