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BEFORE THE SOLE ARBITRATOR UNDER THE .In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF

PepsiCo, Inc.
700 Anderson Hill Road, Purchase,
NY 10577, United States of America

(Complainant)

v.

Mr. Wang Shuang
Jiang Dong Road, Ningbo,
Zhejiang 315040, China

(Respondent)

The Parties

The Complainant in this proceeding is PepsiCo, Inc. having its office at 700 Anderson Hill Road, Purchase, New York 10577, United States of America.

The Respondent in this proceeding is Wang Shuang, having his office (available through .IN WHOIS) at Jiang Dong Road, Ningbo, Zhejiang, 315040, China.

The Domain Name & Registrant

The disputed domain name www.pepsi.in is registered with Directi Web Services Pvt. Ltd. The Registrant is Wang Shuang of China.

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.pepsi.in.

.In Registry has supplied the copy of the Complaint and Annexures to me.

On 09.10.2012, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself I requested the Complainant requesting it to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 09.10.2012 with the instructions to file his say latest by 24.10.2012.

On 11.10.2012, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. According to this mail copy of the complaint was duly sent to the email address as well as the postal address of the Respondent, which was returned due to incomplete address of the Respondent.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted.



I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and annexures / document.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

The Complainant is a corporation duly formed and existing under the laws of the state of North Carolina, United States of America, with its principal office at 700 Anderson Hill Road, Purchase, New York, 10577, United States of America. The Complainant is one of the largest and best known manufacturers and distributors of soft drink beverages and other products in the world. The PEPSI soft drink itself was invented way back in 1898 by a pharmacist, Caleb Bradham in New Bern, North Carolina, using a combination of spices, juices and syrups. The soft drink was initially named as “Brad’s Drink” but was renamed by the inventor as “Pepsi-Cola” and this term was first used on August 28, 1898. Within a short span of time, the business and popularity of the Complainant’s product began spreading to other states in the United States of America and then to other countries worldwide.

Since at least 1911, the Complainant, including its predecessors in interest, has been continuously and extensively using the PEPSI marks in relation to its business. The word PEPSI also forms an essential and distinguishing part of the Complainant’s corporate name and the corporate names of many of its subsidiaries. Numerous websites such as <www.pepsi.com>, <www.pepsico.com>, <www.pepsiworld.com>, <www.pepsibiz.com>, and <www.dietpepsi.com> contain information about the Complainant, its business and products and the PEPSI marks are featured prominently on these websites. The Complainant also owns and operates a number of websites that use Country Code Top Level Domain Names like, <www.pepsi.co.uk> (for United Kingdom), <www.pepsi.fr> (for France), etc., to specifically target customers in that particular country.

The Complainant has been actively pursuing acts of infringement or misuse of PEPSI marks that come to its notice and has succeeded in many domain name cancellation actions involving the domain name “pepsi”. In a number of these actions before the World Intellectual Property Organizations (WIPO) the Complainant’s PEPSI mark has been recognized as one of the most famous marks in the world. In addition to the spillover reputation and goodwill enjoyed by the Complainant, it has been doing business in India and



soft drinks under the PEPSI marks have been available in India from as early as the mid-1950's.

The Complainant entered into collaboration with Punjab Agro Industries Corporation (an organization of the Government of Punjab and Voltas Limited, a Tata Company). Consequently, a joint venture company called Pepsi Foods Pvt. Ltd. (PFPL) was formed on February 24, 1989. PFPL established a soft drink concentrate manufacturing plant at Channo, Punjab and commenced its business in May 1990. PFPL is today a wholly owned subsidiary of the Complainant to use several distinctive trademarks, including the PEPSI marks.

In India, the Complainant has several registrations and applications for the PEPSI marks in Classes 18, 25, 29, 30 and 32. The earliest trademark registration in India containing the designation PEPSI dates back to 1943. In addition to the trademark registrations and/ or pending applications before the Registrar of Trademarks, the Complainant has also obtained domain name registrations in the "co.in" and ".in" categories specific to India (including in Hindi) granted by the Registrar of Domain Names. These registrations demonstrate the Complainant's diligence in protecting and preserving its exclusive rights in the PEPSI name through available online means of protection.

The Respondent in the present proceeding is an individual named Wang Shuang of Jiang Dong Road, Ningbo, Zhejiang, 315040, China.

Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical to the trademark PEPSI of the Complainant.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent was registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex-parte and the hence conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *" An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "PEPSI".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

- i) The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.**

The Complainant has stated in its complaint that domain name of Respondent www.pepsi.in is confusingly similar and identical to his name/mark PEPSI. The Respondent has applied for domain name that is identical with complainant's name and mark PEPSI.

It is further stated that the complainant is the registered proprietor of the "PEPSI" trademark in numerous countries in the world including INDIA and has gained significant reputation



and its mark can be termed as a well known brand. The complainant is also the registrant and proprietor of various Domain name registration at International and Domestic level.

The complainant has established its prior adoption of the mark /name PEPSI. The complainant has filed sufficient evidence to show that it has trademark rights in the marks PEPSI/PEPSICO/PEPSIWORLD/PEPSIBIZ/DIET PEPSI and other PEPSI comprising marks.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

ii) The Registrant has no rights or legitimate interests in respect of the domain name

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)

- i) before any notice to the Registrant of the dispute, the Registrant'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;*
- ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has 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.*

In May, 2011 the Complainant discovered that the domain name in question www.pepsi.in was registered in the name of the Respondent. At this time, the Complainant had already made use of the mark PEPSI as a trademark and corporate name in several parts of the world. The complainant had also registered the domain name www.pepsi.com on 14 January, 1993 and enjoys considerable reputation in respect of the PEPSI mark and domain name. Further, the complainant's corporate name comprises the word PEPSI (PepsiCo. Inc). Therefore it is

obvious that the Respondent was aware of the Complainant's trademark rights in the PEPSI mark/name.

The Respondent is not and has never been known by the PEPSI name or by any similar name. The Respondent did not have any active business in the name of PEPSI. The registration of the disputed domain by the Respondent is thus a typical example of "cyber squatting". The fact that the Respondent's website carries nothing but sponsored links of other websites further proves that the Respondent is just a cyber squatter.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii)

iii) The Registrant domain name has been registered or is being used in bad faith

The Complainant alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website of the Complainant and also to deceive the consumers into believing that there is a connection or association between the Complainant and Respondents website.

In fact, as per the evidence submitted by the Complainant, the Respondent has registered around 169 domain names using the same email id as used for registering < www.pepsi.in >. Thus the bad faith of the Respondent is clearly evident.

The Tribunal is of the view that the Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise, the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).



The Tribunal also gets support from the awards of *Pfizer Inc. Vs. Deep Soni and Ashok Soni*. (Case No. D2000-0782) and *Morgan Stanley v. Keep Guessing*, INDRP/024 (June 27, 2007) to prove the above mentioned contentions.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.pepsi.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 13th day of December 2012.



A.K. Singh

Sole Arbitrator

Date: 13th December, 2012