



S 363599

D: SARAVANAN

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S. SHANMUGA SU
ASA PYEN D O R.

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: www.tenneco.co.in

Tenneco Inc.
500 North Field Drive
Lake Forest, Illinois
United States of America.

Complainant

-Vs-

Li
Hao Li
Giles Ave, North Haven
Postal Code-06473
United States America.

Respondent





தமிழ்நாடு தமில்நாடு TAMILNADU

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SHANMUGA SUNDARAM,
STAMP VENI
L. NO. B4/109/88
HIGH COURT CAMPUS
CHENNAI-600 104. (TAMIL NADU)

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The Parties

The Complainant is Tenneco Inc. having its mail address at 500 North Filed Drive, Lake Forest, Illinois, U.S.A. Rep.by its Authorised Representative Mr.Rodney D. Ryder, having office at Kochhar & Co, DLF Towers Jasola, Tower-A, 11th Floor, Jasola, New Delhi 110 025, India.

The Respondent is Mr .Tony Li, having his mail address at M/s.Tony Hao Li, No.7, Giles Ave, North Haven, Postal Code - 06473, U.S.A. Neither the Respondent I represented himself nor represented by any one.

2. The Domain Name and Registrar :

The disputed domain name: www.tenneco.co.in. The domain name registered with .INREGISTRY.



3. Procedural History:

January 28, 2010 The .INREGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.

February 04 2010 Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorised representative and .IN REGISTRY.

February 14, 2010 Due date for filing Response by Respondent.

February 26, 2010 Arbitrator sent an e-mail to Respondent notifying his default, a copy of which marked to Complainant's authorised representative and the .IN REGISTRY.

The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The Complainant is Tenneco Inc. having its mail address at 500 North Field Drive, Lake Forest, Illinois, U.S.A. Rep.by its Authorised Representative Mr.Rodney D. Ryder, having office at Kochhar & Co, DLF Towers Jasola, Tower-A, 11th Floor, Jasola, New Delhi 110 025, India.

4.2 Complainant's Activities:

Complainant states inter-alia that it is one of the world's leading designers, manufacturers and distributors of emission control and ride control products and systems for the automotive original market and the aftermarket; the complainant is well-balanced across product lines, markets served and geographic regions; the complainant global presents; including a present in the Indian automotive sector; using a combination of leading-edge technology, manufacturing expertise and dedication to customer service, the complainant has increased revenue to \$5.9 billion and penetrated new markets to solidify its leadership in the global automotive supply industry; the complainant is well positioned to capture significant revenue growth going forward has the result of stricter light and commercial vehicle emission regulations being implemented in most markets worldwide over the next five years; as a Tire 1 automotive supply, the complainant delivers premier



emission control and right control products and systems for original equipment customers worldwide; the complainant meet the needs of their OE customers by designing, developing, testing and manufacturing advanced technologies and quality products using their global engineering and manufacturing capabilities and experience in providing fully integrative systems.

4.3 Complainant's Trade Marks and Domain Names:

The complainant states that their profile in popularity under the trade/service name / mark 'Tenneco' has been continuously increasing since the date of adoption and use of mark; at present, the complainants trade name / mark is a name to reckon with and has acquired and enormous goodwill not only in India but in many countries across the globe; the complainant further states that 'Tenneco' mark / brand mark, due to its extensive use, advertisements, publicity and awareness throughout the world, has acquired the status of a well known trademark under the provisions of Trade Marks Act, 1999; the said mark / name qualifies all tests for the well-known status of a mark under the Act in reference which includes considerations like knowledge or recognition among relevant section of public, duration, extent and geographical areas of use, promotion and publicity of mark etc; the mark / brand 'Tenneco' also falls under the category of a famous mark has provided by Article 6bis of Paris Convention; the complainant considers its trade / service name / mark and important and extremely valuable asset and thus in order to protect the same, has obtained Trade Mark registration for the mark 'Tenneco' in India and other jurisdictions, including the Unites State of America; the complainant has filed the registration certificates issued by the Controller General of Patents Designs and Trade Marks Registry; the name / mark 'Tenneco' has acquired unique importance and is associated with the complainant; a mere mention of the said name / mark establishes an identity and connection with the complainant and none else; the complainant owns all the rights in the said name which is its Trade Mark and Service Mark; the use of said name either as a mark, name / domain name, or in any other form whatsoever constitutes infringement and passing off and is violation of complainant's rights in the said mark; the use of the disputed domain by the respondent amounts to misrepresentation and the respondent by doing so is indulging in unfair competition; the complainant further states that as internet has become an essential medium to conduct business, the complainant in order to expand its presence decided to obtain a domain name registration; the domain name extension in question i.e. www.tenneco.co.in is a natural extension of its corporate name; the complainant has spent a considerable amount



of money and skill to develop the brand 'Tenneco'; the website www.tenneco.com is a comprehensive, unique and acclaimed site of the complainant; the complainant also filed a printout of the Home Page of their website; recently, the complainant came to know that some one has obtained a domain name registration for www.tenneco.co.in, immediately the complainant searched WHOIS database for the disputed domain name and found that the impugned domain name is registered in the name of Domain Admin of the private registrations Tony Hao Li; the registrar for the disputed domain name is Name.com LLC; the malafide and devious intention of the respondent is evident from the glaring fact that the disputed domain name registration is the verbatim duplication of the complainant's domain name.

4.4 Respondent's Identity and activities:

The Respondent is the registrant of the Domain Name <tenneco.co.in> which is registered with .INREGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as Mr. Tony Li, M/s. Tony Hao Li, 7 Giles Ave, North Haven, Postal Code-06473, United States America, ghtlee@hotmail.com

5. Parties contentions :

A. Complainant:

- (a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has rights;

According to the complainant that a mere glance at the disputed domain name gives rise to enormous confusion as to its origin as the domain name used by the respondent is identical to the corporate name of the complainant; the utmost malafide intention of the respondent is evident from the fact that not even a single letter differs between the disputed domain name and the corporate name of complainant; in fact, the WIPO Arbitration & Mediation Centre in cases such as Reuters Ltd. Vs. Global Net 2000 Inc. (WIPO Case No. D2000-0441), Altavista Company Vs. Grand Total Finance Ltd. (WIPO Case NO. D2000-0848), Playboy Enterprises v. Movie Name Company (WIPO Case No. D20001-1201) has held that even the mere omission of one letter of a trademark has no effect on the determination of confusing similarity between a trade mark and a domain name; the present case is on an even higher footing as the respondent has picked up the mark / name of the complainant verbatim without even changing a single letter; thus, the use of the disputed



domain name by the respondent is a prima facie case of cyber squatting and Trade / Service Mark / Name infringement; the name / mark 'Tenneco' is distinctive, unique and has an established reputation in India and Internationally; the mere mention of the said name / mark establishes an identity and connection with the complainant and none else; the complainant owns all the rights including statutory and common law rights in the said name mark and is entitled to protection under the Indian Trade Marks Act; the use of said name either as a mark, name, domain name, or in any other form whatsoever constitutes violation of the complainant's rights; it is also well established that the specific top level of a domain name such as '.com', '.org', may be disregarded when determining whether it is identical or confusingly similar to the Trade Mark in which the complainant has rights; and in this respect the complainant relied upon the decision of the WIPO Arbitration & Mediation Centre in **Magnum Piering Inc. v. The Mudjackers and Garwood S. Wilson (WIPO Case No. D2000-1525)** and **Rollerblade Inc. v. Chris McCrady (WIPO Case No. D2000-0429)**

(b) Respondent has no rights or legitimate interests in the domain name:

According to the claimant the respondent is in the business of holding domain names and selling them, whereas the Complainant is an established business entity doing business under the brand '**Tenneco**' which itself is adequate evidence to show that the Respondent has no legitimate interests in the disputed domain name and is merely hoarding the same without doing any business from it; the respondent has no proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part to the disputed domain name; the respondent is not authorized or licensed by the Complainant to use its trade / service mark / name or to use the disputed domain name; the respondent is misusing the domain name by hosting an unauthorised website with misleading links; the

in the registration of the disputed domain name arises from the fact that domain names today are a part and parcel of corporate identity; a domain name acts as the address of the company on the internet and can be termed as a web address or a web mark just like a trade mark or service mark; it is also the internet address of a company; the mere act of registration by the Respondent of the disputed domain name containing the mark of the Complainant in it constitutes passing off.



(c) Respondent has registered and is using the domain name in bad faith:

According to the complainant the fact that the Respondent registered the disputed domain name years after the registration of the Complainant's domain name www.tenneco.co.in is prima facie evidence of malafide intentions and bad faith; the respondent has obtained registration for the disputed domain name in bad faith for the motives inter-alia that the domain name could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interest in the said domain name which is evident as the Respondent is not running any website on the disputed domain

or through the impugned domain name, by activating a website, the Respondent may be able to represent itself as the Complainant or its authorized representative and cause damage to some third party by entering into transactions or contracts with them under the grab of being associated with the Complainant which can be extremely dangerous and prejudicial to public interest as well, or the respondent can transfer or sell the domain name to some competing interest of the Complainant who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant company which would lead to complete tarnishment of the Complainant's image if valuable property like the domain name falls into the hands of competing interests.

Remedies Requested:

In accordance with the Rule 10 of the Policy, for the reasons described in Section V above, the Complainant requests to issue a decision that the contested domain name www.tenneco.co.in be transferred to the Complainant.

B. Respondent:

The Respondent did not submit any response.

6. Discussion and Findings:

It has to be asserted as to Whether the Constitution of Arbitral Tribunal was proper? and Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to



submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on February 26, 2010.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

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

(a) Identical or confusing similarity :

- i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark. The Respondent's domain name, www.tenneco.co.in consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name www.tenneco.co.in is confusingly similar or identical to the Complainant's marks.
- ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

- i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to



present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in this proceeding to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

- ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.
- iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith :

- i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in the similar business competing with the Complainant and the respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.



- ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks, trade names and corporate name of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.
- iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to the Complainant itself or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name www.tenneco.co.in be transferred to the Complainant.

Dated at Chennai (India) on this 5th day of March, 2010.


(D.SARAVANAN)
Sole Arbitrator