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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR 791961

IN DOMAIN NAME DISPUTE RESOLUTION POLICY

(INDRP)

IN RE:

Tenneco Inc,
500 North Field Drive,
Lake Forest, Illinois 60045
UNITED STATES OF AMERICA
Through authorized representative
Rodney D Ryder.
E-mail: rodney.ryder@kochhar.com

.Complainant

Versus

Mr Toni Li
M/s Tony Hao Li
7 Giles Ave
North Haven
Postal Code-06473
United States of America
E-mail: ghtml@hotmai.com

..Respondent

Sanjay Kumar Singh

1. **THE PARTIES:**

The complainant is Tenneco Inc, 500 North Field Drive, Lake Forest, Illinois 60045, United States of America.

(Complaint has been filed by authorized representative Rodney D Ryder, E-mail: rodney.ryder@kochhar.com)

The Respondent is Mr. Toni Li, M/s Tony Hao Li, 7 Giles Ave, North Haven, Postal Code-06473, United States of America.
E-mail: ghlee@hotmail.com

2. **DOMAIN NAME AND TRADEMARK IN DISPUTE:**

Domain name of the respondent is 'tenneco.in'

The trademark of the complainant is "TENNECO".

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name 'tenneco.in'
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me on 30-01-2010 by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
6. The complainant has stated in his complaint that the disputed domain name 'tenneco.in' is identical with and confusingly similar to the name, trade mark and service mark 'Tenneco'. The complainant has submitted that 'Tenneco' has grown to become one of the world's leading designer, manufacturers and distributors of emission control and ride control products and systems of the

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automotive original equipment market and the aftermarket. The complainant has further submitted that the profile and popularity of the complainant under the trade/service name/mark "TENNECO" has been continuously increasing since the date of adoption and use of the mark. The complainant has further submitted that the complainant's trade name/mark is a formidable brand and has acquired an enormous goodwill not only in UNITED STATES or INDIA but in many countries across the globe. The complainant has submitted that a mere glance at the disputed domain name gives rise to enormous confusion as to its origin as the domain name used by respondent is identical to the corporate name of complainant. The complainant has also submitted that the name /mark 'Tenneco' has acquired unique importance and is associated With the complainant. The complainant has further submitted that complainant owns all the rights in the said name which is its 'Trade mark and Service mark". The complainant has prayed that the domain name tenneco.in be transferred to the complainant and cost be also awarded to him.

7. The complainant as such has prayed for an award in the above matter for transfer of the domain name 'tenneco.in' in favour of the complainant.

on 08-02-2010 the authorized representative of the complainant submitted the e-mail address of the respondent.

On 21-02-2010, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence.

A copy of complaint has already been sent to the respondent by the .In Registry through e-mail. Upon receipt of the complaint, the Arbitrator sent a notice dated 21-02-2010 to the respondent to send his defence / counter to the complaint alongwith supportive documents / evidence at his e-mail address within 7(seven) days

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from receipt. But the respondent did not come forward and did not send his defence / counter to the complaint.

Failing to send the defence / counter by the respondent, the Arbitrator again sent a notice dated 06-03-2010 by giving another opportunity to the respondent to send his defence / counter to the complaint within five days with further notice that in default of non-filing or sending of the defence / counter to the complaint, award would be passed ex-parte on merits of the complaint.

In spite of repeated notices, the respondent has again not come forward and has not sent any reply / defence / counter to the either notice or complaint to the Arbitrator.

Therefore, this matter is being decided on the merits of the complaint and as per law of the land.

OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Hence the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

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Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name. The respondent has not submitted any reply / defence / document/evidence to the complaint of the complainant in spite of repeated notices from the arbitrator.

Thus the conclusion is that the domain name 'tenneco.in' is identical and confusingly similar to the trademark of complainant "Tenneco" and the complainant has established that he has right in the trademark.

Whether the respondent's domain name has been registered or is being used in bad faith

Keeping in view aforesaid facts and circumstances it is clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has not come forward and has neither provided any substantial evidence in its support.

Thus the conclusion is that the respondent has got registered his domain name 'tenneco.in' in bad faith.

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RELIEF

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled to transfer of domain name 'tenneco.in' to him, as he has established his bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

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Date: 29-03-2010.

Sanjay Kumar Singh
(Sanjay Kumar Singh)
Arbitrator