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BEFORE SMT. DEEPA GUPTA, sole ARBITRATOR
OF
NATIONAL INTERNET EXCHANGE OF INDIA (N I X I)

In the Matter of :

Dated: 14/02/2011

AKIFANK TRURK A.S.
SABANCI CENTER 80745
4, LEVENT-ISTANBUL/ TURKEY

Complainant

VS

TO
13, NORTH ROAD, CRAWLEY,
WEST SUSSEX RH10 1 JU
GB

Respondent

1. The Parties :

Complainants are **AKBANK TRURK A.S. SABANCI CENTER 80745 4, LEVENT-ISTANBUL/ TURKEY**

Respondent is **TOM, 13, NORTH ROAD, CRAWLEY, WEST SUSSEX RH10 1 JU, GB**

2. The Dispute:

The domain name at issue is < **akbank.in** > (the domain name)

The registrar is NIXI at Incube Business Centre, 38 Nehru Place, New Delhi



3. Brief Background :

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of the NIXI on dated 25/10/2010 and the respondent did not submit his reply at all.

Ms. Deepa Gupta has been appointed as Sole Arbitrator in this matter.

It is alleged in the complaint that the complainant is using his name for the past more than fifty years since Feb 1947 .It is also revealed from the field document that the complainant is in the business of providing National & International financial services, Insurance Services, pension fund services, retail, commercial, corporate , private banking, capital market and investment services, having 1865 ATM's, 835 BTM's, 253274 POS terminals& offering all above through cell phone & web based platform also. It is also not out of context to mention that ample opportunity has been given to the respondent to represent their case before the tribunal.

Respondent has not submitted any answer in the matter.

4. Parties contentions :

(A) Complainant's Contentions:

Complainant alleges that respondent has regd. akbank.in which is visually conceptually and confusingly similar to his trademark and also phonetically identical and respondent is a speculator and has registered the domain name with the intention to sell it to others for profits & defrauding the public. It is also alleged that the respondent has put up the domain name on parking, and is making money by luring customers to the website and many links on the website refer to complainants competitors.

The Complainant has also submitted the following:

Complainant Alleges that Respondent has regd. akbank.in which is AKBANKTURK A.S." well-known briefly as "AKBANK", which is a top-tier Turkish bank. Founded in 1947, now the largest bank in Turkey in terms of assets. Bank opened its first branch in Istanbul in the Sirkeci district on July 14, 1950. Rapidly increasing the number of its branches, Akbank automated all banking operations in 1963.

Akbank established Ak Securities in 1996, Ak Investment Fund in 1998, Ak Asset Management Company and its Private Banking Department in 2000. Akbank established Ak Pension Fund in 2003 and incorporated Ak Leasing in 2005. In February 2006, Ak Pension Fund was sold to the Aksigorta insurance company. As of the end of 2007, Ak Bank ranked as turkey's most valuable bank having the most profitable banking operations among privately owned banks in Turkey.



Together with its core banking activities, Akbank offers a wide range of retail, commercial, corporate, private banking and international trade finance services. Non-banking financial services, as well as capital market and investment services.

AK Bank has extensive domestic distribution network including 715 branches and 13,513 employees, 20 regional directorates around Turkey. Akbank provides "Credit Express" consumer loan, "Big Red House" mortgage, Telephone Banking Center, 1855 ATM's, 835 BTM's, 253274 POS terminals, services through cell phones and web-based platforms. AK Bank is Akbank NV in the Netherlands and Akbank AG in Germany, and has a branch in Malta, which carry out Akbank's overseas operations. On January 9, 2007, Akbank and Citigroup have successfully completed the strategic partnership agreement according to which Citigroup acquired a 20% equity.

At the end of 2007, net profit of Akbank reached approximately 1.76 billion US dollars and its asset size amounted to approximately 62.2 billion US dollars.

In 2007 market share of 13.2% and market share from 10.4% to 11.6% compared to last year. Akbank's shares are traded on the Istanbul Stock Exchange.

Complainant alleges that the Domain Names is identical to The Mark in Which Complainant Has Rights:

Before 1995, registration of service marks was not possible in Turkey. With the establishment of a new intellectual property law in 1995, "AKBANK" obtained service marks registered with the Turkish Patent Office (see Annex 4); attached. AKBANK has international registrations (see Annex 6) Intl. Madrid Protocol: Since December 09, 1996 AKBANK is the legal owner of the domain name "akbank.com.tr" and is still using this domain name legally.

"AKBANK" is also the trade name of the complainant.

Complainant alleges that the Respondent has no rights or Legitimate Interests in respect of the Domain Name.

(a) That Respondent has made no claim that he is using the domain names in connection with a bona fide offering of goods and services Policy 7 (i).

AKBANK, has not licensed or other wise permitted the respondent use the mark "AKBANK" or to apply for or use any domain name incorporating that trade/service mark. Respondent has no relationship with or permission from the complainant for use of its marks. Complainant has prior rights in that trade/service mark, which precede respondent's registration of the domain name.

The only interest which can be imagined is to somehow create a connection to the Complainant and its trademark AKBANK.



The Respondent does not use (commercially or non-commercially) the domain name. The Respondent has not been commonly known by the domain name.

Respondent in this case would only have a right to the domain name <akbank.in> if the Complainant had specifically granted that right.

The complainant has the right to exercise control on how its trademark is used by the third parties in Internet.

(b)That the domain name in question is not a mark by which the respondent is commonly known. Policy 7 (ii).

The respondent has acquired no trademark or service mark rights and he is not known by the domain name.

That the domain name in question is not a mark by which the respondent is commonly known. The respondent is not an institution and has never been licensed or granted permission from the complainant to use its mark. Ref. to: Companies de saint Gobain v. Vcom-Union Corp., D2000-0020 (WIPO Mar.14, 2000) (finding no rights or legitimate interest where respondent was not commonly known by the mark or never applied for a license or permission from the complainant to use the trademarked name).

(c)That It is not possible for the Respondent to make a legitimate non-commercial or fair use of the <akbank.in> domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the AKBANK trade/service mark. Policy 7 (iii)

Complainant is well-known with its trademark and therefore, no kind of usage could be considered as legitimate non-commercial. The Respondent registered the domain name intending to gain commercial benefit. The domain name is on sale and not in an active use. Pay-per-click search engine, which also advertises the Complainant's competitors web-sites. (See Annex-9). The mark AKBANK is well-known and is widely used by Complainant.

Use of another's trademark in domain name does not confer rights or legitimate interests in favor of the owner of the domain name (INDRP Dispute decision n°L2/5/R3 <itcportal.in> decided on November 30, 2007, INDRP Dispute decision n°L-2/5/R4 <bristol.in> decided on April 15, 2008; INDRP Dispute decision case no:096 <danone.in> -decided on June 27, 2009; See also WIPO Case n°D2000-1374 America Online Inc., v. XianfengFu)

That Respondent Registered and Used the Domain Name in Bad Faith



The domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration in excess of the domain name registrant's out-of-pocket costs.

That the Respondent does not actively use the disputed domain name Under the web site of the domain name <akbank.in>, there are two Turkish indications that this domain name is on sale (which means "SATILIK" and "SATIN ALMAK" in Turkish language-highlighted with yellow-), which are linked to the domain name trading web-site SEDO.com:. When clicking on the forwarded link, a SEDO bargaining page is displayed for the domain name <akbank.in>. Screen shots of these web pages, attached as Annex 10.

That the Complainant refers the WIPO Case No: D2008-1200 Wagamama Limited v. Transure Enterprise Ltd: "screen shot states that the domain may be for sale by its owner are circumstances indicating that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name. In the Panel's view, based on the evidence of record, on balance, that alone constitutes evidence of the registration and use of the domain name in bad faith for the purpose of paragraph 4(b).

That Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users to a website largely devoted to third-party advertisement and links.

That AKBANK is a well-known mark and it is difficult to imagine that the Respondent would not have been aware of that mark, when he registered the domain name <akbank.in>.

The Complainant refers to the Panel's held WIPO Case No. D2009-0642, Akbank Turk A.S. v. Mustafa Ismet Cinar. "...on the basis that nobody registers a domain name for no purpose, it is reasonable in the circumstances of this case for the Panel to infer that the Respondent's purpose in registering the Domain Name was abusive. Thus, the Domain Name in the hands of the Respondent represents an abusive threat hanging over the Complainant's head, which in the view of this Panel is tantamount to bad faith use of the Domain Name."

That the respondent registered the domain names in order to prevent the owner of the mark from reflecting the mark in corresponding domain names and from offering online services through said domain names.



That Respondent registered the Domain Name, & knew that the name "AKBANK" was a well-known trademark of the Complainant.

Complainants submits that registration and use of a domain name incorporating a famous mark is necessarily in bad faith where a respondent knew at the time of the registration that he could not make any actual use of the registered domain name without infringing on the trademark owner's right.

fCase submitted : Cellular One Group v. Brien Case No. D2000-0028 (WIPO) held that the Respondent's registration of the domain name was necessarily in bad faith since the respondent knew about Cellular One's mark and nevertheless registered a domain name that was entirely composed of that trademark and the country name China.]

Therefore the domain name <akbank.in> has been registered in bad faith.

That Respondent's bad faith is also shown by its use of the Domain Name or lack thereof. Respondent has placed no content on the site at www.akbank.in that relates to a business or has been created by the Respondent. Rather, Respondent has included superficial links to a handful of third parties' commercial sites that even belong to the competitors of the Complainant and apparently create revenue for the Respondent. Respondent's passive holding of domain names suggests that it registered the domain names for the purpose of selling them to Complainant for profit.

fCase submitted Florists' Transworld Delivery, Inc. v. DomainSource.com a/k/a Domain Source, Inc., NAF Case No. 0203000105882 (May 1,2005)]

Moreover, the parking of such domain names to obtain revenue through web traffic and sponsored results - another source of enrichment to the Respondent - has been held repeatedly to constitute bad faith.

[Case submitted Hilton Group plc v. Forum LLC WIPO Case No. D2005-0244; Volvo Trademark Holding AB v. Michele Dinoia, WIPO Case No. D2004-0911.]

The Panelists have agreed existence of the bad faith and responsibility of the Registrant.

The advertisements and sponsored links on the web-site of the domain name <akbank.in> are to the web-sites of the Complainant's competitor banks or credit services.



Complainant submits that- "The Complainant's trademark is long established and widely known."

- The Respondent has made no use of its domain name and there is no evidence whatsoever of any good faith use of or intention to use the domain name akbank.in
- There is no plausible future active use of the domain name by the Respondent that would not be illegitimate, such as being infringement of Complainant's well-known mark or an act of unfair competition and infringement of consumer protection legislation.
- That Respondent's passive holding of the domain name <akbank.net> satisfies the requirement of paragraph 4(a) of the Policy that the domain name is being used in bad faith by the Respondent.

Complainant submits that:

Due to the fame and well-known status of the Complainant, there have been several attempts to use the Complainant's trademark as gTLD and ccTLD domain names. However, all these attempts have been prevented by authorized Panelists, based on the same facts as stated earlier.

Therefore it is humbly submitted that the Respondent has registered and used the disputed domain name in bad faith according to paragraph 4 (b) of the Policy.

B. Respondents Contentions:

Not responded to the Complaint.

Opinion:

Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint -



This tribunal is of confirmed opinion that the Complainant has been using the name AKBANK since many years i.e. Feb 1947 in one form or the other and has made sincere efforts to promote the brand name AKBANK by consuming various resources available at his end and word 'AKBANK and AK' has certainly acquired a popular Brand name in the process and is a popular brand across the length and breadth of the country and abroad and a prominent place in print and electronic media. That trade mark 'ak' alone and with other related words and 'AKBANK' has been registered effectively in India and other countries respectively mentioned in the application.

On the basis of the records submitted by the complainant it's proved that the domain name akbank.in is related to the age old business of Complainant and is being used for purpose and related to his work.

It is confirmed that Complainant is user of name AKBANK.

The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing fully well of the pre existence of the domain name wishing to be registered and even without understanding whether he has rights to register such a name or not and whether similar domain names were legally registered at the various registries of internet by the Complainant much before the respondent started the process of registration, still respondent went in for the registration of the domain name in question, and was purportedly legitimately using the name for business purposes. It profusely empowers Complainant with the First right to the domain name akbank.in and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant.

This tribunal holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and as being used is in bad faith by the respondent.

Complainant has amply demonstrated that he has been is in the business of banking for a very long time since the year 1947 and is a top tier bank of Turkey. That Akbank has established extensive domestic distribution .overseas operations and international Representation in various countries. That complainant the Akbank offers a wide range



services over the length and breadth of the Nation and also other countries. That the complainant the Akbank has service marks registered with the Turkish Patent Office and international registrations.

That the Respondent has not been commonly known by the domain name. That Respondent has no relationship with or permission from the complainant for use of its marks. That Respondent cannot have ignored the fact that **AKBANK** is a registered and protected trademark of the Complainant.

Complainant is well-known with its trademark The complainant has the right to exercise control on how its trademark is used by the third parties in Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

Respondent's aim is to make a illegitimate, commercial gain, unfair use of the <akbank.in> domain name, with intent to misleadingly divert consumers or to tarnish the AKBANK trade/service mark. It is very clear that the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the products and services provided by the Complainant make this complaint a plausible case of action.

Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misrepresentation of the facts related to allegation against the respondent. Further, in support of this the Complainant submitted documents marked as Annexures which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolourable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.



III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove all the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name akbank.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 50000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 14 day of February 2011.



Deepa
Deepa Gupta
Arbitrator .