



தமிழ்நாடு தமில்நாடு TAMILNADU

9668

8 MAR 2013

D. SARAVANAN

Advocate, Arbitrator & Mediator
"Orient Chambers" No. 90 (Old No. 73)
4th & 5th Floor, Armenian Street,
Chennai - 600 001.

AL 348383

சென்னை மாவட்ட நீதிமன்றம்

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

Disputed Domain Name: <www.alstompower.co.in>

ALSTOM
3 avenue Andre` Malraux
92300 Levallois Perret, France.
Represented by Nathalie DREYFUS
DREYFUS & ASSOCIES
78, Avenue Raymond Poincare`
75116 Paris, France
contact@dreyfus.fr

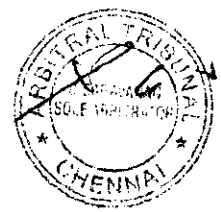
...Complainant

-vs-

Zeng Wei
Shanghai Weihai Rd, 1888 (HD)
Shanghai 200001
China
ruochang@gmail.com

... Respondent

....2..



भारतीय गैर न्यायिक

पचास
रुपये
रु.50



FIFTY
RUPEES
Rs.50

INDIA NON JUDICIAL



9768
8 MAR 2013

D. SARAVARAN
Advocate, Arbitrator & Mediator
"Orient Chambers" No. 80 (Old No. 73)
4th & 5th Floor, Arumathan Street,
Chennai - 600 001.

AB 494183
P.S. SHANMUGA SUNDARAMI
STAMP VENDOR,
L No B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104 (TAMIL NADU)

-2-

1. The Parties:

The Complainant is a French company incorporated under French Law as "soci'et'e anonyme a` directoire", whose head office is located at 3 avenue Andre` Malraux 92300 Levallois Perret, France.

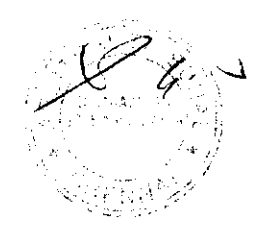
The Respondent is Zeng Wei having his address at Shanghai Weihai Rd, 1888 (HD), Shanghai, 200001, China.

2. The Domain Name and Registrar:

The disputed domain name :< www.alstompower.co.in> Created on 11.10.2006

The disputed domain name is registered with National Internet Exchange of India (NIXI).

...3..



3. Procedural History

- January 23, 2013** The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- January 24, 2013** Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
- February 5, 2013** Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
- February 10, 2013** Due date for filing response.
- February 22, 2013** Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

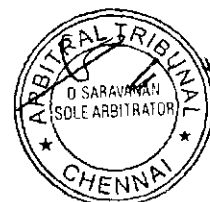
4. Factual Background

4.1 The Complainant:

The Complainant is a French company incorporated under French Law as "soci'et'e anonyme a` directoire", whose head office is located at 3 avenue Andre` Malraux 92300 Levallois Perret, France.

4.2 Complainant's Activities:

The complainant is a French industrial group having business in power generation, transmission and transportation market. The complainant is a global leader in the



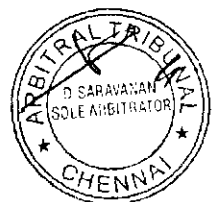
world of power generation with a portfolio of products covering all fuel types. Approximately 25% of the world's power production capacity depends on the complainant's technology and services. The complainant is a leader in innovative technologies for protection of environment by introducing techniques for reduction of Carbon Dioxide emission and elimination of pollutant emissions. The complainant has developed a world leading position in a very high speed transportation system. The complainant supplies rolling stock, transport infrastructure and signaling, maintenance equipment and global rail systems. The complainant has developed a high voltage transmission business by acquiring the transmission business of Areva T&D and by forming a new sector named Alstom Grid.

4.3 Complainant's Business in India:

The complainant has been associated with India's progress for a century. India is a very important market for the complainant for its power and transport sectors. The complainant helps to provide the country with the much needed technological expertise. The complainant in India has full capabilities in engineering, manufacturing, project management and supply of power generation equipment. It also has a significance presence in the transportation sector in India providing railway equipment and technology solutions. The complainant combines local presence and knowledge with global resources to deliver world class services and solutions that meet each project's needs.

4.4 Complainant's Trading Name:

Complainant states that their ALSTOM trademark enjoys a worldwide reputation and they own numerous trademarks across the world including India.

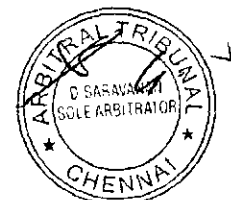


International Trademark Registrations:

S.No	Registration No.	Date	Class
1.	706292	August 28, 1998	1,2,4,6,7,9,11,12,13,16,17,19,24, 35, 36, 37, 38, 39, 40, 41, 42
2.	931242	March 1, 2007	1,2,4,6,7,9,11,12,13,16,17,19,24, 35, 36, 37, 38, 39, 40, 41, 42, 45

Indian Trademark Registrations:

S.No.	Registration No.	Date	Class
1.	819285	September 15, 1998	1
2.	819286	September 15, 1998	2
3.	819287	September 15, 1998	4
4.	819296	September 15, 1998	19
5.	819272	September 15, 1998	1
6.	819273	September 15, 1998	2
7.	819274	September 15, 1998	4
8.	819275	September 15, 1998	6
9.	819276	September 15, 1998	7
10.	819278	September 15, 1998	11
11.	819279	September 15, 1998	12
12.	819280	September 15, 1998	13
13.	819281	September 15, 1998	16
14.	819283	September 15, 1998	19
15.	819284	September 15, 1998	24



The Complainant states, in addition to the trade marks, they own several domain names that incorporate the name ALSTOM.

Domain Name Registrations:

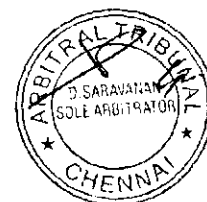
1. <alstom.com> registered on January 20, 1998
2. <alstom.in> registered on February 17, 2005
3. <alstom.info> registered on July 31, 2001
4. <alstom.org> registered on April 1, 2000
5. <alstom.us> registered on May 16, 2002
6. <alstompower.com> registered on March 31, 2000
7. <alstompower.org> registered on July 16, 2001
8. <alstompower.info> registered on September 19, 2001

4.5 Respondent's Identity and activities:

The Respondent is Zeng Wei having his address at Shanghai Weihai Rd, 1888 (HD), Shanghai, 200001, China.

4.6 Dispute

The dispute arose when on February 28, 2011, the Complainant became aware of the disputed domain name registered by Domainjet, Inc, Jack Sun. This information was revealed by when a Whois database search was made. The said domain name approaches to a parking page displaying pay- per- click links related to complainant and one of its competitors. The disputed domain name also features a link to post an offer for the domain name. Many representations were made to Jack Sun for transfer of the disputed domain name. On March 30, 2011 Jack Sun replied stating that he will transfer the disputed domain name on payment of 1200 euros. In absence of amicable settlement, the complainant initiated arbitration proceedings in order to obtain the transfer of domain name. In December 2012, the complainant noticed that the registrant is now ZengWei located in China. The complainant suspects that Jack Sun



and ZengWei are the same person as in both the cases the registrant was located in China. Hence the complaint has been amended to take the change in account.

5. **Parties contentions:**

A. Complainant:

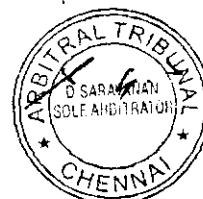
(a) The Domain Name is identical to a Trademark or service mark of the Complainant in which the Complainant has rights:

(i) The predominant part of the disputed domain name is "alstom", which is complainant's registered trademark, company name and trade name. The disputed domain name is also made of the term "power", which corresponds to one of the complainant's field of activities.

(ii) The mere addition of the term "power" is not sufficient to distinguish said domain name from the complainant's Alstom trademark. Indeed, the term "power" is a common English word and previous panels have held that the mere adjunction of a generic word does not sufficiently distinguish the disputed domain name from the complainants trademark.

(iii) The complainant states that in WIPO Case No. D2010- 1376 Alstom v/s Future ISP, the WIPO Panel held that the addition of generic term "power" as prefix and of geographical term "usa" as suffix to the trademark to form the disputed domain name, does not dispel a finding of confusingly similarity.

(iv) The addition of the term "power" in the domain name is more likely to increase the likelihood of confusion than to prevent confusion given that the term directly refers to one of the complainant's activities.



(v) The complainant has developed an active website at the address <http://www.alstom.com/power/> and is the owner of several domain names that incorporate the terms "alstom" and "power". Therefore, the adjunction of the generic term "power" in the disputed domain name can only increase the likelihood of confusion.

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

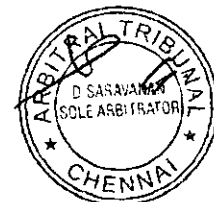
(i) The complainant is the owner of many domain names incorporating the term ALSTOM and many others incorporating the terms, "alstom" and "power".

(ii) The respondent is no way affiliated with the complainant. The complainant has not authorized or licensed Respondent to use and register the alstom trademark, nor to seek registration of any domain name incorporating its trade mark.

(iii) The simple use of the ALSTOM trademark in the disputed domain name does not confer rights or legitimate interests to the respondent.

(iv) The respondent has never provided evidence of being known or recognized by the disputed domain name. Previous panels in *Accor versus Tang Wei* Case No. INDRP/ 127 have concluded that where respondent has not provided evidence that is known or recognized by the domain name, respondent has no rights or legitimate interests in the domain name.

(v) The complainant had registered and used various domain names consisting in its trade mark. The complainant had registered its trade mark before the respondent registered the disputed domain name. Consequently, the respondent can have no legitimate interest.



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

(i) Registration of a domain name containing well known trade mark itself shows bad faith of the respondent. This fact has been held in **Bacarrat SA v/s Dorreen Jungnickel, INDRP/018.**

(ii) It is unlikely that the respondent was unaware of complainant's trade mark rights before registering the disputed domain name. In **Alticor Inc. versus Aryanent, Case No. INDRP/192, February 10, 2011** and in **Monster.com (India) Private Limited versus Domain Leasing Company, Case No. INDRP/002, May 20, 2006**, the Arbitral Tribunals have held that failure by the respondent to conduct WHOIS database search is evidence of bad faith.

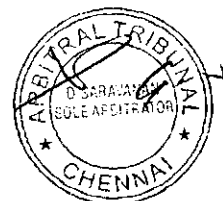
(iii) The disputed domain name has been offered for sale to the complainant by the respondent at a price largely exceeding the registration cost of the disputed domain name which evidences the respondent's bad faith as held in **Accor versus Tang Wei, Case No. INDRP/127, February 24, 2010.**

(iv) The complainant also states that Jack Sun had provided incorrect postal address and was engaged in pattern of registering domain names under false postal address. This is also an evidence of bad faith.

(v) The said domain name approaches to a parking page displaying pay-per-click links related to complainant and one of its competitors. This also evidences bad faith of the respondent.

(vi) The complainant produces various judgements wherein it is clearly seen that Jack Sun is involved in several INDRP proceedings.

- **Lazard Strategic Coordination Company LLC & Lazard India Private Limited versus Jack Sun, Case No. INDRP/165, March 9, 2011**



- Lazard Strategic Coordination Company LLC & Lazard India Private Limited versus Jack Sun, Case No. INDRP/167, November 30, 2010
- The Manufacturers Life Insurance Company versus Jack Sun, Case No. INDRP/181, January 10, 2011
- Morgan Stanley p. DomainJet, Inc versus Jack Sun, Case No. FA1012001362846, January 10, 2011.

(vii) Consequently, the complainant states that the respondent registered and used the domain name in bad faith.

B. Response by the Respondent:

In spite of a notice and a default notice, the respondent did not submit any reply.

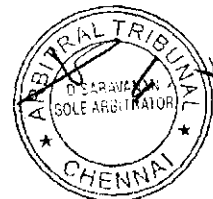
6. Discussion and Findings:

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 10.02.2013.

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.

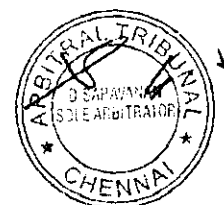
(a) Identical or confusing similarity:

The Arbitral Tribunal finds that the disputed name contains the term "alstom" which is the complainant's registered trademark, company name and trade name and the term "power" which corresponds to the complainant's activities. The Arbitral Tribunal also finds that the complainant is already owner of domain names <alstompower.com> registered on March 31, 2000, <alstompower.org> registered on July 16, 2001 and <alstompower.info> registered on September 19, 2001. The Arbitral Tribunal holds that the addition of generic term like "power" does not remove the scope of confusion and similarity persists.

Thus, the Arbitral Tribunal concludes that the domain name is identical to the trademark of the complainant is also confusingly similar to the trademark of the complainant.

(b) Respondent's Right 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 these proceedings to



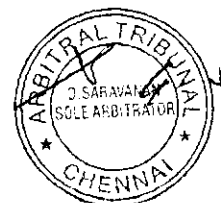
establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary 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 find that there is no evidence on record to show that Respondent is known by the disputed domain name or that he has used the disputed domain name in connection with a bona fide offering of goods or has any rights in the disputed domain name.

iv) The respondent has failed to show any justification for the adoption, usage or registration of disputed domain name.

v) The Arbitral Tribunal thus holds that the circumstances listed above demonstrate rights or legitimate rights of the complainant in the domain name and holds that the respondent has infringed the rights of the complainant by registering the trademarks of the complainant.



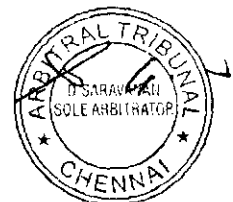
vi) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(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 a pattern of such conduct 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. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered ALSTOM mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

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 and trade names 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 legal 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 a malafide intent 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 a competitor 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 :

In the facts and the circumstances of the case it can be legally inferred that the only purpose for the registration of the disputed domain name by the Respondent was to capitalize on the fame and reputation of the Complainant and to make monetary benefits. Hence, it is clear that the Complainant has succeeded in his complaint.

The Respondent has got registered and used the disputed domain name in bad faith. Hence the .IN Registry of the NIXI is hereby directed to transfer the domain name rules i.e.<alstompower.co.in> to the Complainant in accordance with Paragraph 10 of the INDRP rules.

Dated at Chennai (India) on this 11th March, 2013.


(D.SARAVANAN)
Sole Arbitrator