



தமிழ்நாடு தமில்நாடு TAMILNADU



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26 SEP 2008

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S. DEVI ANOCHARI
Stamp Vendor
L.No. 10980 / B4 / 87
HIGH COURT
CHENNAI - 104.

BEFORE THE SOLE ARBITRATOR SHRI. D.SARAVANAN, ADVOCATE

In the matter of .INDRP and Arbitration
And Conciliation Act, 1996

And

In the matter of disputed domain name
<ballantines.in> between

ALLIED DOMEQ SPIRITS AND WINE LIMITED

Chivas House
72 Chancellors Road
Hammersmith
London, W6 9RS.

.Complainant.

Vs.

ROBERTO FERRARI

Renzi AG
Haldenstr. 5
Baar
Switzerland

Respondent





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1. The Parties:

The Complainant is Allied Domecq Spirits and Wine Limited, Chivas House, 72 Chancellors Road, Hammersmith, London, W6 9RS, represented by its authorized representative Mr.Hemant Singh, INTLL ADVOCARE, D-22, Janchsheel Enclave, New Delhi 1100017, India.

The Respondent is Roberto Ferrari, Renzi AG, Haldenstr.5, Baar, Switzerland. Neither the Respondent has represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name:
<ballantines.in>

The domain name registered with .IN REGISTRY

..3.



3. Procedural History:

- July 02, 2008 : Date of Complaint.
- August, 06, 2008 : Date of List of Annexure and Exhibits.
- August 11, 2008 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- August 11, 2008 : Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality And Independence to the .IN REGISTRY.
- August 16, 2008 : Arbitrator was served with a copy of the Compliant including Annexure and Exhibits by the .IN REGISTRY
- August 18, 2008 : 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 authorized representative and .IN REGISTRY.
- August 28, 2008 : Due date for filing Response by Respondent.
- August 29, 2008 : Arbitrator sent an e-mail to Respondent notifying his default, a copy of which marked to Complainant, Complainant's authorized representative and the .IN REGISTRY.
- August 29, 2008 : Corrigendum to Notice of Default was sent by The Arbitrator to all the parties concerned
- : The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The Complainant is Allied Domecq Spirits and Wine Limited, Chivas House, 72 Chancellors Road, Hammersmith, London, W6 9RS



4.2 Complainant's Activities:

The Complainant states that it is a part of the "Pernod Ricard Group" engaged in the business of manufacturing, marketing and selling a variety of alcoholic beverages and "Pernod Ricard Group" is the world's number two in wines and spirits group having strong international presence and a turn over to the tune of 6.4 billion Euros in 2006-07.

4.3 Complainant's Trading Name:

The Complainant states the products of the Pernod Ricard Group are sold under internationally renowned and acclaimed brands such as CHIVAS REGAL, RICARD, 100 PIPERS, CLAN CAMPBELL, SOMETHING SPECIAL, THE GLENLIVET, WILD TURKEY, JAMESON, BALLANTINE'S PASTIS 51, JACOB'S CREEK MARTELL, ROYAL STAG, PASSPORT, HAVANA CLUB, G.H. MUMM, PERRIER JOUET, BEEFEATER etc., Out of which, the brand name in dispute being BALLANTINE'S dates back to the year 1827 when its founder George Ballantine began to supply a select range of whiskies from his grocery shop in Edinburgh and such trade mark was registered on 12th November, 1930 in Bahamas.

4.4 Respondent's Identity and activities:

The Respondent is the registrant of the Domain Name <ballantines.in> which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as Ferrari, Renzi AG, Haldenstr.5, Baar, Switzerland.

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:**

i) The Complainant states that they are the registered Trademark owner of BALLANTINE'S and since its adoption and registration the said trademark has been put in extensive commercial use in relation to whisky



marketed by the complainant; BALLANTINE'S is one of the World's top and best selling whiskies and gain its unique richness of character through the perfect blend of selected quality malt and grain Scotch whiskies representative of the four corners of Scotland; BALLANTINE'S is sold in over 20 countries including Asian territories and that the same has won over 60 trophies and medals in the last decade at International competitions; in the financial year 2007, over 53 million liters of BALLANTINE'S were sold throughout the world and over 113,000 liters were sold in India and during the said financial year the complainant spent 77 million Euros on advertising and promoting the brand across the world and spent 108,000 Euros in India .

The complainant further states that in order to gain in the trademark BALLANTINE'S, they obtained registration in various countries of the world including India, such as, BALLANTINE'S, word per se was registered under clause 33 and such registration is valid till the year 2015; BALLANTINE'S, label was registered under clause 33 and such registration is valid till the year 2012 as exhibited under **Annexure D**.

The complainant further states that they registered various Domain names internationally as well as in India which includes their trademark BALLANTINE'S, such as, ballantines.asia, ballantines.biz, ballantines.com, ballantines.eu, ballantines.info, ballantines.net.cn, ballantines.de etc., and such registrations are in force as exhibited under **Annexure E**. The complainant further states that the BALLANTINE'S whisky being such a popular brand has been available for last 20 years in duty free shops at all international airports, bonded warehouses, five star hotels and exclusive restaurants by which the trademark in reference enjoyed a formidable trans-border reputation in India and such trademark is currently imported and marketed in India in open commercial retail outlets. The complainant further states that the trademark in reference enjoys a world wide



reputation and is a well known trademark associated with the goods and business originating from the complainant as such the complainant is the proprietor of the trademark in reference and the owner of goodwill and reputation vested with them.

According to the complainant, the impugned domain name is identical to the complainant's well known and highly distinctive trademark in reference phonetically, visually and conceptually as a cumulative result of prior and bonafide use of the trademark in reference in relation to the goods offered by the complainant the extensive and continuous use and the resultant accrual of reputation and goodwill, the complainant has occurred common law rights in the undisturbed and exclusive use of the trademark in reference and in such circumstances, the adoption of the impugned domain name which is identical to the complainant's trademark in reference is misappropriation of complainant's goodwill and reputation which constitutes acts of mis-representation to the members of public at large so as to mislead that the respondent's goods or business are associated or approved by the complainant leading to passing off goods and business for those of the respondent. That apart, the respondent's unwarranted registration of impugned domain name being identical to the complainant's trademark is clear infringement as contemplated under Section 29 of the Trademarks Act, 1999 which is a cognizable offence punishable with imprisonment upto 3 years and such conduct also constitutes criminal offence of falsification and false trade description under Sections 102 and 103 of the Trademarks Act, 1999; the blatant and malafide adoption of the complainant's trademark in reference by the respondent will also inevitably lead to dilution and erosion of the uniqueness and exclusivity associated with the complainant's trademark by reducing its capacity to identify and distinguish the goods originating from a particular source, regardless of the presence or absence of likelihood of confusion, mistake or deception and in other words the unauthorized and indiscriminate use by the respondent is bound to result in



the whittling away of the selling power, distinctive quality and value of the complainant's well known and famous trademark in reference being the BALLANTINE'S.

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

According to the Complainant, the impugned domain name was registered by the respondent on 3rd November, 2007 and at that time the complainant had a very considerable reputation in the trademark in reference internationally including in India who had common trademark rights in the name which had been accruing since, 1948 when it got registered with the trademark registry, India; the respondent is not or has never been known by the name BALLANTINE'S or by any confusingly similar name; the registration and use of the impugned domain name by the respondent is a clear case of cyber-squatting whose intention is to take advantage of the complainant's substantial reputation and its prominent presence on the internet in order to confuse the public to the detriment of the complainant; such registration is likely to lead the public to believe that the respondent and the website to which the impugned domain name directs is sponsored by or affiliated to or associated with the complainant which will lead to confusion in the minds of the public.

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

The respondent has got the registration of the impugned domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant, who is the proprietor of the trademark or to a competitor of the complainant, for valuable consideration and/or for deriving undue benefit and in this respect the complainant has exhibited the copy of the cease and desist notice via e-mail



dated 17.05.2008 and respondent's reply e-mail dated 19.05.2008 and complainant's reply e-mail dated 29.05.2008 as **Annexure F, G & H** respectively; the registration of impugned domain name by the respondent is in order to prevent the owner of the trademark or service mark from reflecting the mark in the corresponding domain name; the respondent has intentionally attempted to attract internet uses to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation or endorsement of respondent's website or location or of a product or service on the respondent's website or location; the complainant has not authorized, licensed or otherwise consented to the respondent's use of the impugned domain name; the respondent will have no doubt been aware that prior to its registration of the domain name that there was substantial reputation and goodwill associated with the trademark in reference which inures and continuous to inure to the complainant; the registration and subsequent use of the impugned domain name by the respondent is for the purpose of defrauding the public which resolves to a website which does not offer the services of the complainant; there has been no website/activity under the impugned domain name and it has been only used a META tag to take the internet surfer to respondent's website.

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 August 29, 2008.

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 and logo being BALLANTINE'S. The Respondent's domain name, <**ballantines.in**>, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <**ballantines.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 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 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.

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 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 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. The intention of the Respondent is explicitly clear from the Annexure G wherein the Respondent offered price of 248 Euros being sale price of disputed domain name.

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 <**ballantines.in**> be transferred to the Complainant. There is no order as to costs and damages.

Dated at Chennai (India) on this 27th day of September, 2008.


(D.SARAVANAN)
Sole Arbitrator