



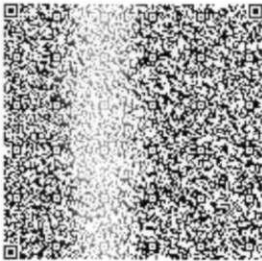
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL29096392315598L
Certificate Issued Date : 27-Jun-2013 01:32 PM
Account Reference : IMPACC (IV)/ dl712203/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL71220357290914419888L
Purchased by : V K Agarwal
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V K Agarwal
Second Party : Not Applicable
Stamp Duty Paid By : V K Agarwal
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line.

NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6 B, 6th Floor, Uppals M 6 Plaza,
6, Jasola District Centre,
NEW DELHI – 110 025

BASF SE v. GaoGou/Yerect International Limited

AWARD

1. The Parties

The Complainant is BASF SE, Carl-Bosch-Strasse 38, 67056 Ludwigshafen, Germany

The Respondent is GaoGou / Yerect International Limited, Suite 1100 South Tower, 175 Bloor Street, East, M4W 3R8 TORONTO, CANADA

2. The Domain Name and Registrar

The disputed domain name is <www.basf-se.in>.

The particulars of registration of the disputed domain name, as contained in Annexure 1 to the Complaint, are as follows:

- | | |
|----------------------------|-----------------------------------|
| (a) Domain ID | : D5746107-AFIN |
| (b) Name of the Registrant | : GaoGou |
| (c) Created on | : 21 January 2012 |
| (d) Expiration date | : 21 January 2014 |
| (e) Registrar | : 1 Indian Domains d.b.a.Mitsu.in |

3. Procedural History

- (a) A Complaint dated June 25, 2013 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

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- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Rules, on 22nd July 2013 the Sole Arbitrator formally notified the Respondent of the Complaint by post. The Respondent was required to submit his defence within 15 days from the ^a ll _^ dte of receipt of the letter. The Respondent was informed that if his response was not received within that period, he would be considered in default and the matter will proceed ex-parte.
- (d) No response has been received from the Respondent.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

According to the complaint, in these proceedings the Complainant is a company within BASF's corporate structure. BASF Group was established in 1865 in Germany. The Complainant is the supplier of chemicals, plastics, crude oil and natural gas, and a large number of other products to customers in many industries in about 200 countries. BASF is newly ranked as 62nd in the global 500 ranking published by US business magazine Fortune in 2012.

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The complaint further states that BASF also has presence in India dating back to 1890. In 1961 BASF acquired a 50% holding in R. A. Cole Private Limited which is now known as BASF India Limited. BASF has 14 out of 15 global BASF Divisions operational in India in the field of chemical industries. Since 1995, BASF is also listed in the National Stock Exchange of India.

Respondent's Identity and Activities

Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that its name is BASF SE. The disputed domain name is <www.basf-se.in>. Thus, the disputed domain name contains the complete name of the Complainant. The addition of the hyphen and the word "in" is insignificant. Therefore, the disputed domain name is identical and/or confusingly similar to the marks of the Complainant. Further that the word "BASF" is a made-up word that has no common meaning in the English language or in any other language. "BASF" was initially derived from "Badische Anilin – and Soda Fabrik" which translates in English to mean "Baden Anilin and Soda Factory."

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It is further stated in the Complaint that the Complainant's trademark "BASF" is registered in more than 170 countries. They are registered in various Classes. The Complainant got the first registration of its trademark "BASF" in the year 1959 and in India in 1977. The Complainant has submitted a list of countries where the trademark "BASF" is registered (Annexure 3). In the said list the names of the countries have been indicated in the abbreviated form. Therefore, it is not possible to ascertain the exact countries where the trademark of the Complainant is registered. In any case, the Complainant is well known to its customers as well as in business circles as BASF all around the world.

In the cases of **Farouk Systems Inc., v. Yishi**, Case No. 02010-0006 it has been held that the domain name wholly incorporating a complainant's registered trademark may be sufficient to establish identity or confusing similarity, despite the addition of other words to such marks. Further that, in the case of *Alta Vista Company v. Curtis Clard/b/a Tae Po Promotions*, FA 0009000095549 (NAF Oct. 24, 2000) it has been held that the domain name <altavistas.com>, irrespective of addition of the word "s" was confusingly similar to the ALTAVISTA trademark. See also *L 'Oreal v. Zeng Wei*, INDRP Case No 342; *Oakley, Inc. v. Joel Wong/BlueHost.com*, WIPO Case No D 2010-0100; *Diageo Ireland v. Guinnessclaim*, WIPO Case No. D2009-0679; *The Coca Cola Company v. Whois Privacy Service*, WIPO Case No. 2010-0088; etc.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "BASF-SE". Further, the

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Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

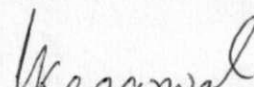
In support of its contentions, the Complainant has relied on the decisions in the cases of *PepsiCo, Inc. v. PEPSI, SRL* (a/k/a P.E.P.S.I.) and *EMS COMPUTER INDUSTRY* (a/k/a EMS) WIPO Case No. 2003-0696.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.basf-se.in> by the Respondent is to mislead the general public and the customers of the Complainant and to make profit by selling the domain name to the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

The Complainant has relied on the decisions in the cases of *Bloomberg Finance LP v. Domain Admin/Bharat DNS Pvt Ltd.*, INDRP Case No. 365 and *Sony Kabushiki Kaisha v. Kil Inja*, WIPO Case No. D2000-1409. See also *Mead Johnson & Company v. Guangxin*, INDRP Case No. 362, and *Konecranes Plc v. GaoGou*, INDRP Case No. 404. .

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.basf-se.in> or any trademark right, domain name right or contractual right. Therefore, the



Respondent has no legal right or interest in the disputed domain name .

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

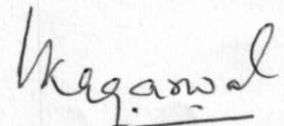
According to the Policy, the Complainant must prove that:

- (i) The 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 interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. *Identical or Confusingly Similar*

The Complainant's trademark BASF is registered for a long time and that the said trademark is registered in about 170 countries of the world in various classes.

The present dispute pertains to the domain name <www.basf-se.in>. The Complainant possesses a number of other domain names, as mentioned above, with the word "BASF". The Complainant is also the owner of trademark "BASF" or "BASF-SE". Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The Respondent created the disputed domain name on 21st January 2011. The disputed domain name is very much similar or identical to these domain names and the trademark of the Complainant.



Therefore, I hold that the domain name <www.basf-se.in> is confusingly similar to the Complainant's marks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

BASF-SE is the name of the Complainant. The trademark of the Complainant "BASF-SE" has acquired unique importance and is associated with the Complainant. A mention of the said trademark establishes an identity and connection with the Complainant. The

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Respondent is known by the name of GaoGou / Yerect International Limited. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. The Complainant has no relationship whatsoever with the Respondent.

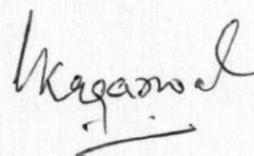
The decisions relied upon by the Complainant support its contentions that the use of domain name consisting of a trademark to divert users to another commercial websites is not a bona fide offering of goods or services and cannot confer any rights or legitimate interests upon the Respondent.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or



- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, 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 its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to the disputed website.

The Complainant further states that it has received correspondence on three occasions offering to sell the disputed domain name to the Complainant. The first two occasions occurred on May 27, 2011 and September 29, 2011. The third occasion occurred on November 1, 2012 where the disputed domain name was offered for sale for Euros 1,890. The relevant correspondence is attached as Annexure 23 to the Complaint.

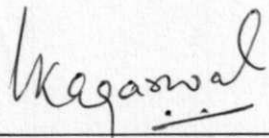
The Respondent's registration of the domain name <www.basf-se.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

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The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In the light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.basf-se.in> be transferred to the Complainant.



Vinod K. Agarwal

Sole Arbitrator

Date: August 16, 2013