



महाराष्ट्र MAHARASHTRA सदरचा मुद्रांक लिहू अँड लायसेन्ससाठी नाही.

FW 510092

अनुक्रमांक क्र. २६६८ दि. २१/०१/१२ रुपये १००१

मुद्रांक कायद्याच्या कारणासाठी दापरावयाचा आहे खात्री इराक अबाडे

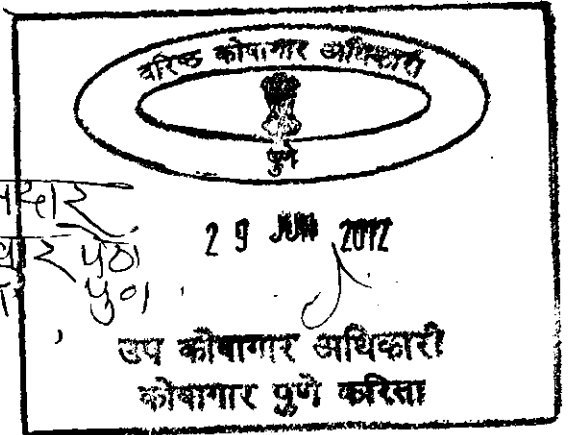
मुद्रांक कायद्याच्या अर्थव्यवस्था १९५८ चे अनुच्छेद क्र.

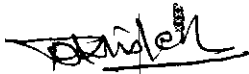
मुद्रांक कायद्याच्या संदर्भात त्रिशेष चिंतामणी इनाम सार


संभुषण पत्रा २००६/२३ इनाम शक्य - शनिवार पुढे

हस्तो द्यावीचे संभुषण पत्रा निरपेक्ष च प्रजाते जोशी

पत्ता पत्ता रोम



  
मुद्रांक कायद्याची सही  
/हस्तो व्यक्तीची सही

  
सा. निलीमा वळे (मुद्रांक विक्रेते)  
परवाना क्र. २२०१००४  
परवान्याची मुदत: - ३१/३/२०१३  
पत्ता: - ८६, नारायण पेठ, पुणे-३०.

## AWARD IN ARBITRATION

**Chocoladefabriken Lindt & Sprüngli AG.**  
Seestrasse 204, 8802, Kilchberg  
Switserland..

THE COMPLAINANT

AND

**Anqi**  
Traffic Supervision Consulting  
Room No.1326, Kexin Building,  
228, Liaoning Road, Hong Kong.

THE RESPONDENT /  
THE REGISTRANT

**IN THE MATTER OF DISPUTED DOMAIN NAME: - caffarel.co.in**

**BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.**

**SOLE ARBITRATOR**

**DELIVERED ON THIS 10<sup>TH</sup> DAY OF JULY TWO THOUSAND TWELVE AT PUNE, INDIA.**

**SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

**01. Names and addresses  
Of the Complainant: -** **Chocoladefabriken Lindt & Sprüngli  
AG**  
Seestrasse 204, 8802, Kilchberg  
Switzerland..

Through its authorized  
representative **Lall and Sethi Advocates**  
D-17, South Extension II  
New Delhi. 11049.

**02. Name and address of  
The Respondent: -** **Anqi**  
Traffic Supervision Consulting  
Room No.1326, Kexin Building,  
228, Liaoning Road, Hong Kong.

**03. Name and address of  
The Registrar** **Transecute Solutions Pvt. Ltd.**

**04. Calendar of Major events:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date (Communications in electronic mode)</b>
01	Arbitration case referred to me	12/06/2012
02	Acceptance given by me	12/06/2012
03	Hard copy of the complaint received	21/06/2012
04	Notice of Arbitration issued with the instructions to file reply latest by 03.07.2012	22/06/2012
04	Reminder notice sent to the Respondent with the instruction to file reply latest by 07.07.2012	04/07/2012
06	Award passed	10/07/2012

## I] PRELIMINARY: -

- 1) M/s **Chocoladefabriken Lindt & Sprüngli AG (The Complainant)** is the exclusive owner of the trademark CAFFAREL and other trademarks in which the caffarel mark appears as a component thereof. The mark CAFFAREL was adopted in the year 1826 for premium chocolates. In 1997 the Complainant acquired the Italian chocolate company Caffarel and all rights in and to the Caffarel brand were assigned to the Complainant.
- 2) The Complainant has disputed registration of domain name '**caffarel.co.in**' in the name of **Anqi**, Traffic Supervision Consulting Room No.1326, Kexin Building, 228, Liaoning Road, Hong Kong. (**The Respondent**).
- 3) Major events took place as enumerated in the above table.

## II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 22<sup>nd</sup> June 2012 with the instructions to file his say latest by 3<sup>rd</sup> July 2012.
02. The Respondent did not file reply to the Complaint within the stipulated period.
03. On the basis of principles of natural justice and as the last opportunity the arbitration panel extended *suo moto* time period to file his say / reply latest by 7<sup>th</sup> July 2012. However the Respondent failed / neglected to file any say / reply even within the extended period.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.

## III] SUMMARY OF THE COMPLAINT: -

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -



**A) The Complainant's rights in the marks: - 'caffarel'**

- i) The disputed domain name fully incorporates and is identical to the trademark 'caffarel' and other trademarks of the Complainant.
- ii) The Complainant owns / registration is pending in respect of several trademark registrations (**Annexure G**) in several countries, including in India. It also owns domain name registrations like 'caffarel.com'. The Complainant's domain name and trademark were used and applied for registration long before the Respondent's registration of the disputed domain name.
- iii) Due to the Complainant's marketing and promotion of its goods under its trademark CAFFAREL the mark has gained worldwide recognition and goodwill.

**B) The Disputed domain name is identical to the Complainant's mark: -**

- i) The Respondent registered the disputed domain name on 8<sup>th</sup> June 2011 which is much later to the registration, use and marketing of the mark caffarel and website caffarel.com.
- ii) The dominant and distinctive feature of the disputed domain name is the incorporation of the Complainant's trademark as it is.
- iii) The Respondent cannot claim or show any rights to the disputed domain name that are superior to the Complainant's rights in the trademark due to prior and well known use of the mark and registration thereof.
- iv) Due to above reasons it can be inferred that the intention of the Respondent was to trade upon the fame of the Complainant's reputation by selling the disputed domain name for the substantial commercial gain in violation of Section 4(b) of the Policy.
- v) In the light of foregoing internet users are likely to believe that the disputed domain name is related to, associated with or authorised by the Complainant and they will be confused into thinking that the Respondent enjoys authorisation of the Complainant to do business in India.

**C) Bad faith Registration and use: -**

- i) The bad faith of the Respondent is apparent from the fact that an email was sent by the Respondent to the Complainant asking to contact them for the domain in question offering a good price deal.
- ii) The Respondent has sought to profit from an unauthorized registration of the Complainant's trademark as a domain. 'The goal of the efforts of the Registrants in such cases is an expectation of receiving an adequate reward i.e. sufficient profit from this

trafficking.’ (WIPO CASE No.D2000-1016 – Playboychannel.com and playboynetwork.com).

- iii) Mere registration of the disputed domain name is thus further evidence of the Respondent’s bad faith.(WIPO Case No.D2000-0163 – Veuve Clicquot Ponsardin V The Polygenix Group Co.)
- iv) The activities of the Respondent are in violation of the Policy under Paragraph 6 demonstrating bad faith registration and use of the disputed domain name.
- v) When internet users log onto the disputed domain name carrarel.co.in the site is merely a dummy page on which none of the links works apart from the sponsored links that are featured therein.

**D) No Legitimate interest: -**

- i) The Respondent registered disputed domain name after the Complainant had established rights in the caffarel trademark through extensive use and registration.
- ii) Since the Respondent offered to sell the disputed domain name it is evident that the Respondent acquired the same primarily for the purpose of selling, renting or otherwise transferring the same to the Complainant or its competitor for valuable consideration in excess of his out of pocket costs directly related to the domain name, which constitutes bad faith pursuant to Paragraph 6(i) of the Policy.
- iii) There does not exist any relationship between the Complainant and the Respondent by way of license, permission or authorisation to use the domain name or the Complainant’s mark.

**IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

In response to the contentions of the Complainant, the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period. Thus the Respondent has failed / neglected to file any say / reply.

**V] REJOINDERS OF THE PARTIES: -**

In view of non-reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

**VII] ISSUES & FINDINGS: -**

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interest in the disputed domain name?	No
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?	Yes
08	Has the Registrant 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?	Yes
09	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

**VIII] BASIS OF FINDINGS: -**

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word caffarel is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant world over. I have considered all trademarks registered in various countries, for the purpose of deciding this question.

Against this the Respondent has no registered trade mark or service mark consisting of the word caffarel.

Therefore my finding on the first issue is affirmative.

2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

Yes. Already discussed in issue (A) above.

Therefore my finding on this issue is in affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not responded at all to any of the notices of arbitration. It therefore has been presumed that the Registrant cannot claim of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has been commonly known by the domain name?

The name of the Registrant, as available in the records is Anqi. As such he / she is not commonly been known by the domain name caffarel.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interests in the disputed domain name?

In view of no response from the Registrant, it has been presumed that he / she does not have registered trademark or service mark which includes the words caffarel. He is not commonly been known by that name. He has not established that he has taken all reasonable steps to use the registered domain name.

Against this he has offered it to sell to the Complainant itself. The Respondent had established links to other websites including that of the Complainant.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

According to the Complainant the webpage contains various switches which do not lead to anything. Thus it has not been used actively, much less for bona fide business purpose or non-commercial use.

Therefore my finding on this issue is affirmative.

7. Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?

Yes. The mail sent to the Complainant clearly contains offer to sell the same for good price.

Therefore my finding on this issue is affirmative.

8. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. If the website is allowed to be used by the Registrant, it shall amount to depriving the Complainant who is a bona fide owner of relevant trade mark and other website containing the word caffarel, from using the disputed domain name.

Therefore my finding on this issue is in affirmative.

9. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

Though presently the webpage does not resolve into any valid subsequent page, it is already established that the Registrant has not used the site for his own purposes. Due to exactness of the registered mark of the Complainant incorporated in the domain name it would definitely create confusion in the minds of internet users.

Therefore my finding on this issue is affirmative.

#### **IX] CONCLUSION AND BASIS OF AWARD: -**

From above discussion I have reached the conclusion that: -

- a. The Respondent does not have any registered trade mark / service mark in his name containing the words caffarel and hence does not have any legitimate interest in the same.
- b. Previously the webpage had links to other websites including that of the Complainant. Presently the webpage does not appear at all. There are no separate goods or services in which the Respondent regularly trades or deals with. This reveals that the Respondent has not been using the website / webpage for his bona fide business purpose or for non-commercial purpose.




- c. The Registrant has not been commonly known by the disputed domain name.
- d. The Registrant is not making any non-commercial or fair use of the disputed domain name.
- e. The Respondent / Registrant has completely failed to establish his nexus with the disputed domain name in any way.
- f. On the contrary he has offered to sell the disputed domain.
- g. Any person of reasonable prudence and with genuine business intentions would enquire and satisfy himself whether, by registering proposed domain name, is he going to infringe any third party rights or interests, especially of registered trademarks. Registrations of domain names like the disputed domain name, are done with the intention to extract unreasonable value from the rightful owner of relevant trademark who generally happens to be of internationally good standing in the business. It is always with the intention of encashing on their goodwill that he registers such types of domain names. His ultimate object is to sell these domain names at premium and make money out of it. Ethically, legally and morally, such practice is bad and needs to be curbed.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in which he does not have any legitimate interest with the purpose of selling the same for unlawful monetary benefits.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

- 01. The Complainant is entitled to the disputed domain name – www.caffarel.co.in and hence the same be transferred to the Complainant immediately.
- 02. No orders as to the cost.

Dated: - 10/07/2012  
Place: - Pune

  
(S.C.INAMDAR)  
SOLE ARBITRATOR