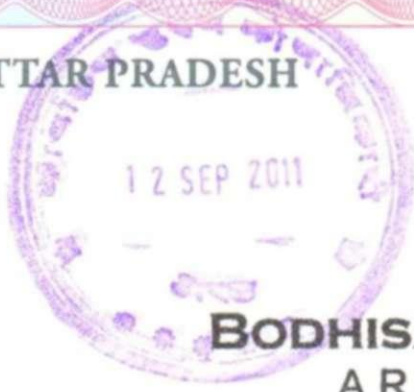




उत्तर प्रदेश UTTAR PRADESH

AU 801580



BODHISATVA ACHARYA
ARBITRATOR

(Appointed by .IN Registry-National Internet Exchange of India)

Case No. Of 2011

ARBITRATION AWARD: DISPUTED DOMAIN NAME :< danacol.in >

In the matter of:
COMPAGNIE GERVAIS DANONE
17, Boulevard Haussmann
75009 Paris
FRANCE

Filed by its authorized representative attorney -
Nathalie DREYFUS
DREYFUS & ASSOCIES
78 Avenue Raymond Poincare
75116 Paris
France
Email- contact@dreyfus.fr

...Complainant.

Vs.

Liu Jiapeng

Room 503, Unit 2 Shaoshui Dong Road

Shaoyang City Hunan Pro

Shaoyang, 422000

CHINA

Email: aucifer212@gmail.com

.....Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is COMPAGNIE GERVAIS DANONE, 17, Boulevard Haussmann, 75009 Paris, FRANCE filed by its authorized representative attorney Nathalic DREYFUS, DREYFUS & ASSOCIES, 78 Avenue Raymond Poincare, 75116 Paris, France.

Respondent in this arbitration proceeding is Liu Jiapeng, Room 503, Unit 2 Shaoshui Dong Road, Shaoyang City, Hunan Pro Shaoyang, 422000, CHINA
Email: aucifer212@gmail.com

2. The Domain Name, Registrar & Registrant:

The disputed domain name is www.danacol.in



3. Procedural History:

The complainant, through its authorized representative, filed this complaint to NIXI regarding the disputed domain name www.danacol.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed **Mr. Bodhisatva Acharya** (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on November 11th, 2011 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on November 14th, 2011, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the January 10th, 2012 as Ex-parte.

4. Factual Background:

(a) Complainant, COMPAGNIE GERVAIS DANONE, is a subsidiary of the French company DANONE. COMPAGNIE GERVAIS DANONE is a company incorporated under the French Law. Complainant's main brand DANONE originated around 1919 in Barcelona, Spain when it was launched for yogurts. At that time, DANONE was the result of the collaboration between Isaac CARASSO and Elie METCHIKOF, the director of the Pasteur Institute.

(b) DANONE quickly internationalized and started to commercialize its products in France. In 1967, DANONE merged with the company GERVAIS and formed GERVAIS DANONE developing its activities in several sectors. In 1973, GERVAIS DANONE merged with BSN to form BSN-GERVAIS DANONE, France's largest food and beverage group with consolidated sales in 1973 of approximately 1.4 billion euros, consisting of 52% food and beverage sales.

(c) Today complainant, COMPANIE GERVAIS DANONE (hereinafter "DANONE"), is a worldwide leading company in fresh dairy products, bottled water, baby food and medical nutrition. DANONE is the global



leader in dairy products and number two is bottled water. DANONE is particularly committed to the Indian market. DANONE is also well-known in China for its dairy business, where sales more than doubled in 2010.

(d) On January 17, 2011, when Complainant first became aware of the registration and use of the domain name <danacol.in>, its registrant was Amit Gupta. Said domain name was then placed for sale on the Sedo Platform for 2,900 pounds. Before introducing the present action, Complainant sent a cease-and-desist letter via registered letter and email respectively dated of January 30, 2011 and January 31, 2011 to Amit Gupta, requesting the transfer of the disputed domain name.

On January 31, 2011, Complainant was contacted by a certain Alice who used the same email address than Amit Gupta. She agreed to transfer the disputed domain name for 1500 euros, which corresponded, according to her, to compensation of the cost and lost involved. She also informed Complainant that she was willing to accept "friendly negotiations" but not "menace of fraud". She further explained that the registration of the domain name was within the law and that she was planning to set up a website in relation to the domain name. On February 15, 2011, Complainant was contacted by a certain "Liu" who used the same email as Amit Gupta and Alice. That person asked if Complainant received his last email and what he thought about it. Said person also wanted to know Complainant's best offer. On February 22, 2011 Alice contacted Complainant asking if he received her last email. On May 30, 2011, Complainant noticed that the domain name <danacol.in> had been transferred to Respondent Liu Jiapeng. Complainant also realized that Respondent had the same first name than the person who contacted him by email on February 15, 2011. Further more, Respondent has the same email address than Amit Gupta, Alice and Liu. It seems rather obvious that, as from the registration of the domain name, the same person is behind the disputed domain name. This is cyberflying.

(e) Lastly the complainant filed this complaint for Arbitration proceeding and the complaint was produced before the Arbitrator on November 12th, 2011 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on November 14th, 2011, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the January 10th, 2012 as Ex-parte.



5. Parties Contentions:

(a) Complainant contends that

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent gave no response and produced no reply.

6. Discussion & Findings:

(a) Complainant and its trademark DANACOL enjoy a worldwide Reputation. COMPAGNIE GERVAIS DANONE is the owner of numerous trademarks across the world. In addition to this trademark, Complainant is the owner of several domain names that incorporate the name DANACOL. The predominant part of the disputed domain name is "danacol", the registered trademark of Complainant. Respondent's domain name <danacol.in> is therefore identical or at least confusingly similar to Complainant's DANACOL mark since it incorporates Complainant's mark in its entirety. Complainant's mark and its extensive use in commerce, it is obvious that Respondent has targeted Complainant's mark in choosing the disputed domain name. By registering the domain name in this manner, Respondent has therefore created a likelihood of confusion with complainant's mark. It is likely



that the public and internet users may be misled or confused thinking that the disputed domain name, which is identical to Complainant's mark, is in some way associated with complainant.

(b) Respondent is not affiliated with Complainant in any way, nor has Respondent been authorized by Complainant to registrar and use Complainant's DANACOL trademark or to seek registration of any domain name incorporating said mark. The disputed domain name is not used in connection with a bona fide offering of goods or services. Since the date of registration, Respondent has neither used nor made any demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with bona fide offering of goods and services. Respondent is not currently known, nor has been known by the name DANACOL. Besides, since the domain name in dispute is so identical to Complainant's famous trademark, Respondent cannot reasonably pretend it was intending to develop a legitimate activity.

(b) With regards to bad faith registration, it is obvious that Respondent knew or must have known Complainant's trademark DANACOL at the time it registered the disputed domain name. DANACOL is well known trademark throughout the world and Respondent cannot have ignored Complainant's international reputation at the time of registration of the domain name. Respondent appears to be engaged in a cyberflight pattern. Indeed, not only was Complainant contacted by two different people but it also noted that the disputed domain name had been transferred from Amit Gupta to Respondent. Amit Gupta and Respondent are likely to be linked as they have identical email address; it is even likely that one single person is behind the disputed domain name. Consequently, in view of the above, it is established that Respondent both registered and used the domain name < danacol.in > in bad faith in accordance with Paragraph 6 of the Policy.



7. Decision:

Hence the Arbitrator decides, 'the Disputed Domain Name www.danacol.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.danacol.in shall be transferred to the Complainant with immediate effect.


BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI 10/01/2012

DATED: January 10TH, 2012,
PLACE: NEW DELHI,
INDIA.