



दिल्ली DELHI

K 710198

ARBITRATION CASE NO. 3/2010

IN THE ARBITRATION MATTER OF:

ETRO S.p.A

COMPLAINANT

VERSUS

ASHISH CHORDIA

RESPONDENT

AWARD:

The present dispute relates to the registration of the domain name <etro.co.in> in favour of the Respondent.

The Complainant has filed the instant complaint challenging the registration of the domain name <etro.co.in> in favour of the Respondent. Pursuant to the .IN Domain Name Dispute Resolution Policy (INDRP) and the rules framed thereunder, the Complainant has preferred this arbitration for raising this dispute for redressal of its grievances.

In its complaint, the Complainant has stated that it is an internationally renowned Italian fashion house and manufacturer of

fabrics, furnishings and fragrances. The Complainant states that it was founded in the year 1968 by Gerolamo Etro and that the Complainant has spread its business in Milan, Tokyo, Paris, Rome, New York, London and a host of other countries which were listed in the complaint. The Complainant has further stated that its product and collection were sold through its stand-alone boutiques and high-end department stores around the globe under their mark ETRO for instance Harrods, Selfridges and various others. The Complainant has produced its Indian trademark registration and renewal certificates in Classes 3, 18, 24 & 25 which are in the years 1991, 2002 and 2005. The Complainant has also stated that it is recognized and patronized worldwide for its distinctive collections of pret-a-porter and haute couture fabrics, decorator fabrics, menswear and women's wear, apparel accessories, home accessories, perfumes, etc. The Complainant as also stated that it has registered its domain names as <etro.com> and <etro.it> and for which it has produced records pertaining to WHOIS database.

The Complainant has further stated that it had commenced its commercial operation in India in the year 2006 through franchising and that the Respondent was one of its franchisee/affiliate during the period August 2006 to February 2009. It has produced on record certain news clipping relating to the Respondent's statements wherein he has been referred to as CEO of M/s. Shreyans, which is stated to be a multi-brand luxury store in Mumbai.

The Complainant has stated that on 4<sup>th</sup> February 2009, it had terminated the franchising agreement with the Respondent and that the Respondent had registered <etro.co.in> on 10<sup>th</sup> October 2008.

The Complainant has filed this complaint that the registration of the domain name <etro.co.in> is confusingly similar to Complainant's mark and that it has no right or legitimate interest in the said domain name and

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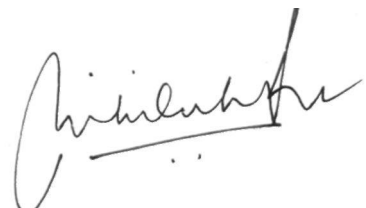
that it is in bad faith, therefore the said domain name be transferred to the Complainant.

A notice was sent to the Respondent on 19.01.2010 calling upon for their response to the said complaint. However, even after granting considerable time to the Respondent, there has been no response. Accordingly, the Respondent is proceeded ex-parte.

I have perused the records and have gone through the contents of the complaint. Although there has been no reply on behalf of the Respondent to the complaint, I shall deal with the complaint on the basis of its merits. Three grounds have been raised by the Complainant regarding the transfer of the domain name <etro.co.in> in its favour.

Firstly I shall deal with the ground regarding the rights of the Complainant vis-a-vis that of Respondent's over the domain name <etro.co.in>. It has been case of the Complainant that the Respondent had been associated with it as an affiliate/franchisee. Even according the reports as well in his website <http://www.shreyans.in> where the Respondent has himself represented that his company is the first ever multi-brand luxury store in India, does make it very clear that the Respondent was only a person who was marketing and retailing Complainant's products. In his list of brands, he has stated to be retailing for Complainant's brand as well. This clearly shows that the Complainant has no right over the said domain name <etro.co.in>.

Secondly on the issue that the domain name <etro.co.in> is confusingly similar to the Respondent's mark, the Complainant has placed various trade mark registration certificates and references in India as well world over. It has been able to show that the word ETRO has been in existence since 1968 and that its brand has been established world over including India. Also the Complainant's website <http://www.etro.com> shows the word ETRO as their brand. Hence the

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domain name <etro.co.in> being identical and similar to the word ETRO is capable of creating confusion in the minds of the public and therefore is held to be confusingly similar to the mark of the Complainant's brand ETRO.

Lastly on the issue that the registration of the said domain name by the Respondent has been in bad faith is also supported by the fact that the Respondent was a franchisee of the Complainant. Therefore being aware of the existence of the Complainant and its business, I hold that the act of registration has been done in bad faith.

Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the complainant has proprietary right over the mark 'ETRO'. Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant in its favour and direct the Registry to transfer the said domain name i.e. <etro.co.in> in favour of the Complainant.

Parties to bear their costs.

  
[NIKILESH RAMACHANDRAN]  
ARBITRATOR

DATED: 19<sup>th</sup> March 2010