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BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR
OF
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

In the Matter of:-

Societe Anonyme des Eaux Minerales d'Evian (SAEME)
22, avenue des Source
74500 Evian
FRANCE

Complainant

VS

RAJESH AGGARWAL
IMPO-EX TECHNICAL SERVICES
#56, Sector-15
Panchkula, Haryana
134122
INDIA

Defendants

1. The parties:

Complainant is **Societe Anonyme des Eaux Minerales d'Evian (SAEME)**, a

French Company incorporated under French law as "societe anonyme", which has its Head office at 22, avenue des Source, Evian, France.

Respondent is **RAJESH AGGARWAL, IMPO-EX TECHNICAL SERVICES, #56, Sector-15, Panchkula, Haryana 134122 INDIA**

2. The domain name at issue is **<evian.co.in>** (the domain name) The registrar NIXI is at Incube Business Solutions Pvt. Ltd., Delhi.

Deepa Gupta
DEEPA GUPTA
NIXI
ARBITRATOR

3. **Brief Background**

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of NIXI on and the respondent submitted his reply on 2 June 2009.

Ms. Deepa Gupta has been appointed as Sole Arbitrator in this matter

It is alleged in the complaint that the complainant is using this trademark since O July 1998 and the name 'evian' since 1970. It is also revealed from the filed documents that the complainant is in the business of producing, distributing, and marketing of mineral water and products of beauty and health products (mineral water, sprays, Evian Affinity, the new range of cares and moisturizers under the brand of EVIAN presently.

Respondent has not responded at all.

4. **Parties contentions:**

Complainant alleges that the respondent has registered evian.co.in, which is visually conceptually and confusingly similar to his trademark and also phonetically similar and that the respondent has done it with a malafide intention well knowing the Worldwide fame and Goodwill of the name Evian and to en-cash upon it commercially and registered the same as a registrant with an intention to prevent the real owner of the trademark or service mark from reflecting the mark in a corresponding domain name, and is a bad faith registration plus bad use of the domain name. The Respondent has registered the domain name evian.co.in with the intention to sell it to others for profits & misleading the public.

The Complainant has also submitted the following:

That it is a leading company of the 1980's having World wide fame initially incorporated as **Societe Anonyme des Eaux Minerales d'Evian (SAEME)**, a French Company incorporated under French law as "societe anonyme" and is a subsidiary of a French company group Danone.

Evian water was born 8,000 years ago. Discovered in 1789 by the marquis of Lessert, the source of Cachat became Les Eaux d'Evian les Bains in 1869. In 1901, no less than 8 million bottles were sold. Evian is today the best selling trademark of mineral water in the world, with 1,7 billion bottles sold every year. The trademark EVIAN is present on the 5 continents, in 142 countries. The Evian trademark also includes a whole range of beauty and health products (mineral water, sprays, Evian Affinity, the new range of cares and moisturizers) In India, SAEME's main product is bottled water. In bottled water sales, Evian presence in India is 1.5 millions bottles annually. It entered the Indian market in 1999.

That the Complainant owns numerous trademarks which are protected throughout the world, including in India. Its trademarks are very well-known, especially in the field of water.



Handwritten signature of Deepa Gupta and a circular stamp reading "DEEPA GUPTA NIXI ARBITRATOR".

Complainant also submit that the disputed domain name was registered on July 19, 2007. A Whois database search revealed that said domain name is registered by the Respondent and also noticed that the disputed domain name is inactive.

He further submits that before introducing said INDRP action, Complainant sent a letter of cease-and-desist by e-mail and registered letter dated October 17, 2008 to Respondent based on its trademarks rights asking the same to amicably transfer the disputed domain name . Respondent never responded.

Detailed submission made by complainant in the court of Arbitration are:

A. The domain name registered by the Respondent is identical or at least similar to the trademark of the Complainant

(Policy, para.4 (i); Rules, para. 3(b)(vi)(1))

He (Complainant) is the owner of numerous EVIAN trademarks in India - (Details Attached)

He (Complainant) is the owner of numerous EVIAN international trademarks around the world (Details Attached)

He (Complainant) is also the owner of community trademarks (Details Attached)

Additionally, Complainant is also the owner of several domain names including <evian.fr>, <evian.us>, <evian.it>, <evian.ca>, <evian.com> and <detoxwithevian.co.uk>.

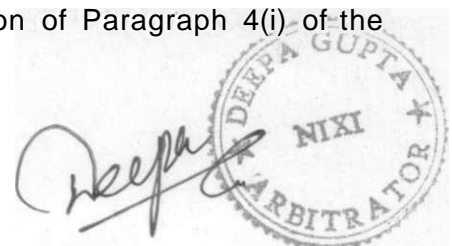
The predominant part of the disputed domain name is "EVIAN", the registered trademark of Complainant. The presence of the country code top level domain <.in> is insignificant and be disregarded for the purpose of determining confusing similarity to the trademark in which Complainant has rights .

Respondent's domain name <evian.co.in> is identical to Complainant's EVIAN mark since it incorporates Complainant's mark in its entirety. There is no alteration existing which distinguishes Respondent's domain name from this mark as it is exactly the same as Complainant's

Given the strong distinctiveness of Complainant's mark and its extensive use in commerce, Respondent has targeted Complainant's mark in choosing the disputed domain name.

By registering such a domain name, Respondent has therefore created a likelihood of confusion with Complainant's mark to mislead the public and Internet users in thinking that the disputed domain name, which is identical to Complainant's mark, is in some way associated with Complainant, or that it is registered by Complainant.

For all the above-cited reasons, it is established that Complainant has trademark rights in the name that is reproduced or at least imitated in the domain name in dispute, and therefore the condition of Paragraph 4(i) of the .IN Policy is fulfilled.



The image shows a handwritten signature in cursive that reads "Deepa". To the right of the signature is a circular stamp. The text inside the stamp, starting from the top and moving clockwise, reads "DEEPA GUPTA", "NIXI", and "ARBITRATOR". There are small star-like symbols on either side of the name "NIXI".

B. The Respondent has no rights or legitimate interests in respect of the domain name;

Respondent is not affiliated with Complainant in any way, nor has Respondent been authorized by Complainant to register and use Complainant's EVIAN trademark or seek registration of any domain name incorporating said mark. The filings and registrations of numerous EVIAN trademarks preceded the registration of the disputed domain name. Respondent is not using the domain name at all.

C. The domain name has been registered or is being used in bad faith.

Respondent knew Complainant's trademark EVIAN at the time it registered the disputed domain name. EVIAN is a well-known trademark throughout the world, particularly in Asia, and Respondent cannot have ignored Complainant's international reputation at the time of registration of the domain name.

A simple search via Google or any other search engine using the keyword "EVIAN" demonstrates that numerous first results relate to the Complainant's products or news .

The fact that Respondent is well aware of the Complainant's well known trademark and trade name and the goodwill attached to it and still such conduct by Respondent clearly reflects the dishonesty and shows the mala fide intention of Respondent.

Besides, the Policy (paragraph 3) clearly states that it is the responsibility of Respondent to determine before registration that the domain name it is going to register does not infringe or violate third parties' rights.

Moreover, by registering the domain name, Respondent has prevented Complainant from registering the domain name <evian.co.in>. This precludes Complainant from a very important tool in India, since the Internet is widely used in this country.

The Policy, under Paragraph 6 (ii), states that if the Registrant 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, such registration can be considered as bad faith registration and use of the domain name.

Additionally, there has been no active use of the domain name. Absence of use and passive holding of domain names have been held as evidence of bad faith use. (Example Quoted)

Respondent registered the well-known mark as domain name to capitalize on Complainant's long history, its reputation and its goodwill. Respondent is aware of the commercial value of the trademark and registered the domain name for deriving revenue from them.

Respondent: Not responded to the Complaint



The image shows a handwritten signature in cursive that reads "Deepa". To the right of the signature is a circular stamp. The text inside the stamp, arranged in a circle, reads "DEEPA GUPTA" at the top, "NIXI" in the center, and "ARBITRATOR" at the bottom. There are small stars on either side of the word "ARBITRATOR".

5. Opinion:

I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in the domain name in question is identical or confusingly similar to a trademark or service mark in mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint This tribunal is of confirmed opinion that the Complainant has been using the name Evian since 1970 in one form or the other and has made sincere efforts to promote the brand name Evian by consuming various resources available at his end and word Evian has certainly acquired a popular Brand name in the process.

On the basis of the records submitted by the complainant it's proved that the domain name www.evian.co.in is related to the business of Complainant, is being used for purpose and related to his work.

It is confirmed that Complainant is user of name Evian & operates worldwide.

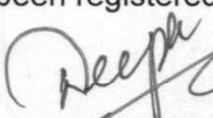
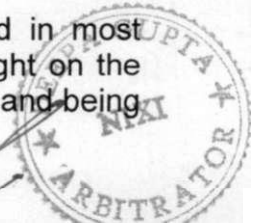
The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no preexistence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have honorable intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration and has not bothered to do the verification of preexistence of the domain name wishing to be registered. Evian and similar domain names were legally registered at the various registries of internet by the Danone Group of Companies also having Evian Brand in one of its subsidiary Company much before the Respondent started the process of registration, and were legitimately using the name for business purposes profusely empowers them with the First right to the domain name www.evian.co.in and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant.

This tribunal holds that such misuse of the names should be checked in most efficient manner the complainant has tried to prove his good faith and right on the domain name in question should be considered as having been registered and being used in bad faith by the respondent

Complainant has amply demonstrated that he is in the business of mineral water and products of beauty and health products (mineral water, sprays, Evian Affinity, the new range of cares and moisturizers under the brand of EVIAN presently.

The tribunal is of confirmed opinion that the domain name trade name and trade are facially and correctly conjoint to each other and is proof of the same of widespread recognition of the products and services provided by the Complainant make this complaint a plausible case of action.

II. Domain name hijacking

This is establish rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the compliant was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant ask for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's failure to fully disclose the facts related to allegation against the respondent. Further, in support of this the Complainant submitted documents marked as Annexure 1 to 18 which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. **Conclusion**

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove all the necessary conditions. Further, this tribunal bound to conclude with the certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name evian.co.in be and is hereby transferred to Complainant with immediate effect.

This tribunal also directs the Respondent to pay an amount of Rs 5,00,000/- to the Complainant for costs and damages undergone by the Complainant and another Rs 50,000/- to NIXI for cyber squatting and as cost of this proceedings for burdening the administration to fulfill his dirty ulterior motives. In the facts and circumstances of this case this tribunal further directs the registry of NIXI to take adequate precaution in entertaining such complaints and send a copy of this decision to the Hon'ble High Court of Delhi at New Delhi to take further actions against the miscreants as this tribunal cannot go beyond its jurisdiction.

Given under my hand and seal on this **day of 12th June 2009.**



Deepa Gupta
Arbitrator

