



தமிழ்நாடு தீர்ப்பாயம் TAMILNADU

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17.5.2013

Sridharan

AL 596646

J. NELSON
STAMP VENDOR
L.No. 12857/BA/98
HIGH COURT CAMPUS
CHENNAI 104

BEFORE S SRIDHARAN, SOLE ARBITRATOR

OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 22nd June 2013

Findus Sverige Aktiebolag, Sweden

... Complainant

Versus

Andre Wallenrodhe, Poland

... Respondent

Sridharan

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Versus		
Andre Wallenrodhe, Poland	...	Respondent

1. The Parties

- 1.1 The complainant, **Findus Sverige Aktiebolag**, is a Swedish private limited liability company having its place of business at 267 81 BJUV, SWEDEN, represented by C.A. Brijesh, V. Mohini, Kamal Sharma, all advocates of Remfry & Sagar, at Remfry House, Millennium Plaza, Sector-27, Gurgaon-122 009.
- 1.2 Respondent is Andre Wallenrodhe at UL. Krolewska 23/16, Warsaw 00-064, POLAND.

The Domain Name and Registrar

- 1.3 The disputed domain name <findus.in> created on 29.10.2012 is registered with Instra corporation Pty Ltd (R104-AFIN).

2. Procedural History

- 2.1 On 24th May 2013, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On the same day, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 30th May 2013, I received hardcopy of the Complaint.
- 2.3 On 30th May 2013, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 31st May 2013, I received a soft copy of the Complaint.
- 2.5 On 12th June 2013, I received reply from the Respondent. In his reply, Respondent has, among others, agreed to transfer the disputed domain name <findus.in> without any further expense to the Complainant.
- 2.6 On 14th June 2013, I asked the Respondent to confirm his consent to transfer the disputed domain name <findus.in> to the Complainant.

Sridharan

- 2.7 On 15th June 2013, Respondent has confirmed his intention to transfer the disputed domain name <findus.in> to the Complainant.
- 2.8 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

- 3.1 Complainant, a part of Findus Group, is a leading international frozen food business operating in the retail and foodservice sector.
- 3.2 Complainant's history traces back to the year 1905 with the founding of Skånska Frukt- vin- & Likörfabriken (Fruit, Wine and Liqueur Industries) in Bjuv, Sweden. In 1941, Skånska Fruktin & Likörfabriken was acquired by the confectionery manufacturer Freja Marabou and was, subsequently, renamed Findus Canning Factory. In the year 1945, the first FINDUS branded deep frozen food products were sold in Sweden, produced in a small factory in Skåne and by the late 1950s, the products were exported to an increasing number of European countries. In 1962, the brand was acquired by the Swiss food company Nestlé. As of 2013, Findus Group owns the FINDUS brand in most of Europe including the Nordic countries, France, Spain and the United Kingdom.
- 3.3 Operationally decentralized into 3 regional clusters, Findus Group is the parent company of Findus in the Nordics, Young's Seafood Limited in the U.K. and Findus in the South Europe. Complainant grows, develops, produces and markets a complete range of frozen food products including vegetables, vegetable mixes, prepared meals, recipe dishes, fish and seafood. Complainant has operations in all Nordic (a region in Northern Europe and the North Atlantic which consists of Denmark, Finland, Iceland, Norway and Sweden and their associated territories) markets, France, Central and Eastern Europe as well as in Thailand. In the Nordics, FINDUS is the leading frozen food business in Norway and Sweden. In the UK, Complainant offers its products under the brand YOUNG'S which is the leading provider of frozen, chilled, branded and own label fish and seafood to customers and consumers. With over 6000 employees worldwide, Complainant's turnover in the year ending December 31, 2011 was more than £1 billion.
- 3.4 Responsibly serving its customers and consumers, Complainant has led its way with award winning programmes on a range of issues – from responsible fish sourcing to vegetable growing- and from its environmental footprint to promoting healthy diet. Complainant has over the years, received numerous awards and recognition for its product, service and innovation such as Green Business Awards 2010 (UK's comprehensive award celebrating excellence in green practice, strategy and products) in the category of Land, Water & Ecology; FDF Community Partnership Awards for Environment in 2010 (an award to recognize and celebrate the contribution the UK food and drink sector makes to the economy); Business in the Community Awards 2008 for Excellence 'Big Tick' (awards to identify, celebrate, and showcase businesses demonstrating a positive, sustainable and societal impact); European Business Awards, 2010 for the Environment (to reward businesses that contributes to improve environmental performance and sustainable economic development) etc.
- 3.5 Owing to the excellent quality, products of Complainant under the brand FINDUS command tremendous popularity and have been sold extensively worldwide and gained significant market share due to its strong sales success. This is evident from the revenues

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generated by Complainant through sale of its products. The Complainant has given the Year wise sales revenue for the years 2009-2012 as below:

Year	Sales Revenue (in billion SEK)
2009	3.7
2010	2.8
2011	2.6

- 3.6 Complainant has attached relevant extracts from the Annual Reports for the years 2000, 2001, 2005, 2010 and 2011.
- 3.7 Being an important intellectual property, the trade mark FINDUS/FINDUS formative marks are registered/applied for registration in numerous jurisdictions of the world. In addition, FINDUS is being used a part of corporate name/s of Complainant and its various affiliates/subsidiaries. A list of worldwide registrations obtained in respect of the trade mark FINDUS/ FINDUS formative marks is attached to the Compliant. Copies of certificates of registration for the mark FINDUS registered in Sweden, U.S.A. as well as extracts from the online records of the Trade Marks Offices of different jurisdictions such as Canada, UK, etc. evidencing registration of the said trade mark in the name of Complainant are also attached.
- 3.8 In India, an application under no. 1749566 dated October 31, 2008 has been filed seeking registration of the trade mark FINDUS in classes 29 and 30. Extracts from the online records of the Trade Marks Registry in respect of application No. 1749566 are also attached.
- 3.9 Complainant/its affiliates have registered several top level domain names comprising the trade mark FINDUS such as 'findus.com', 'findusfoods.com', 'findusfoodservices.com', 'findusgroup.com' as well as country code top-level domain names (ccTLD) such as 'findusgroup.in', 'findus.co.uk', 'findus.se', 'findus.fr', 'findus.no', 'findus.fi', 'findus.dk', 'findus.cz', 'findus.hu', 'findus.sk', , 'findusfoodservices.no', 'findusfoodservices.fi', 'findusfoodservices.dk'. A list of such domain names is attached to the Complaint. Complainant's websites are very popular amongst the internet users and disseminate valuable information and are a source of knowledge of its products/business under the trade mark FINDUS.
- 3.10 The trade mark FINDUS represents important proprietary rights of Complainant. The said trade mark is representative of Complainant, its products, brand identity, business reputation and public identification throughout the globe including India. Complainant has invested years of time, capital, efforts and resources and attained immense goodwill and reputation in the trade mark FINDUS. Resultantly, a secondary meaning stands attached in respect of the said trade mark, which is exclusively associated by members of the trade and public with Complainant and its products. Complainant's said trade mark is extremely well-known through out the world and it considers the same as its valuable intellectual property and vigorously enforces against any act of infringement and passing off.
- 3.11 Recently, Complainant was desirous of extending its rights on the Internet by registering the domain name 'findus.in' in India. However, when Complainant sought to register the said domain name sometime in January 2012, it was shocked to learn that the same was already registered in the name of one Mr. Peter Chang of 8, Fordham Road, Lewes East, Sussex BN8 6FL, Great Britain (hereinafter referred to as the erstwhile Registrant). The

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email address of the Registrant was mentioned as ljp198@gmail.com and telephone No. as + 44 654212481. It is pertinent to mention here that both the telephone numbers as well as the postal details appear to be bogus. As per the WHOIS records pertaining to the domain 'findus.in', the same was registered on July 12, 2011. The Complainant has attached extracts from the WHOIS records evidencing details of the disputed domain name registered in the name of the erstwhile Registrant.

- 3.12 While attempting to view the contents of the website www.findus.in, Complainant learnt that the same does not resolve to any active website. Further research of the Complainant revealed that the said domain is parked for sale at www.sedo.com (a well-known site for trading of domains). Sedo allows Registrants to simply 'park' the registered domain names for sale without having to develop any website. Prints outs reflecting that the domain was parked for 'sale' at 'Sedo' are attached. Online research has also revealed that Mr. Chang is a habitual cyber squatter and registered about 453 different domain in his name. Relevant extracts reflecting registration of several domain names in the name of Mr. Chang is attached to the Complainant. Aggrieved by the erstwhile Registrant's adoption/registration of the domain 'findus.in' which is identical with and/or confusingly similar to Complainant's trade mark/name/domain name FINDUS, Complainant addressed a 'cease and desist' notice to the erstwhile Registrant on March 26, 2012. Complainant, vide its aforementioned notice, apprised the erstwhile Registrant of its rights vesting in the trade mark/name/domain name FINDUS and called upon it to cease using FINDUS as a part of its domain name and transfer the same in favour of Complainant. The Complainant has attached a copy of the 'cease and desist' notice dated March 26, 2012.
- 3.13 In the absence of any response, Complainant reviewed the WHOIS records and learnt that the same has been updated and reflected one Andre Wallenrodhe of UL. Krolewska 23/16, Warsaw 00-064, Poland as the Registrant of the said domain. Extracts from the WHOIS records evidencing Andre Wallenrodhe as the Registrant is attached. The Registrant is not operating any active website under the domain 'findus.in' and the said domain name continues to be parked at Sedo. Further, a review of the website 'www.findus.in' indicates that the domain is parked at the website of Onlydomains (www.onlydomains.com) as well, which is another website dealing in sale/purchase of domains. Extracts from the website of www.findus.in as well as www.sedo.com are attached.
- 3.14 There is no iota of doubt that the impugned domain name is identical to Complainant's trade mark/name/domain names comprising FINDUS and has been registered with a view to reap illegal profits. In the circumstances, Complainant submits that the Registrant's impugned domain name 'findus.in' may be transferred to Complainant.
- 3.15 The Complainant has filed Annexures A to N along with the Complainant.

B Respondent

- 3.16 The Respondent intended starting-up a search engine that would help people find each other. He checked the availability of the disputed domain on www.onlydomains.com, which offers .in-domains, and it proved that it was not taken and was thus available for registration. Hence, he registered this domain on 30 October 2012. Before that date he had nothing to do with it.
- 3.17 At the time of registration, this start-up idea was not yet fully explored as to its potential, prospect, viability, etc. However, it soon proved that what had appeared to be a good idea at first sight, it actually wasn't at all. So the Respondent gave up this idea and simply forgot about it, and hence also about this disputed domain. The disputed domain was registered



and paid for a period of one year and the registration is thus about to expire on 30 October 2013. Respondent had no intention to renew it.

4. Parties Contentions

A Complainant

- 4.1 The disputed domain name <findus.in> comprises Complainant's trade mark FINDUS, which is proprietary to it. Respondent has registered the disputed domain name <findus.in> with an intention to trade upon the immense goodwill and reputation enjoyed by Complainant in its well-known trade mark/name/domain name FINDUS and thereby gain undue mileage out of it. This is a clear case of passing off which is violative of the rights enjoyed by Complainant in its famous trade mark/name.
- 4.2 The disputed domain name <findus.in> is identical to, *inter alia*, the following domain names registered in the name of Complainant/its affiliates:

S. No.	Domain names	Registrant's domain name
1.	findus.com	findus.in
2.	findusgroup.com	
3.	findusgroup.in	
4.	findusfoods.com	
5.	findusfoodservices.com	
6.	findus.co.uk	
7.	findus.se	
8.	findus.fr	
Note: The list is illustrative and not exhaustive		

- 4.3 The disputed domain name <findus.in> was registered on July 12, 2011 in the name of the erstwhile Registrant whereas Complainant's domain www.findus.co.uk was created on June 17, 1997. Further, the earliest registration for the trade mark FINDUS was secured on January 10, 1939 in Sweden by Complainant. In India, the trade mark FINDUS has been applied for registration on October 31, 2008 in the name of Complainant in Classes 29 and 30. Thus, Complainant's adoption of the trade mark FINDUS is much prior to Respondent's registration of the disputed domain name <findus.in>. In view of the same, it is crystal clear that Complainant has prior rights in the trade mark/name FINDUS *vis-à-vis* Respondent.
- 4.4 As regards Paragraph 7(i), Respondent is not offering any goods/services under the disputed domain name <findus.in>. In fact, Respondent is not operating any active website under the disputed domain <findus.in> and the same is parked with the websites dealing in sale of domains viz. www.onlydomains.com as well as www.sedo.com. Therefore, by no stretch of imagination, Respondent can demonstrate any use relating to

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bona fide offering of goods or services before any notice of this dispute or at any point in time whatsoever.

- 4.5 Regarding paragraph 7(ii), the erstwhile Registrant registered the disputed domain name <findus.in> but was not using the same. Pursuant to receipt of a 'cease and desist' notice March 26, 2012, the domain was renewed and transferred to the current Registrant. On the other hand, Complainant is the leading frozen food business in the Nordic region and France and the leading seafood business in the UK with employee strength of 6000 and annual income about £1.5 billion. Due to the extensive and continuous use of the trade mark/name FINDUS, the same has become well-known and is associated with Complainant/its businesses and none else. Hence, Registrant cannot claim to have been commonly known by the domain name for any reason/s whatsoever.
- 4.6 With respect to paragraph 7(iii), Respondent is not making any legitimate, non-commercial or legitimate fair use of the disputed domain name <findus.in>. In fact, parking of the disputed domain name <findus.in> on the websites www.onlydomains.com and www.sedo.com cannot come under the definition of 'fair use'. The registration of the disputed domain is aimed to gain mileage from the immense goodwill and reputation of Complainant's trade mark/name thereby creating a dent in its business. Thus, Respondent is indulging in (i) unfair use of the disputed domain name <findus.in> with an intention to reap profits therefrom; and (ii) tarnishing the goodwill and reputation enjoyed by Complainant's well-known trade mark/name FINDUS. Respondent, therefore, cannot justify any interest in the disputed domain name <findus.in>.
- 4.7 Insofar as Paragraph 6(i) is concerned, Respondent has registered the disputed domain name <findus.in> with the sole purpose of selling/transferring the same for excessive consideration. The said objective is evident from the fact that the disputed domain name <findus.in> is parked at www.onlydomains.com and www.sedo.com, websites engaged in sale of domain names. Further, Respondent has to date not developed any website in respect of the said domain. Thus, the said act of Respondent clearly establishes (mis)use of Complainant's well-known trade mark/name FINDUS to gain illegal benefits.
- 4.8 As regards Paragraph 6 (ii), it is beyond doubt that Respondent registered the disputed domain name <findus.in> knowing fully well of Complainant's goodwill/reputation as well as its registrations vesting in the trade mark FINDUS worldwide. Thus, the registration of the disputed domain name <findus.in> by Registrant has resulted in Complainant being prevented from reflecting the trade mark FINDUS in the corresponding domain name. Complainant has already established that several TLDs/ccTLDs comprising FINDUS including 'findusgroup.in' are owned and managed by Complainant/its affiliates.
- 4.9 Finally, for the purpose of paragraph 6(iii), the conduct of Respondent amply proves its *mala fide* to attract internet users to its website by creating a likelihood of confusion with Complainant/its affiliates as to the source, sponsorship, affiliation or endorsement of Registrant's website. Further, internet users desirous of accessing Complainant/its affiliates' website/s may get attracted to the impugned website thereby creating confusion.
- 4.10 Paragraph 3(a) of INDRP stipulates that the statements made in Respondent's Application Form for registration of Domain Name are complete and accurate. In the instant case, the contact details provided by Respondent appear to be incomplete and bogus.
- 4.11 Paragraph 3(b) of INDRP obligates that Respondent's registration of the domain name does not infringe upon or otherwise violate the rights of any third party. In the instant case, as elaborated hereinabove, Respondent's domain <findus.in> comprising Complainant's famous trade mark/name FINDUS violates the proprietary rights of Complainant.

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- 4.12 Paragraph 3(c) of INDRP states that *'the Registrant is not registering the domain for an unlawful purpose'*. In the instant case, Respondent has registered the disputed domain name <[findus.in](#)> with *mala fide* to mislead innocent customer of Complainant to its website thereby tarnishing Complainant's goodwill and reputation vesting in its trade mark/name/domain names FINDUS. Further, the factum of parking the disputed domain name <[findus.in](#)> at [www.onlydomains.com](#) and [www.sedo.com](#) for sale and not operating any website thereunder and thereby, depriving Complainant from registering the corresponding domain in its name speaks volumes of Respondent's illegality to gain undue profits therefrom.
- 4.13 Paragraph 3(d) of INDRP obligates Respondent not to use the domain name in violation of any applicable laws or regulations. In this regard, it is humbly submitted that registration of the disputed domain name <[findus.in](#)> violates not only INDRP/INDRP Rules of Procedure but is also contrary to Trade Marks laws as well as principles of business ethics.

B. Respondent

- 4.14 Respondent in his reply has stated as below:
- 4.15 There was no need to file this complaint - all the Complainant had to do was to call the Respondent, or to send him an email or a regular mail, and ask for the transfer. All his coordinates were available with the Complainant. However, no previous contact was taken with the Respondent. There was never any case of infringement or violation of any rights of the Complainant.
- 4.16 The disputed domain name <[findus.in](#)> was a compilation of two common English words: the verb "find" and the pronoun "us" which, together with the country domain of India ", in " – serving here as a preposition - compose a sentence " find-us-in " [Europe, Asia, Poland, India, etc.].
- 4.17 Respondent has never had any intention to sell this disputed domain name <[findus.in](#)>. He has never offered it for sale and has never put any price on it. He has never parked it with [www.sedo.com](#), nor did he ever have any dealings with them. The disputed domain name <[findus.in](#)> was purchased for regular price and registered through [www.onlydomains.com](#) and it became automatically parked there.
- 4.18 The Complainant further describes its contacts with a Mr Peter Chang and attaches some documents showing the Complainant's correspondence etc., with this individual. Respondent can only say that he has never heard about that person until now.
- 4.19 As a general comment as to the content of the Complaint - for reasons explained above, Respondent disagrees with all statements and allegations made by the Complainant with respect to any plans or intentions in connection with his registration of the disputed domain name <[findus.in](#)>. Respondent humbly requests for the dismissal of all the allegations of the complainant.

5. Discussion and Findings

- 5.1 Respondent has agreed to transfer the disputed domain name <[findus.in](#)> to the Complainant. Respondent has again vide email dated 15th June 2013 confirmed his willingness to transfer the disputed domain name <[findus.in](#)> to the Complainant without incurring any further expense.

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5.2 In view of the consent expressed and confirmed by the Respondent, I order transfer of the disputed domain name <[findus.in](#)> to the Complainant.

6. **Decision**

6.1 For all the foregoing reasons, the Complaint is allowed as below.

6.2 It is hereby ordered that the disputed domain name <[findus.in](#)> be transferred to the Complainant.

6.3 There is no order as to costs.



S.Sridharan
Arbitrator