



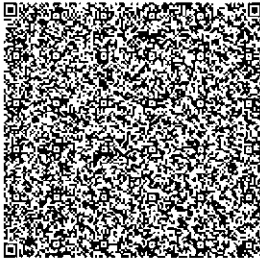
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate No. : IN-DL50510261295005P
Certificate Issued Date : 21-Feb-2017 01:44 PM
Account Reference : IMPACC (IV)/ dl712203/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL71220301502893834960P
Purchased by : NIKILESH RAMACHANDRAN
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : NIKILESH RAMACHANDRAN
Second Party : Not Applicable
Stamp Duty Paid By : NIKILESH RAMACHANDRAN
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION CASE NO. 5 OF 2016

IN THE ARBITRATION MATTER OF:-

FRANKE TECHNOLOGY AND TRADEMARK LTD

COMPLAINANT

VERSUS

ZHAXIA

RESPONDENT

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Statutory Alert:

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DISPUTED DOMAIN NAME: **franke.co.in**

AWARD:

The present dispute relates to the registration of the domain name **franke.co.in** in favour of the Respondent.

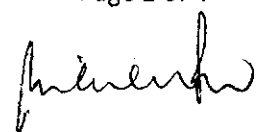
The Complainant has filed the instant complaint challenging the registration of the domain name < **franke.co.in** > in favour of the Respondent. Pursuant to the In Domain Name Dispute Resolution Policy (INDRP) and the rules framed thereunder, the Complainant has preferred this arbitration for raising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

I gave my consent on the 9th of December 2016 to adjudicate the instant domain name dispute. I was handed over the complaint on the 15th of December 2016. Accordingly, I issued notice on the 20th of December 2016 calling upon the Respondent to file its reply on the complaint within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter. However, the respondent has chosen not to file any reply and has also not entered his appearance even after him being served the notice on his address supplied by the Complainant, obtained from WHOIS. I, therefore, proceed to adjudicate this complaint ex-parte.

In its complaint, the complainant has stated that it is a company which is the registered proprietor of trademark FRANKE in several countries across the world including India.

ANALYSIS:

The Complainant states that "FRANKE" was founded in 1911, based in Switzerland. The Complainant has registered incorporating ***franke*** word in Classes 6, 11, 20, 21, 19, 37 from 1995 till 2005. It has placed in record the details of the registration of the said trademark in various countries.



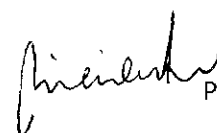
Apart from this, the Complainant has registered domain names incorporating the **franke** term in generic Top-Level Domains (g TLD) and country code Top-Level Domain (cc TLD), namely the domain name franke.in.

In its complaint, the grievance of the complainant is that the Respondent has registered the disputed domain name < **franke.co.in** > which is confusingly similar to the Complainant's well known "franke" trademark. There is striking similarity between the domain name and Complainant's trademark.

Before I proceed to deciding the case at hand, I must decide the issue that the Respondent has chosen not to controvert the contentions raised in complaint and the consequence of such action on the part of the Respondent is that it leads to an adverse inference and the statements and records placed in support stands proved.

I now proceed to decide the claim on merits. Firstly I shall deal with the ground regarding the rights of the Complainant vis-à-vis that of Respondent's over the domain name < **franke.co.in** >. The domain has the mark **FRANKE**, which according to the complainant is the owner. **FRANKE** has acquired distinctiveness both in India and various other countries. It has been shown by the complainant that the use of the said mark has been for quite some time and that too for world over. The Complainant has registered domain names incorporating the **FRANKE** trademark in numerous countries across the world. From the records submitted before me, it is seen that it has registered its trademark in various countries, the earliest being in the year 1995. The complainant has shown the various trade mark registration details world over. Although the Respondent has not appeared in these proceedings to present his case, but it is borne out from the records that Respondent has no bonafide or legitimate right over the mark "**FRANKE**".

The **FRANKE** trademark has the status of a well-known trademark with a substantial and widespread reputation throughout the whole community where it


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operates. The Respondent registered the Domain Name subsequent to the trademarks for **FRANKE** were registered.

Thereby, it is quite clear that the Respondent knew of the Complainant's legal rights in the name of **FRANKE** at the time of registration. Thus, the Respondent cannot claim to have been registered or used the trademark **FRANKE**, without being aware of the Complainant's rights to the said trademark.

Secondly as the Respondent's action to register the said domain name is not bonafide, therefore the said registration is done in bad faith. Neither the Respondent is associated as an individual, business or organization with the name "**FRANKE**" nor the complainant has authorized in any way the use of the trademark "**FRANKE**". More particularly, after the Respondent received the Cease and Desist letter dated 26th October 2016 from the Complainant, it offered the Complainant to buy the said Disputed Domain name at price of USD 2890. Therefore the Respondent has registered the said Domain name in bad faith and thus has no legitimate right over the said domain name.

CONCLUSION:

Considering the facts and circumstances of the present matter and taking view of the law and the precedents in this context, I am of the view that the complainant has proprietary right over the mark "**FRANKE**". Therefore, under the facts and circumstances and on the basis of 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. < **franke.co.in** > in favour of the complainant.

Parties to bear their respective costs of this litigation.


(NIKILESH RAMACHANDRAN)
ARBITRATOR

Dated 21ST FEBRUARY 2017.