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Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY  
(Appointed by .IN Registry- National Internet Exchange of India)

#### ARBITRATION AWARD

Disputed Domain Name: <SURYAEC.IN>

#### IN THE MATTER OF

**SURYA ROSHNI LIMITED,**  
Padma Tower-I,  
Rajendra Place,  
New Delhi-110008

...Complainant

-----versus-----

**SURYA ELECTRO CONTROLS,**  
3607, DLF Phase 4,  
Gurgaon - 122001 Haryana  
Email: [sales@suryaec.in](mailto:sales@suryaec.in), [suryaec@yahoo.com](mailto:suryaec@yahoo.com)

*Murant Sano*

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...Respondent

**1. The Parties**

The **Complainant** in this arbitration proceeding is **SURYA ROSHNI LIMITED**, of the address Padma Tower-I, Rajendra Place, New Delhi-110008.

The **Respondent** in this arbitration proceeding is **SURYA ELECTRO CONTROLS** of the address 3607, DLF Phase 4, Gurgaon - 122001 Haryana.

**2. The Domain Name, Registrar and Registrant**

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <**SURYAEC.IN**> with the .IN Registry. The Registrant in the present matter is **SURYA ELECTRO CONTROLS**, and the Registrar is **Endurance Domains Technology LLP**.

**3. Procedural History**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated November 10, 2020, had sought consent of Mr. Vikrant Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of his availability and gave his consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day, i.e. November 11, 2020. Thereafter the Arbitrator received soft copies of the Domain Complaint and the annexures thereto (along with a copy of the complete/un-redacted WHOIS records of the disputed domain name) on November 18, 2020, and confirmed receipt of the same vide email dated November 19, 2020 and also sought Complainant's confirmation regarding service of the Domain Complaint as well as the annexures thereto upon the Respondent by post and/or email.

*Murant Lane*

On November 23, 2020, the Complainant provided the Arbitrator with soft copy of the complaint and annexures thereto and further informed that they have sent the hard copy in this regard to the Respondent and provided speed post receipts as proof of service thereof. Vide email dated November 23, 2020, the Arbitrator confirmed receipt of the soft copy and further requested the Complainant to provide proof of service of the hard copies of the complaint and annexures upon the Respondent (in the form of duly received Registered AD cards or snapshot of online Tracking Report). As no response was received from Complainant, a reminder email was sent by the Arbitrator on November 27, 2020, in response to which Complainant replied vide email of the same date, inter alia providing courier receipts and consignment status report along with the relevant email chain to the Respondent confirming that the Respondent has been duly served with copies of the complaint and documents via email as well as post.

Thereafter, the Arbitrator, vide email dated December 01, 2020, announced that the Complaint along with Annexures had been duly served upon the Respondent, vide email and post. The Respondent was deemed to have been duly served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of receipt of the email dated December 01, 2020, within which to file a response to the Complaint and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law. The arbitration proceedings were therefore deemed to have commenced from December 01, 2020.

On December 16, 2020, the Arbitrator, vide email addressed to the Respondent, brought it on record that despite the prescribed deadline for the Respondent to respond in the matter having elapsed on December 15, 2020, in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **seven (7) days** within which to submit a response (if any) in the matter.

As no response to the Complaint was preferred by the Respondent in the matter even after expiration of the aforementioned final time period of **seven (7) days**, the Arbitrator, vide email dated December 24, 2020, reserved the award to be passed on the basis of facts and documents available on the record.

#### **4. Factual Background**

The Complainant has submitted that it is one of the largest Indian multinationals incorporated in 1973 in Haryana and having revenue of INR 6000 crore for the year ending 2018-2019. Complainant has further submitted that they are engaged in manufacturing, marketing exporting a variety of products such as heating products, lighting products and home appliances. Complainant has claimed that the mark **SURYA** has become a household name in the Indian market through its use in almost every home since 5 decades and that besides India, it has a presence in over 44 countries including Bangladesh, Pakistan, Sri Lanka, China, Nigeria and Algeria.



Complainant has submitted that it owns and operates a website at [www.surya.co.in](http://www.surya.co.in) which is the Complainant's corporate website and contains information about their goods/ services, history and operations.

Complainant has further stated that they are the owner and registered proprietor of the trademark **SURYA** which is registered in different classes with the Trade Marks Registry since as early as the year 1981. The name/ mark **SURYA** forms a part of the Complainant's corporate name and trading style. Complainant has claimed that it sells, markets and promotes its products through a number of authorized partners, dealers, retainers both physical and online resellers through Amazon, Flipkart, Snapdeal, etc.

Complainant has further stated that in order to curb the sale of unauthorized and spurious products, it runs awareness campaigns for the public at large and has been making conscious and cautious efforts to curb sales, marketing and promotion of illegal, unauthorized and defective products and services. As per the Complainant, their customer confidence center provides step-wise guide for the customers to ensure personal safety from imitators and imposters, who can cause threat to life and liberty by selling low quality, sub-standard unlicensed products under the brand name **SURYA**. The Complainant has also claimed that they operate a toll free line for customer care services and verification of the **SURYA** genuine product. Complainant has stated that they are wary of the risks involved in providing same/ similar goods and services under identical domain names and hereby takes each and every case of misrepresentation, deception, and impersonation extremely seriously and is very active and vigilant in enforcing and protecting its mark **SURYA** and **SURYA ROSHNI**. In this regard, Complainant has registered various FIRs against infringers selling counterfeit **SURYA** branded products and has attached evidence of such actions as **Annexure-E**.

Complainant has submitted that they market and promote its **SURYA** branded products through both print and online media and have appointed famous Bollywood celebrities such as Ms. Preeti Zinta and Ms. Sonali Bendre for promotion. In this regard, Complainant has attached evidence of advertisement and promotion in print and online media as **Annexure-F**.

On account of the above, the Complainant has claimed that their brand **SURYA** has accrued immense goodwill, reputation and popularity in the market such that consumers exclusively identify **SURYA** branded products and services with the Complainant alone. In light of this, Complainant has claimed that unscrupulous traders like the Respondent use the mark **SURYA** with respect to their products, which are likely spurious/ sub-standard. Accordingly, the Complainant has claimed that they zealously protect the reputation and goodwill in the brand **SURYA** through legal processes and have obtained trademark registrations for the mark **SURYA** and various **SURYA- formative** marks in respect of their products and services. In this regard, the Complainant has provided a list of registrations for the mark **SURYA** and variants thereof in various classes including the corresponding registration certificates annexed as **Annexure-G**.

Notably, the earliest registration of the Complainant for the mark **SURYA**, namely registration No. **384887** has been filed with respect to class 9 goods claiming use since **April 01, 1978** and is dated January 02, 1982.

*Murant Sana*



The Complainant has also adduced evidence regarding their various copyright registrations incorporating the mark **SURYA** as **Annexure H**.

Owing to the vast promotion, sales, numerous trademark registrations for the Complainant's mark **SURYA** and use of the same in various countries around the world over a period of several decades, the Complainant has claimed that the mark **SURYA** has acquired immense reputation and goodwill among the consuming public such that the same is exclusively identified with the Complainant and their products and has therefore become a well-known mark.

### **5. Complainant's Contentions and Arguments**

Complainant has submitted that they came across the Respondent's website at <**SURYAEC.IN**> and were shocked to find out that the Respondent is using the identical mark **SURYA** in respect of identical goods.

Further, Complainant has stated that their arbitrary and unique trademark **SURYA** is the most striking and essential feature of the impugned domain <**SURYAEC.IN**> and that owing to the confusing similarity of the impugned domain with the Complainant's registered trademarks, internet users may believe that the Respondent's business and their products are somehow associated/ related to the Complainant, when it is not so.

Additionally, Complainant has alleged that the Respondent has adopted the impugned domain name with a *mala fide* intent to misrepresent itself as the Complainant and pass off its spurious/ sub-standard products and services as that belonging to the Complainant. Further, Complainant has stated that by unauthorizedly adopting the impugned domain <**SURYAEC.IN**>, the Respondent intends to misappropriate the Complainant's reputation, goodwill and customer loyalty associated with its mark **SURYA** in order to gain wrongful profits.

Accordingly, given that the Complainant is the registered proprietor and owner of the trademarks **SURYA** and variants thereof, the Complainant has stated that the Respondent has no right or legitimate interest in respect of the domain <**SURYAEC.IN**>.

Complainant has further alleged that by use of the impugned domain <**SURYAEC.IN**>, which suggests that the Respondent is somehow authorized by/ connected to the Complainant, it is possible that the Respondent has already deceived, cheated and duped several unwary customers of the Complainant. As per the Complainant, such misrepresentation and cheating by the Respondent, pose a grave threat to the life of a consumer and owing to such bad faith on the part of the Respondent, the domain <**SURYAEC.IN**> should be deleted/ handed over to the Complainant.

Complainant has also submitted that the Respondent has evidently adopted and used the domain <**SURYAEC.IN**> to attract existing and potential customers of the Complainant for commercial gain and to further deceive consumers into believing that the Respondent's products are affiliated to the Complainant when it is not so.

*Murant Lane*

In view thereof, Complainant has claimed that adoption of the domain <SURYAEC.IN> is a deliberate act of deception, misrepresentation and passing off and hence the same ought to be deleted/ handed over to the Complainant.

#### **6. Other Legal Proceedings**

The Complainant has submitted that they have not initiated any other legal proceedings against the impugned domain name <SURYAEC.IN>.

#### **7. Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 4(b)(vii) of the INDRP Rules of Procedure)**

The Complainant has claimed that:

- i. the domain name <SURYAEC.IN> be transferred to them; and/ or
- ii. the domain name <SURYAEC.IN> be cancelled; and/ or
- iii. cost of the proceedings be awarded to them.

#### **8. Respondent's Contentions**

As already mentioned in the Procedural History of the matter, despite being duly served with a copy of the Domain Complaint as filed and thereafter granted adequate time to respond to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.

#### **9. Discussion and Findings**

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

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

- i. **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**  
**(Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy)**

The Complainant has established its rights in the mark SURYA in India, and based on the evidence placed on record, the Complainant's trade mark rights in India for the same at least date back to registration No. 384887 for the word mark SURYA which has been filed with

respect to electronic goods in class 9 claiming use since **April 01, 1978**. Further, the Complainant has submitted evidence showing that it is the owner of many **SURYA** and **SURYA-formative** trademarks that are registered in various classes in India and the owner of copyright registrations incorporating the **SURYA** label as well. Additionally, Complainant has submitted that they are the owner of the Indian ccTLD <SURYA.CO.IN> registered on **January 30, 2005**. These rights significantly pre-date the registration of the domain name <SURYAEC.IN> by the Respondent, which was only registered on **May 31, 2006**.

The Complainant has further submitted evidence of wide marketing and promotion of their business and trade name under the name/ mark **SURYA** in print and electronic media. Further, Complainant has submitted evidence of action taken against third parties, in particular FIRs filed against the misuse of the name/ mark **SURYA** on counterfeit products.

The disputed domain name <SURYAEC.IN> incorporates the trade mark **SURYA** in toto. It is further noted that the Respondent is *prima facie* using the website hosted on the domain name to portray an offering of products which are overlapping/ identical to those in which the Complainant has rights, i.e. electrical/ electronic goods.

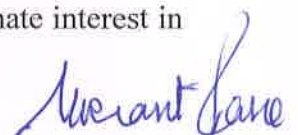
The disputed domain comprises of the mark **SURYA** followed by the letters **EC**, which is not sufficient to distinguish the domain name or differentiate it from the Complainant's trademarks and domain name/website incorporating the name/ mark **SURYA**. As submitted by the Complainant, the mark **SURYA** is the most essential feature of the domain <SURYAEC.IN>.

It has been upheld by prior INDRP panels in *Indian Hotels Company Limited v. Mr. Sanjay Jha (INDRP/148)*, that in cases where the disputed domain name incorporates a mark in its entirety, it is adequate to prove that the domain name is either identical or confusingly similar to the mark. The same has also been held by other INDRP panels, such as *Voltas Limited v. Sergi Avaliani INDRP/1257 <voltasac.in>*, *M/s Merck KGaA v. Zeng Wei INDRP/323 <Merckchemicals.in>*, *Instagram LLC v. Osbil Technology Ltd. INDRP/1130 <instagrampanel.in>* and *Advance Magazine Publishers Inc. v. Abhishek Singh INDRP/1240 <voguetravelhouse.co.in>*.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy, and that the Respondent's domain <SURYAEC.IN> is confusingly identical/similar to the Complainant's trade mark(s).

ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy)**

The Complainant has contended that since they are the registered proprietor and owner of the trademark **SURYA** and variants thereof, the Respondent has no right or legitimate interest in respect of the domain <SURYAEC.IN>.



In the present dispute, Complainant has established that it has rights over the name/mark **SURYA** and that the domain <SURYAEC.IN> is confusingly identical/similar to the Complainant's trade mark.

The element under Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy necessitates that Complainant has to establish a prima facie case that Respondent has no rights or legitimate interests in the disputed domain in question. The burden thereafter lies on the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name. It has been held in numerous cases, including in *Huolala Global Investment Limited v Li Chenggong (INDRP /1027)* that the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a prima facie case, then the Complainant prevails.

In this case, the Respondent has not submitted any response and/or any evidence of its rights and interests even though extended time period and ample opportunities were granted to the Respondent in this regard. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 6 of the INDRP.

Further, it has been contended by the Complainant that by use of the impugned domain <SURYAEC.IN>, which suggests that the Respondent is somehow authorized by/ connected to the Complainant, it is possible that the Respondent has already deceived, cheated and duped several unwary customers of the Complainant. In view of the above, it can be stated that the Respondent cannot be said to be making legitimate or fair use of the domain name.

The Complainant has established a prima facie case of its rights in the name/mark **SURYA**, and in view of the Respondent's non-response, despite ample opportunities being provided to them, the Arbitrator finds that Respondent has not established any rights or legitimate interests in the disputed domain name and that the Respondent is not using the disputed domain name for a bonafide offering of services and is not making legitimate non-commercial or fair use of the Complainant's trade mark.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(b) of the .IN Domain Name Dispute Resolution Policy.

**iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(c) and Paragraph 7 of the INDRP)**

Paragraph of the INDRP stipulates the below circumstances which show registration and use of a domain name in bad faith - (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise



transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or (b) 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, provided that the Registrant has engaged in a pattern of such conduct; or (c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

Complainant has submitted that the Respondent has adopted the impugned domain name with a *mala fide* intent to misrepresent itself as the Complainant and pass off its spurious/ sub-standard products and services as that belonging to the Complainant. Further, Complainant has stated that by unauthorizedly adopting the impugned domain <SURYAEC.IN>, the Respondent intends to misappropriate the Complainant's reputation, goodwill and customer loyalty associated with its mark **SURYA** in order to gain wrongful profits.

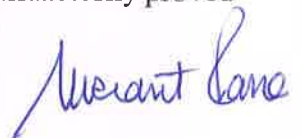
As per the Complainant, such misrepresentation and cheating by the Respondent, pose a grave threat to the life of a consumer and owing to such bad faith on the part of the Respondent, the domain <SURYAEC.IN> should be deleted/ handed over to the Complainant. Complainant has also submitted that the Respondent has evidently adopted and used the domain <SURYAEC.IN> to attract existing and potential customers of the Complainant for commercial gain and to further deceive consumers into believing that the Respondent's products are affiliated to the Complainant when it is not so.

Based on the above, it appears that by registering and using the domain <SURYAEC.IN>, the Respondent has engaged in conduct as enumerated in paragraph 7 (c) of the INDRP, that *it has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.*

Further, the Respondent's use of the disputed domain name has not been defended as having been bona fide and the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use of the disputed domain name.

In light of the above and in the absence of any defense by the Respondent, the Arbitrator finds that the disputed domain name was registered and is being used in bad faith.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(c) and Paragraph 7 of the INDRP.



## **10. Decision**

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has rights over the trade mark name/mark **SURYA**. In light of the non-response by the Respondent, the Complainant has herein been able to prove conclusively that:

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

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain **<SURYAEC.IN>** to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



**Vikrant Rana, Sole Arbitrator**

**Date: January 14, 2021.**

**Place: New Delhi, India.**