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e-Stamp

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Account Reference

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Unique Doc. Reference

: SUBIN-DLDSLHIMP1779398516078960T

Purchased by

: VAKUL SHARMA

Description of Document

: Article 12 Award

Property Description

: Not Applicable

Consideration Price (Rs.)

: 0
(Zero)

First Party

: VAKUL SHARMA

Second Party

: Not Applicable

Stamp Duty Paid By

: VAKUL SHARMA

Stamp Duty Amount(Rs.)

: 100
(One Hundred only)

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ARBITRATION AWARD

INDRP CASE No. 1353

SAFRAN [Complainant] v DING RIGUO [Respondent]**Disputed Domain Name: SAGEMCOM.IN****BEFORE THE SOLE ARBITRATOR: VAKUL SHARMA****DATED: JUNE 30, 2021****Statutory Alert:**

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ARBITRATION AWARD**In the matter of:**

SAFRAN

2 boulevard du Général Martial-
Valin

75015 Paris

FRANCE

[Complainant]

-v-

Ding Riguo

Zhejiang

China

juc@qq.com

[Respondent]**Disputed Domain Name:****www.sagemcom.in****INDRP CASE No. 1353**

1. The Complainant

SAFRAN, registered with the Paris Trade and Companies Register under the number 562 082 909.

2. The Respondent

Respondent [Ding Riguo] in this administrative proceeding is identified by the email address juc@qq.com as given in WHOIS details.

3. The Registrar

The Registrar with which the domain name is registered is: Endurance Domains Technology LLP.

4. Disputed Domain Name

<SAGEMCOM.IN>

5. Jurisdiction

The Complainant by filing the Complaint under the aforesaid INDRP Rules of Procedure [Rules] has accepted the subject matter jurisdiction of the .IN Domain Dispute Resolution Policy - .INDRP [Policy].

In view of the above, this domain name dispute is properly within the scope of the Policy. The registration agreement, pursuant to which the disputed domain name was registered, incorporates the Policy. Disputes between Registrants, as they relate to domain name registrations, are governed by the Policy.



6. Procedural History

- (i) This Arbitration Proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By submitting to the Policy and the Rules, the Complainant agreed to the resolution of the disputes pursuant to the Policy and the Rules.
- (ii) The Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- (iii) I submitted the statement of acceptance on 02/03/2021 and subsequently appointed by NIXI as an Arbitrator in the above matter [INDRP No. 1353] vide email dated March 2, 2021.
- (iv) Complainant submitted a Copy of the Complaint and Annexures to me as well as to the Respondent vide email dated March 2, 2021 from its email ID in accordance with the Rules.
- (v) Complainant has further placed on record vide email dated March 8 2021 has submitted the proof of mailing of hard (paper) copies to the Respondent, however



has affirmed on oath vide email dated March 19, 2021 that the documents have been dispatched to the Respondent and *have not yet received delivery report of the said documents*. The Complainant has further affirmed that the complaint and all the annexures have been sent to email ID: juc@qq.com and subsequently confirmed that *"I did not receive an error email regarding this email address"*.

- (vi) In view of the completion of procedures related to Service of Complaint as mandated under the Rules, I issued a Notice dated 25/03/2021 to the Respondent to submit its reply to the above said complaint within 15 days from the date of the Notice failing which the Complaint shall be decided on merit.
- (vii) Further on account of my hospitalization due to COVID in the month of April - May, parties were duly informed and advised that the proceedings would be initiated only after my complete recovery.
- (viii) I issued another notice dated 31/05/2021 informing the parties that despite the delay, the Respondent has failed to submit any reply and hence *"the Respondent right to file Reply stands closed and the Complaint shall now be decided ex-parte on the basis of the merits of the Complaint."*
- (ix) The Arbitration Award is now pronounced on this day, i.e., June 30, 2021 after considering the contentions of the Complainant and the Policy framework under my signatures. This is an *ex-parte* order as the Respondent has failed to file their Reply despite being given adequate opportunity.



7. Contentions of the Complainant

Complainant submits as follows:

- (i) The company SAFRAN is an international high-technology group, operating in the aviation, defense and space markets. Safran has a global presence, with more than 95,000 employees and sales of 24.9 billion euros in 2019.
- (ii) Safran is, moreover, listed on NYSE Euronext Paris.
- (iii) SAFRAN has been granted a worldwide and exclusive license of the SAGEMCOM trademark and the SAGEMCOM name, as a trade name, corporate name, domain name, or all other distinctive sign identifying the company or its products and services.
- (iv) The term "SAGEMCOM" is not a generic term used in everyday language. Furthermore, as previously stated, SAGEMCOM is subject of several trademark registrations, including European registration and an international registration. SAGEMCOM owns an extensive portfolio of national and international trademarks containing "SAGEMCOM".
- (v) The Complainant is also the owner of 62 domain names composed of the SAGEMCOM trademark.
- (vi) In the context of the above, Complainant in its Complaint has made assertions to establish presence of each of the three elements required by paragraph 4 of the Policy.



I. Whether the domain name is identical and/or confusingly similar to the Complainant's mark 'DELL' ?

- (a) The Complainant submits that the term "SAGEMCOM" is not a generic term used in everyday language. Moreover, SAGEMCOM is subject of several trademark registrations, including European registration and an international registration. SAGEMCOM owns an extensive portfolio of national and international trademarks containing "SAGEMCOM". Reliance is placed on Annexure 9 [sagemcom registration as an international trademark], Annexure 10 [sagemcom registration as European trademark] and Annexure 11 [ownership of 62 domain names composed of sagemcom trademarks].
- (b) It is clear that, by choosing "SAGEMCOM" to compose the domain name <SAGEMCOM.IN>, the Respondent is targeting SAGEMCOM trademark.
- (c) It is used to register domain names composed of the SAGEMCOM trademark, this is particularly the case of with TLDs and ccTLDs. Reliance is placed on Annexures 12 [<sagemcom.com>] Annexure 13 [<sagemcom.us>] and Annexure 14 [sagemcom.fr].



- (d) These domains [referring to Annexures 12-14] are resolving to the website <https://www.sagemcom.com/> used to promote the activity of the French company SAGEMCOM BROADBAND SAS.

II. Whether The Respondent has no rights or legitimate interests in respect of the domain name?

- (a) SAFRAN has never authorized the registrant of the domain name to use the SAGEMCOM trademark in the disputed domain name or neither granted to him any license, franchise or authorization to incorporate the SAGEMCOM trademark in the disputed domain name.
- (b) The Respondent has no prior rights or legitimate interests in the disputed domain name. Registration of the SAGEMCOM European and international trademarks and the domain names and by the Complainant all precede the date of creation of the disputed domain name as per information provided from WHOIS database.
- (c) The Respondent has no legitimate purpose to register the disputed domain names, other than to illegally sell these domain names for commercial gain. Even the Google search of the word 'SAGEMCOM' leads to the links related to 'SAGEMCOM' products and activities.



III. Whether The Respondent registered and/or is using the domain name in bad faith?

- (a) The impugned/disputed domain name <sagemcom.in> resolved to a website <SAGEMCOM.IN> on which it is indicated "This premium domain name is for sale". Reliance is placed on Annexure 6.
- (b) Respondent is seeking USD 9000 for transfer of the impugned/disputed domain name. Reliance is placed on Annexure 15.
- (c) Respondent is therefore seeking, not only to block the Complainant from registering the disputed names, but above all, to make money from SAFRAN trademark, with certainly the wish that the Complainant buys the disputed domain name from him
- (d) Ding Riguo is a habitual offender and has been involved as a Respondent in many domain names disputes wherein he had used the similar modus operandi by registering the confusingly similar domain names incorporating well-known trademarks, and then offering for sale of such disputed domain name in order to earn money. In all these disputes coming under INDRP, the decisions went against him. Reliance is placed on Annexure 18 [INDRP Decision: *American*



Airlines Inc. V Ding Riguo], and Annexure 19 [INDRP Decision: *Societe Anonyme des Galeries Lafayette v Ding Riguo*]

- (e) It is clear that the Respondent has a real pattern of conduct of abusive registrations. He has registered the domain name with the aim of blocking the Complainant from registering the impugned/disputed domain name, and selling it, most certainly to the Complainant, which is, *a priori*, the most likely to be interested in the said disputed domain name.
- (f) The Respondent has registered a number of domain names containing well-known trademarks without explanation, which constitutes a pattern of cybersquatting conduct.
- (g) The Respondent also has no rights conferred on the Complainant's trademark 'sagemcom', which makes the Respondent guilty of trademark infringement for unauthorized use.

8. Respondent's Contentions

Despite giving adequate opportunity, Respondent has failed to submit any Reply.

Vah


9. Discussion and Findings

The Respondent has not filed any Reply to the Complaint. However, the Respondent's default does not automatically result in a decision in favour of the complainant. The Complainant has to still establish each of the three elements required by Paragraph 4 of the Policy:

Under the Paragraph 4 clauses (a) – (c) of the Policy, the Complainant must prove that:

- (a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (c) the Registrant's domain name has been registered or is being used in bad faith.

The Complaint has to be decided on the basis of the provisions of INDRP, pleadings, including documentary evidence presented before me. The Complainant in order to succeed must satisfy the conditions laid down in Paragraph 4, clauses (a) – (c) of the Policy.

I have considered the Complainant's pleadings, documentary evidence and conditions as laid down in the aforesaid Policy. My opinion is as follows:



(a) Whether the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights?

The Complainant has placed on record details of its 'SAGEMCOM' under different classes of International and European trade mark registrations and has submitted screen shots and documentary evidence to highlight the fact that it [SAFRAN] has been granted a worldwide and exclusive license of the 'SAGEMCOM' trademark and the 'SAGEMCOM' name, as a trade name, corporate name, domain name, or all other distinctive sign identifying the company or its products and services. There is no document on record to suggest that the Respondent has ever been given a license, franchise or authorization to incorporate the 'SAGEMCOM' trademark in the disputed domain name: <SAGEMCOM.IN>. To strengthen the arguments, the Complainant has placed on record its portfolio of domain names having the word 'SAGEMCOM' alongwith copies of trademark registration certificates as a *bonafide* proof that its interest in the disputed domain name is legitimate.

I consider that there is a force in the arguments of the Complainant that the words "SAGEMCOM" is legally associated with Complainant's company. Furthermore, the Respondent has failed to observe the legal obligations as laid down in Paragraph 3 [Registrant's Representations] of the INDRP, which provides:



By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;*
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and*
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.*

In my opinion, the Respondent has knowingly registered the Complainant's trademark in the form of an identical name <SAGEMCOM>, which is followed by a *suffix*, .IN [ccTLD] to complete the domain name string <SAGEMCOM.IN>. In fact the Respondent's registration of an identical name <SAGEMCOM> which is a coined word is an attempt on the Respondent to derive substantial benefits from the Respondent. I am inclined to accept the Complainant's argument that the Registrant has registered the domain name with the aim of blocking the Complainant from registering the impugned/disputed domain name, and selling it, most certainly to the Complainant, which is, *a priori*, the most likely to be interested in the said disputed domain name. I am of the opinion that the Complainant by a deliberate design chose to register the disputed domain name which is identical to the Complainant's trademark with the sole purpose of selling. Respondent knew it all along that the disputed domain name being identical to the Complainant's registered trademark would earn him substantial money. His only motive was selling to the highest bidder and for this reason he had listed the disputed domain name at



<sedo.com> for USD 9000. I must place on record the fact that I am accepting the documentary evidence as submitted by the Complainant on Sedo listing and screenshot of <SAGEMCOM.IN> webpage, as the Respondent has failed to deny the said evidence relied upon by the Complainant despite being given ample opportunities. I am of the opinion that the benefit under the circumstances lies with the Complainant. It is thus very clear that the Respondent violated the conditions as laid down in the Paragraph 3(b) – (c) of the policy as mentioned above. In view of the above, the requirement of the Policy as stated in Paragraph 4(a) is satisfied.

(b) Whether the Registrant has no rights or legitimate interests in respect of the domain name?

As discussed above, the Respondent has knowingly registered the Complainant's trademark in the form of an identical name <SAGEMCOM>, which is followed by a suffix, .IN [ccTLD] to complete the domain name string <SAGEMCOM.IN>, this clearly demonstrates lack of legitimate interests on the part of the Respondent to own the domain name <SAGEMCOM.IN>.

Also, Paragraph 6 of the INDRP provides:

6. Registrant's Rights and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4 (b) :

(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;



(b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or

(c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

I have evaluated the evidence on record and came to a conclusion that none of the limbs highlighted in the Paragraph 6 of the Policy above have been present to give the Respondent/Registrant any rights and legitimate interests in the disputed domain name. The screen-shots/webpages [Annexures 6 and 7] as relied on by the Complainant makes it abundantly clear to every internet user that the domain name <SAGEMCOM.IN> a *premium domain name is for sale*. It is to be noted that the Respondent has failed to counter or deny assertion made by the Complainant. I, therefore, found merit in the Complainant's submission that by offering to sell the disputed domain name at <sedo.com> for USD 9000, the Respondent has no legitimate purpose to register the disputed domain names, other than to illegally sell these domain names for commercial gain. Screenshots/webpages as placed on record by the Complainant as Annexures 6-7 and 15] establish the fact that the Respondent actions are neither *bonafide* nor fall in the category of legitimate non-commercial or fair use of domain name. In view of the above, the requirement of the Policy as stated in Paragraph 4(b) is satisfied.



(c) Whether the Registrant's domain name has been registered or is being used in bad faith?

As discussed above, use of the disputed domain name by the Respondent, when it has no legal rights to register the disputed domain name in the absence of any legal arrangement with the Complainant – only proves *malafide* intent on the part of the Respondent.

Further, Paragraph 7 of the policy provides:

7. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the 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 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.



The documentary evidence placed on record by the Complainant clearly shows that the Respondent has indeed taken advantage of the Complainant's goodwill and reputation by registering the disputed domain name <SAGEMCOM.IN> primarily for the purpose of selling. The *malafide* intent is clear from the fact that the said disputed domain name has been referred to as "premium" and being offered for sale by the Respondent. The evidence in the form of screenshots placed on record, which has not been denied/contested by the Respondent shows reckless behaviour on the part of the Respondent. Further, the Complainant has been able to prove that the Registrant, identified as "Ding Riguo" is a habitual offender and a "cybersquatter" and has been involved as a Respondent in many domain names disputes wherein he had used the similar *modus operandi* by registering identical/confusingly similar domain names incorporating well-known trademarks, and then offering for sale of such disputed domain name in order to earn money. In all these disputes filed under INDRP, the decisions went against him. Cases referred by the Respondent *Ben Sherman Group Ltd. v Riguo Ding* [INDRP/168, 18/11/2010] ; *E. REMY MARTIN (REMY CONTREAU) v Nilon Inc., Riguo Ding* [INDRP/186, 11/02/2011]; *Tenaris Connections BV v Riguo Ding* [INDRP/257, 17/11/2011]; *Carl Karcher Enterprises v Ding RiGuo* [INDRP/419, 22/12/2012]; *L'Oreal v Ding RiGuo* [INDRP/437, 22/03/2013]; *CMA CGM v Ding RiGuo* [INDRP/530, 25/10/2013]; *Clarins v Mr. Ding RiGuo* [INDRP/728, 18/11/2015]; *Google Inc. v Ding Riguo* [INDRP/794, 04/06/2016]; *EH Europe GMBH v Ding Riguo*, [INDRP/814, 23/08/2016]; *American Airlines Inc. v Ding RiGuo* [INDRP/967, 16/04/2018]; and *Société Anonyme des Galeries Lafayette v Ding RiGuo*, [INDRP/1083, 05/07/2019] – point out to a distinctive conduct on the part of the Respondent/Registrant, who seems to be a 'serial



cybersquatter' and I am of the opinion that such reckless behaviour/conduct has no space in "domain name ecosystem" and all such actions should never been given any legitimacy.

Accordingly, having regard to the circumstances of this particular case, I hold that the Complainant has been able to prove that the Registrant's registered the disputed domain name in bad faith. In view of the above, the requirement of the Policy as stated in Paragraph 4(c) is satisfied.

10. Decision

For the foregoing reasons, in accordance with the Policy and Rules, I direct NIXI to transfer the disputed domain name <SAGEMCOM.IN> to the Complainant.

There is no order as to costs.

The original copy of the Award is being sent alongwith the records of the proceedings to the National Internet Exchange of India (NIXI) for its record and a copy of the Award are being sent to both the parties thru email for their information and record.


Vakul Sharma

(Sole Arbitrator)



Dated: June 30, 2021