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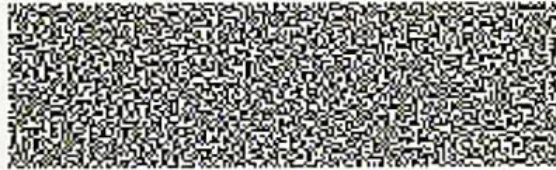
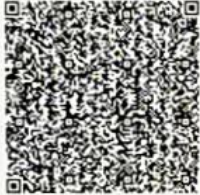
INDIA NON JUDICIAL

Government of Karnataka

Rs. 100

e-Stamp

Certificate No. : IN-KA35809813071305U
Certificate Issued Date : 20-Sep-2022 12:42 PM
Account Reference : NONACC (FI)/ kagcsl08/ Vinayaka Layout/ KA-JY
Unique Doc. Reference : SUBIN-KAKAGCSL0883266339050730U
Purchased by : MARAM SURESH GUPTA
Description of Document : Article 11 Award other than partition Award
Description : ARBITRATION AWARD
Consideration Price (Rs.) : 0
 (Zero)
First Party : MARAM SURESH GUPTA
Second Party : MARAM SURESH GUPTA
Stamp Duty Paid By : MARAM SURESH GUPTA
Stamp Duty Amount(Rs.) : 100
 (One Hundred only)



Please write or type below this line

ARBITRATION AWARD
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
.IN Domain Name Dispute Resolution Policy
INDRP Rules of Procedure

Disputed Domain Name: < benesse.in>
INDRP Case No. 1600
Before the Sole Arbitrator: Mr. Maram Suresh Gupta

ASG

Page 1 of 10

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3. In case of any discrepancy please inform the Competent Authority.

ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

.IN Domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Disputed Domain Name: <benesse.in>

INDRP Case No. 1600

Before the Sole Arbitrator: Mr. Maram Suresh Gupta

IN THE MATTER OF:

Benesse Holdings, Inc.

1-34 Ochiai Tama-Shi

Tokyo 206-0033

JAPAN

.....Complainant

Versus

Ding RiGuo

8F, No.199 Shifu Road

This-domain-may-be-for-sale

Taizhou.

.....Respondent

1. The Parties

- a) The Complainant in the present arbitration proceedings is **BENESSE HOLDINGS, INC.** (hereinafter referred as '**Complainant**'), with its office at 1-34 Ochiai Tama-Shi, Tokyo 20600033, Japan. The Complainant is represented by **Douglas M. Isenberg**, Esq. THE GIGALAW FIRM, DOUGLAS M. ISENBERG, ATTORNEY AT LAW, LLC One Glenlake Parkway Suite 650 Atlanta, Georgia - 30328, USA 1-404-348-0368 (telephone) 1-678-681-9681 (facsimile) Doug@Giga.Law.
- b) The Respondent in the present arbitration proceedings is **Ding RiGuo** (hereinafter referred as '**Respondent**') having postal address: No. 8F, No.199 Shifu Road, This-domain-may-be-for-sale, Taizhou having email id as: juc@qq.com and contact phone



number as (+86)13819669399. These contact details of the Respondent were provided by the Complainant in its amended complaint dated 1st September 2022, wherein they collected the same from .IN registry (*see Annex – 1* (amended)).

2. The Disputed Domain Name and The Registrar

- a) The following information about the disputed domain name and the registrar is as per the information furnished by the Complainant in its complaint and supporting annexures.
- b) The disputed domain name is <**benesse.in**> and was created on 24th September 2011. It was set to expire on 24th September 2022. Based on information from WHOIS database, the registrant client ID is EDTRP-12474101 and registrant ROID is C827859C629F74717B8B0AE41E21E7B22-IN.
- c) The accredited Registrar with whom the disputed domain name was registered is PDR Ltd. d/b/a PublicDomainRegistry.com, Domain Manager, Tel: +1 2013775952
tldadmin@logicboxes.com.

3. Procedural History

- a) The present arbitration proceeding is as per 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”), under the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes according to the Policy and the Rules thereunder.
- b) NIXI vide its email dated 31st August 2022 requested the availability of Mr. Maram Suresh Gupta to act as the Sole Arbitrator in the present matter. In return, on the same day, I have indicated my availability and accordingly submitted the fully signed



Statement of Acceptance and Declaration of Impartiality and Independence, which complied with the .INDRP Rules of Procedure.

- c) Pursuant to the above acceptance and declaration of the Sole Arbitrator, NIXI appointed, vide in its email dated 31st August 2022, Mr. Maram Suresh Gupta as the sole Arbitrator and the same was also intimated to both the Complainant and Respondent (hereinafter '*parties*'). Thereafter, on the same day, 31st August 2022, a notice having directions to both the parties was issued by me. In the said notice, the Complainant was directed to furnish copies of the complaint along with supporting annexures to the Respondent both via email and courier. In addition, the Respondent was also directed to file his response to the complaint within 10 days from the date of the notice. The Complainant was also instructed to furnish confirmation copies of both the means of communication to the Arbitrator with a copy to NIXI. Further, the Complainant was also directed to file the missing parts – power of attorney issued by the Complainant, and amended complaint with name of the Respondent.
- d) The Complainant served copies of the Complaint and its supporting annexures only via email to the Respondent. The confirmation copies of the email sent to the respondent were submitted by the Complainant to the Arbitrator with a copy to NIXI, dated 1st September 2022. Moreover, the legal representative of the Complainant also submitted power of attorney issued by the Complainant. Thereafter, on 1st September 2022, I have also directed the Complainant to file registration certificates of its marks protected in India as the same were missing from originally filed complaint. In response, the Complaint furnished the certificates via email dated 5th September 2022. It is evident that hard copies of the complaint and its copies were not served via courier to the Respondent due to incomplete or inaccurate address found in WHOIS record (*see Annex – 1* (amended)).



e) On 13th September 2022, I informed the Parties that though no Response was received by the Panel from the Respondent within the allotted time, in the interest of justice, I granted an additional time of 5 days and that if no reply is filed by 19th September 2022, the award would be passed on merits. The additional time granted to the Respondent lapsed and no Response was received by the panel. In reality, there has been absolutely no communication from the Respondent till today.

4. Factual Background and Parties Contentions


The Complainant has made the following submissions in support of its complaint against the Respondent. The contentions are detailed as follows:

- a) From **Annexure – 3 and 4** it is evident that the complainant is involved in offering educational services/ courses to school pupil and are based out of Japan. It also has offices/ branches in other countries namely China and India. A perusal of **Annexure 4** details its profile on Reuters.
- b) Similarly, a perusal of **Annexure 2** indicates status report of its registered trademarks bearing numbers 1273051, 1942942, and 2117109. The registration certificates of these marks were provided by the Complainant, dated 5th September 2022, post issuance of directions by the Panel. The marks registered (Table 1) by the Complainant in India are recited below:

Table 1: Registered Trademark of the Complainant

| Sl. No. | Indian TM Application No. | Name of the mark | Class |
|---------|---------------------------|------------------|-------|
| 1 | 1273051 | BENESSE | 41 |
| 2 | 1942942 | BENESSE | 18 |
| 3 | 2117109 | BENESSE | 41 |

Most importantly, the Complainant has also renewed the marks. Further, the Complainant also owns domain names under the mark BENESSE and is associated with active internet presence. A perusal of **Annexures 5 and 6** substantiates the aspects

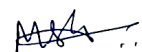


recited in this paragraph and also the aspects pertinent to domain name ownership. Similarly, a perusal of **Annexure 8 and 9** provides insights about various registered trademarks of the Complainant in countries outside India.

- c) The Complainant contends that the disputed domain name (www.benesse.in) subsumes its registered trademark BENESSE thereby amounting to infringement. The Complainant submits here that the disputed domain name was registered by the Respondent in bad faith, as the distinctive and dominant element in the Respondents domain is the word BENESSE and that it even states “This premium domain is for sale!” (*see Annexure – 7*).
- d) The Respondent did not reply to the Complainant’s contentions even after providing a fair opportunity. It is pertinent to reiterate that till today, this Panel has not received any response from the Respondent’s.

5. Discussion and Findings

- a) As per Paragraph 4(i) of the Policy, the Complainant is required to show that it has a right in the trademark which it intends to assert. Based on the documents furnished by the Complainant it is abundantly evident that the trademark BENESSE is registered in India under different classes (*see Table 1*). In addition, the Complainant has never authorized the Respondent in any manner whatsoever to offer the goods for sale under its registered trademark BENESSE. Therefore, from the averments made by the Complainant, it is clear that the Respondent is neither a licensee nor has it otherwise obtained the authorization of any kind whatsoever to use the registered trademark BENESSE. Accordingly, the Respondent does not have any legitimate interest and it appears that the Respondent has registered the disputed domain name only to enrich itself unjustly from such unauthorized adoption and registration.



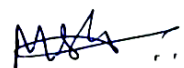
- b) Once the Complainant makes a *prima facie* case showing its legal rights and lack of any kind of rights/ authorizations to the Respondent from the Complainant, the Respondent must come with proof of legitimate interest in the disputed domain name to rebut the presumption. Nonetheless, the Respondent has failed to file any Response till today towards the Complaint. According to Paragraph 8 (b) of the Rules I have given a fair opportunity to the parties to present their case. Though sufficient time (10 days + 5 days) was offered, the Respondent failed to file any response to the Complaint. Accordingly, under Paragraph 12 of the Rules, the proceedings are set to award *ex parte*.
- c) In light of the above circumstances, my decision is based upon the assertions; evidences presented by the Complainant and inferences drawn from the Respondent's failure to file/ submit a Response despite offering sufficient opportunity and time to do so.

6. Issues in the Dispute

The Complainant invoked Paragraph 3 of the Rules to initiate arbitration proceedings by filing a Complaint with NIXI. The Respondent in registering the disputed domain name has submitted to the mandatory arbitration proceedings in terms of Paragraph 4 of the Policy, which determines the essential elements for a domain name dispute, which are as follows:

- Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?
- Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?
- Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

All the above three essential elements are discussed in the following sections:

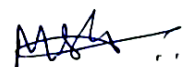


Essential Element No. 1: Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?

The test for confusing similarity involves the comparison between the registered trademark and the disputed domain name. In the present case, the disputed domain name incorporates the Complainant's registered trademark BENESSE in its entirety. In order to assess confusing similarity, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") ".in". In short, the disputed domain is identical to the Complainant's registered trademark BENESSE. In addition, the Complainant has furnished sufficient evidence (registration certificate/ renewal certificate) in support of its registered trademark BENESSE, arising out of its use. Therefore, given the Complaint and its accompanying annexure documents and cited case laws, I am convinced beyond any ambiguity that the disputed domain name is absolutely same/ identical to the Complainant's registered trademark BENESSE. Accordingly, the disputed domain name is identical to Complainant's registered trademark. The complainant has satisfied the first essential element.

Essential Element No. 2: Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?

Firstly, from the submissions of the Complainant it is clear that they have never authorized the Respondent in any fashion or otherwise not licensed to use its registered trademark BENESSE for a domain name registration. Besides, it appears that the Respondent is an individual by the name Ding RiGuo. There is also no evidence to suggest that the Respondent is commonly known by the disputed domain name or that the individual/ Respondent has any rights in BENESSE. In short, the Respondent is not affiliated or related to the Complainant in any way whatsoever.



Secondly, the burden of proof to establish legitimate interest over the disputed domain name lies with the Respondent. However, the Respondent failed to submit a reply to the Complainant within the allotted time. Thus, the Respondent fully and completely failed to establish legitimacy in registering the disputed domain name. Moreover, the Respondent is using the Disputed Domain Name in connection with a website advertising it for sale (see **Annexure – 7**) such usage fails to constitute a bonafide offering of goods or services. Here, the Panel relies on “Singapore Telecommunications Limited v. NA NA, WIPO Case No. D2016-1251 (“advertising the Domain Name as being for sale... is not a bona fide offering of goods or services”); Bharti Airtel Limited v. Milen Radumilo, WIPO Case No. D2015-1948 (“Respondent does not appear to be using the domain name in connection with a bona fide offering of any kind” where “the disputed domain name... is used with a site that offers the domain name for sale”); and Sanofi and Genzyme Corporation v. Wang Xuesong, WIPO Case No. DCC2016-0007 (“the disputed domain name was being used with a website that merely offered the disputed domain name for sale [which]... is not a bona fide offering of goods or services for the purposes of the Policy.”). Accordingly, in light of the Complaint with annexures (particularly, see **Annexure – 7**) and Respondents failure to file reply to the Complaint, I believe that the Respondent does not have a right and legitimate interest.

Essential Element No. 3: Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

The Complainant is the registered owner of BENESSE as an Indian Trade Mark since 2004. In addition, the panel accepts that the Complainant’s mark BENESSE enjoys world-wide reputation and also has wide presence in the internet. At present, due to rapid advancement in information technology services, reputation of marks transcends national borders. In the present case, a simple cursory internet search for the disputed domain name BENESSE would have disclosed its ownership and its use thereof by the Complainant. Accordingly, a strong presumption arises towards the aspect that the



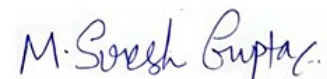
Respondent was very much aware of the existence of the Complainant's mark BENESSE at the time of registering the disputed domain name. Therefore, using the same known and registered mark of the Complainant strongly suggests opportunistic bad faith. The fact that the Respondent has not replied to the Complainant's contentions, further points to bad faith. Lastly, it appears that the Respondent is a serial cyber squatter who has lost numerous decisions under the INDRP, including the following:

- ❖ *CMA CGM v. Ding RiGuo*, NIXI Case No. **INDRP/530** (transfer of <cma-cgm.co.in>)
- ❖ *Clarins v. Ding RiGuo*, NIXI Case No. **INDRP/728** (transfer of <clarins.in>)
- ❖ *Google Inc. v. Ding RiGuo*, NIXI Case No. **INDRP/794** (transfer of <adwords.co.in>)
- ❖ *Societe Anonyme des Galeries Lafayette v Ding RiGuo*, NIXI Case No. **INDRP/1083** (transfer of <galerieslafayette.co.in>)
- ❖ *American Airlines, Inc. v. Ding RiGuo*, NIXI Case No. **INDRP/967** (transfer of <americanairlines.co.in>)

In light of the above, it is evident beyond reasonable doubt that the Respondent has adopted the disputed domain name in bad faith.

7. Decision

The Complainant has succeeded in establishing all the three essential elements of the .INDRP Policy. In light of the above discussions and in accordance with the Policy and Rules, the Panel directs the transfer of disputed domain name <**benesse.in**> to the Complainant with a request to NIXI to monitor the transfer. This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceedings.



Maram Suresh Gupta
Sole Arbitrator

Date: 21st September 2022