

INDRP ARBITRATION CASE No.1647
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : AJAY GUPTA

Z & V

Vs.

Chistovich Vyacheslav

DISPUTED DOMAIN NAME: "ZADIGETVOLTAIRE.IN"



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THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

Z & V
11, Avenue d'Iéna
75116 PARIS
[FRANCE]

... Complainant

VERSUS

CHISTOVICH VYACHESLAV
A-812a, Main Building, Leninskie Go
Moscow 119992
Russian Federation
Phone : (+7)49593912
Email: ruochang@gmail.com

...Respondent

Disputed Domain Name: "ZADIGETVOLTAIRE.IN"



1. The Parties

- 1.1 The **Complainant, Z & V**, in this arbitration proceeding, is a French fashion company and its contact address is 11, Avenue d'Iéna 75116 PARIS [FRANCE].
- 1.2 The Complainant's Authorized Representative in this administrative proceeding is **NAMESHIELD79 rue Desjardins 49100 Angers [FRANCE]**.
- 1.3 In this arbitration proceeding, the Respondent is Chistovich Vyacheslav A-812a, Main Building, Leninskie Go Moscow 119992 Russian Federation Phone: (+7) 49593912 Email : ruochang@gmail.com as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

2. The Domain Name and Registrar

- 2.1 The disputed domain name is "**ZADIGETVOLTAIRE.IN**" and the Registrar with which the disputed domain name is registered is **1APi GmbH**.

3. Procedural History [Arbitration Proceedings]

- 3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes under the .IN Dispute Resolution Policy and Rules framed thereunder.



3.2 The history of this proceeding is as follows :

3.2.1 In accordance with Rules 2(a) and 4(a), NIXI on 04.01.2023 formally notified the Respondent of the complaint along with a copy of the complaint & annexures/documents, and appointed Ajay Gupta as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Resolution Policy and the Rules framed thereunder. That the Arbitrator submitted the Statement of Acceptance & Declaration of Impartiality and Independence dated 05.01.2023 to NIXI.

3.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 05.01.2023 was emailed to the Respondent on 05.01.2023 by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days.

3.2.3 This panel vide its Arbitration Notice dated 05.01.2023 had directed the Respondent to file the reply of complaint, if any, within 10 days of the notice and therefore Respondent was supposed to file the reply of the complaint by 15.01.2023.

3.2.5 However, since the Respondent failed to file the reply of Complaint, if any, within time, i.e., by 15.01.2023 as directed by this panel, this panel again in the interest of justice vide its mail dated 16.01.2023 granted a further period of 05 days i.e. by 20.01.2023 to the Respondent to file the reply of the complaint. The Respondent, despite the receipt of Notice Dated 05.01.2023 and reminder dated



16.01.2023 of this panel neither replied to the Arbitration notice nor filed a reply of complaint; hence, on 21.01.2023 the Respondent was proceeded ex-parte.

4. The Respondent's Default

4.1 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is **"ZADIGETVOLTAIRE.IN"**.

4.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :

"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."

4.3 The Respondent was notified of this administrative proceeding per the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.

4.4 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file a reply of the complaint if any, but the Respondent neither gave any reply to notice nor to the complaint despite repeated opportunities. The 'Rules' paragraph 12 states, "In the event, any party breaches the



provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to the law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite repeated opportunities given in this regard and is proceeded ex parte.

5. Background of the Complainant & its Submissions about the trademark "ZADIG & VOLTAIRE", its statutory and common law rights Adoption :

5.1 The Complainant, in the present arbitration proceedings to support their case, has relied and placed on records documents as Exhibits and made the following submissions:

5.1.1 The Complainant Z&V submits that it is operating under the brand ZADIG & VOLTAIRE and is a French company in the fashion industry, which was established in 1997 by Thierry Gillier, the brand ZADIG & VOLTAIRE stands for ready-to-wear fashion, accessories and perfumes.

5.1.2 The Complainant submits that complainant is the owner of several trademark "ZADIG & VOLTAIRE", such as the Indian trademark ZADIG & VOLTAIRE® n°2790231 registered since August 12th, 2014; the European trademark ZADIG & VOLTAIRE® n°005014171 registered since March 17th, 2006; the international trademark ZADIG & VOLTAIRE® n°907298 registered on September 15th, 2006.

5.1.3 The Complainant further submits that it also owns an important domain names portfolio, including the same distinctive wording ZADIG & VOLTAIRE®, such as the domain name <zadig-et-voltaire.com> registered and used for its official website since May 16th, 2002.



6. Submissions of Complainant about the Respondent and its use of the domain name

6.1 The Complainant submits that the disputed domain name <zadigetvoltaire.in> was registered on November 23rd, 2022 and resolves to a parking page with commercial links. The Complainant further submits that besides this , the domain name is offered for sale for 8500 USD by the Respondent.

7. The issues involved in the dispute

7.1 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

"Types of Disputes

Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the.IN Registry on the following premises:-

The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory/common law rights.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The disputed domain name has been registered or is/ are being used in bad faith."

7.2 The above-mentioned 3 essential elements of a domain name dispute are being discussed hereunder in light of the facts and circumstances of this complaint.

8. Parties' Contentions

The domain name <zadigetvoltaire.in> is confusingly similar to the trademark 'ZADIG & VOLTAIRE in which the Complainant has rights.



9. Complainant

9.1 The Complainant submits that the disputed domain name <zadigetvoltaire.in> is confusingly similar to its trademark ZADIG & VOLTAIRE® and, the disputed domain name incorporates the Complainant's trademark with the substitution of the "&" by its French equivalent "ET". The Complainant contends that it doesn't eliminate the likelihood of confusion with the trademark.

9.2 Furthermore, the Complainant contends that the addition of the ccTLD ".IN" is not sufficient to escape the finding that the domain is identical to its trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

9.2 The Complainant has relied on Case No.INDRP/776, *Amundi Vs. GaoGou <amundi.co.in>* which states (*"The disputed domain name incorporates the trademark "AMUNDI" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark"*)

9.3 The Complainant contends that the disputed domain name <zadigetvoltaire.in> is confusingly similar to its trademarks.

10. Respondent

10.1 The Respondent has not replied to Complainant's contentions.

11. Panel Observations

11.1 This Panel on pursuing the documents and records submitted by Complainant observes that the Complainant is



a French Company dealing in fashion, cosmetic and accessories under the brand name "ZADIG & VOLTAIRE".

11.2 This panel observes that the Complainant has common law as well as statutory rights in its trade mark "ZADIG & VOLTAIRE". It is also observed by this panel that the Complainant has successfully secured registrations of ZADIG & VOLTAIRE for Indian, European and international trademarks. The Complainant has proved that it has trademark rights and other rights in the mark "ZADIG & VOLTAIRE" by submitting substantial documents in support of it.

11.2 It is further observed by this panel that the disputed domain name incorporates the Complainant's trademark with the substitution of the "&" by its French equivalent "ET", and the fact that the Disputed domain "zadigetvoltaire.in" comprises the Complainant's trademarks "ZADIG & VOLTAIRE" in their entirety has the potential to cause consumer confusion and will cause the user to mistakenly believe that it originates from, is associated with or is sponsored by the Complainant. It is further observed by this panel that suffix "in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.

11.3 This panel, therefore, is of opinion that the disputed domain name "zadigetvoltaire.in" being identical/confusingly similar to the trademark of Complainant will mislead the public and will cause an unfair advantage to Respondent. The Panel is of the view that there is a likelihood of confusion between the disputed domain name and the Complainant, its trademark, and the domain names associated. The disputed



domain name registered by the Respondent is confusingly similar to the trademark "ZADIG & VOLTAIRE" of the Complainant.

11.4 It is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner and the Respondent has miserably failed in following this condition.

11.5 This Panel, therefore, in light of the contentions raised by the Complainant concludes that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(a) of the INDR Policy.

12. The Respondent has no rights or legitimate interest in respect of the disputed domain name

12.1 Complainant

12.1.1 The Complainant submits that according to the Case No.INDRP/776, *Amundi Vs. GaoGou*, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

12.1.2 The Complainant submits that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any



business with the Respondent. It is further submitted by the Complainant that neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant.

12.1.3 The complainant submits that disputed domain name points to a parking page with commercial links where the domain name is offered for sale for 8500 USD and the Complainant contends this general offer to sell the disputed domain name evidences the Respondent's lack of rights or legitimate interest.

12.1.4 The Complainant therefore contends that the Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and therefore is not making a legitimate, fair or bona fide use of the domain name.

12.2 Respondent

12.2.1 The Respondent has not replied to Complainant's contentions.

13. Panel Observations

13.1 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

13.2 This panel observes that the Complainant by placing documents/records and evidence along with the complaint has been able to prove that the Complainant is trading and doing its business under the mark 'ZADIG & VOLTAIRE' in



India and other countries. The Complainant by virtue of its priority in adoption, goodwill, and long, continuous and extensive use of the mark, the Complainant has acquired the exclusive right to the use of the 'ZADIG & VOLTAIRE' mark in respect of its products.

13.3 Whereas, it is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant

13.4 It is further observed by this panel that the respondent has also failed to rebut the allegations of the Complainant , that respondent does not carry out any activity for, nor has any business with Complainant. The respondent has further failed to rebut the allegations of the Complainant that neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant.

13.4 The respondent has also failed to rebut the allegations of the Complainant that the disputed domain name points to a parking page with commercial links where the domain name is offered for sale for 8500 USD.

13.5 Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to place any evidence to rebut the allegations of the Complainant.



13.6 It is further observed by this panel that para 6 of the.IN Domain Name Dispute Resolution Policy (INDRP) states :

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 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.

13.7 This panel observes that the Respondent also failed to full fill any of the requirements as mentioned in Para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name.

13.8 For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name **"zadigetvoltaire.in"**.



The domain name <zadigetvoltaire.in> was registered or is being used in bad faith

14. Complainant

14.1 The Complainant submits that the disputed domain name <zadigetvoltaire.in> is confusingly similar to its trademark ZADIG & VOLTAIRE®.

14.2 The Complainant submits that complainant has been using its trademark ZADIG & VOLTAIRE® for many years and, the term "ZADIG ET VOLTAIRE" is only known in relation with the Complainant's products. The Complainant further submits that a Google search on the expression "ZADIG ET VOLTAIRE" displays several results, all of them being related to the Complainant and its cosmetic activities.

14.3 The Complainant submits that given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. The Complainant has relied upon WIPO Case No.D2004-0673, *Ferrari S.P.A Vs. American Entertainment Group Inc. Which states that ("Complainant's trademark is well-known and Respondent undoubtedly knew about it when registering the contested domain name. Said domain name would most likely not have been registered if it were not for Complainant's trademarks.")*.

14.4 The Complainant submits that the disputed domain name resolves to a parking page where it is offered for sale for 8500 USD. The Complainant submits that under paragraph 6(i) of the Policy, it shall be evidence of bad faith

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"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".

14.5 The Complainant on these facts, contends that the Respondent has registered the disputed domain name and is using it in bad faith.

15. Respondent

15.1 The Respondent has not replied to Complainant's contentions.

16. Panel Observation

16.1 Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

"(a) Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for 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 over the Registrar's documented out of pocket costs directly related to the domain name; or

(b) the Respondent has registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or



(c) by using the domain name, the Respondent has intentionally attempted to attract internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its Website or location or a product or services on its website or location."

16.2 This panel while going through the complaint and documents which are placed in the form of annexures has observed that the Respondent registered the disputed domain name in November 2022, by which time the Complainant has been using the mark ZADIG & VOLTAIRE® mark for many years. It is observed by this panel that the Complainant has statutory and common law rights in the mark ZADIG & VOLTAIRE® worldwide including in India and Complainant is also using the ZADIG & VOLTAIRE mark on the internet, in other domain name, and as a trading name prior to registration of disputed domain name. It is observed by this panel that in view of the above-mentioned facts and circumstances, it is impossible to conceive that the Respondent could have registered the disputed domain name in good faith or without knowledge of the Complainant's rights in the mark ZADIG & VOLTAIRE.

16.3 It is further observed by this panel that the Respondent has failed to rebut the allegation of the Complainant, that that the disputed domain name <zadigetvoltaire.in> is confusingly similar to its trademark ZADIG & VOLTAIRE®.

16.4 It is further observed by this panel that the respondent has failed to rebut the allegation of the Complainant, that the term "ZADIG ET VOLTAIRE" is only known in relation with the Complainant's products and its cosmetic activities.



16.5 It is further observed by this panel that the respondent has failed to rebut the allegation of the Complainant, that the disputed domain name resolves to a parking page where it is offered for sale for 8500 USD.

16.6 The Complainant rightly established that the Respondent has registered the disputed domain name in bad faith, and there is evidence that points to the existence of circumstances as mentioned in Clause 7(a) of the INDRP Policy. The Respondent's domain name registration meets the bad faith elements outlined in Para 4 (c) of the INDRP Policy. Therefore the Panel concludes that the registration by Respondent is in bad faith. Consequently, it is established that the disputed domain name was registered in bad faith or used in bad faith and the Respondent has wrongfully acquired/registered the domain name in its favor in bad faith.

17. Remedies Requested

17.1 The Complainant has prayed to this Administrative Panel that the disputed domain <ZADIGETVOLTAIRE.IN> be transferred to the Complainant.

18. Decision

18.1 The following circumstances are material to the issue in the present case :

18.1.1 Through its contentions based on documents/ records and evidence, the Complainant has been able to establish that the mark "ZADIG & VOLTAIRE" is a well-established name in the Fashion industry in many countries including India. The Complainant has established that the ZADIG & VOLTAIRE, is popularly known exclusively concerning the Complainant. The Complainant has also established that the

trademark ZADIG & VOLTAIRE is inherently distinctive of the products, and business of the Complainant and has secured trademark protection for ZADIG & VOLTAIRE by registering trademarks in many countries including India.

18.1.2 The Respondent despite repeated opportunities given, however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.

18.1.3 The Complainant has rather has been able to establish by its contentions and records in the form of exhibits, that the Respondent has registered the disputed domain name <zadigetvoltaire.in> which resolves to a parking page with commercial links and beside this , the disputed domain name is offered for sale. It is therefore established that respondent in order to get monetary gain has registered the disputed domain name, rather than any bona fide offering of goods/ services thereunder, which is evidence of bad faith. This panel while considering the complaint and records in the form of exhibits submitted by the Complainant, has concluded that there exist circumstances as stated in Para 7(a) of INDRP Policy.

18.1.4 Taking into account the nature of the disputed domain name and in particular, the ".in" extension alongside the Complainant's mark which is confusingly similar, which would also inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated



active use of disputed Domain Name by the Respondent is and would be illegitimate.

18.1.5 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third-party rights.

18.1.6 This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. The Respondent's registration and use of the domain name [zadigetvoltaire.in] are in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

RELIEF

Following INDRP Policy and Rules, this Panel directs that the disputed domain name [ZADIGETVOLTAIRE.IN] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India

Dated : 23 January 2023


[AJAY GUPTA]
Sole Arbitrator