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Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
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DEEPALI GUPTA
SOLE ARBITRATOR
.IN Registry - National Internet Exchange of India
INDRP Case No: 1781

In the matter of Arbitration Between:

Société des Produits Nestlé S.A.Complainant
Versus
Ye GenrongRespondent

Disputed Domain Name : <WWW.GARDENOFFLIFE.IN>

**DEEPALI GUPTA
SOLE ARBITRATOR**

Appointed by the .IN Registry - National Internet Exchange of India
INDRP Case No: 1781

In the matter of:

Société des Produits Nestlé S.A.,
1800, Vevey, Switzerland.
Through its Authorised Representative
Manish Kumar Mishra
INTTL ADVOCARE
Express Trade Tower
B-36, Sector – 132
Noida Expressway, Noida - 201303
National Capital Region of Delhi, INDIA
Phone: +91 120 2470200 – 298
Fax: +91 120 2470299
E-mail: manish@inttladvocare.com;
akansha@inttladvocare.com

.....Complainant

Versus

Ye Genrong
Pudong Ave. 2288,
Shanghai,
China
Telephone: (+86)21724511
E-mail: premiumdomains@163.com
(Registrant)

.....Respondent

Disputed Domain Name : < www.gardenoflife.in >

ARBITRATION AWARD

DATED JANUARY 16, 2024.

1) The Parties:

The Complainant in the present arbitration proceedings is Société des Produits Nestlé S.A., 1800, Vevey, Switzerland. The Complainant is represented by its Authorized Representative Manish Kumar Mishra, INTTL ADVOCARE, Express Trade Tower,



B-36, Sector – 132, Noida Expressway, Noida – 201303, National Capital Region of Delhi, INDIA.

The Respondent in the present case is Ye Genrong, Pudong Ave. 2288, Shanghai, China, E-mail: premiumdomains@163.com as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar and Registrant:

The disputed domain name is <www.gardenoflife.in>

The Registrar is: IAPiGmbH

The Registrant is: Ye Genrong, Pudong Ave. 2288, Shanghai, China.

3) Procedural History:

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 pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole Arbitrator to arbitrate the dispute between parties in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on 17th November, 2023.
- Thereafter Notice was issued to the Respondent on 22nd November 2023, at his e.mail address 'premiumdomains@163.com', communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <WWW.GARDENOFLIFE.IN> in its favour. The Respondent was called upon to submit their response within ten (10) days of the receipt of the Arbitrators email i.e. on or before 2nd December 2023.



- The Arbitrator received no response from the respondent within the said timeline and even thereafter. Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) **FACTUAL BACKGROUND:**

The Complainant, 'Société des Produits Nestlé S.A.' is a company incorporated under the Laws of Switzerland and belongs to the Nestlé Group of companies. That the Complainant is the registered owner of the trade marks and designs used by Nestlé around the world. Nestlé was founded in the year 1866 by Henri Nestlé and is today one of the largest food and beverage companies in the world.

Nestlé is engaged in the business of manufacture and sale of an extensive range of foods and other allied products. Its goods are sold and marketed under various internationally famous brands/trade marks including NAN, NESTOGEN, LACTOGEN, NESTUM, KITKAT, MAGGI, NANGROW, NESPRESSO, NESCAFÉ, POLO, MILKMAID, GARDEN OF LIFE etc. All these trade marks have a large international presence and international goodwill. Nestlé's goods and services are available around the world under more than 2000 brands. That the Complainant has been continuously involved in dedicated research and development, including innovation and renovation and is today a world leader in Nutrition, Health and Wellness. Nestlé has evolved stringent norms for manufacturing its high-quality products, which are well-known and have established its niche in the international markets. Nestlé has a significant geographical presence in almost every country of the world

That at present, Nestlé is the legal owner of the trade mark 'GARDEN OF LIFE' That on account of long, open, extensive commercial use of trade mark 'GARDEN OF LIFE' on huge scale, it has acquired tremendous goodwill and reputation in the industry and enjoys the highest degree of distinctiveness. The goods/products bearing the trade mark 'GARDEN OF LIFE' have become extremely popular amongst the consumers at large internationally as well as in India and connotes and denotes the trade origin and the source of goods as originating from Nestlé and its business. The Complainant is the



registered proprietor and user of the trade mark 'GARDEN OF LIFE' in India as well as in several jurisdictions worldwide.

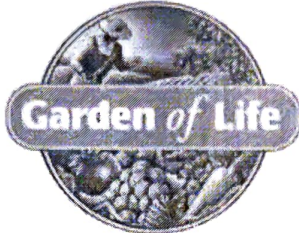
The Complainant also has domain name registrations for various domain names for its trade mark 'GARDEN OF LIFE'. That the trade mark 'GARDEN OF LIFE' is forming part of domain name in almost all countries in the world for carrying on business activities of the Complainant. Considering the extensive use and registrations of the 'GARDEN OF LIFE' trade marks and domain names throughout the world, including in India, the public at large associates the mark GARDEN OF LIFE with the Complainant alone. The Complainant is one of the world leaders in food industries and has been ranked amongst top companies in the "Fortune 500" magazine.

5) Summary of Complainant's contentions:

The Complainant has contended that each of the element in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. It has thus been contended that the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; that the Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and the Registrant's domain name has been registered or is being used in bad faith. The Complainant has in support of its case has made the following submissions:

- (a) The Complainant submits that the Complainant is the registered proprietor and user of the trade mark 'GARDEN OF LIFE' in India as well as in several jurisdictions worldwide. The Complainant has also obtained various registration for its trade mark 'GARDEN OF LIFE' in a number of countries worldwide such as USA, EU, Switzerland, Australia, Korea, Japan, Mexico, Norway, Great Britain and Canada. The Complainant relies on **Annexure – 4 (Colly)** depicting the Illustrative copies of the aforesaid trade mark registrations issued in favour of the Complainant along with international protection list. The Complainant is also the owner of registrations for the trade mark 'GARDEN OF LIFE' in India under the Trade Marks Act, 1999 (**Annexure-5** relied on) as follows:



Trade mark	Reg.no.	Reg.Date	Class	Status & Valid till
GARDEN OF LIFE	4461359	03/03/2020	5	Registered & valid up to 03.03.2030
	4462063	04/03/2020	5	Registered & valid up to 04.03.2030

(b) In addition, the Complainant operates among others the following domain names duly registered in its name reflecting its trademark in order to promote its services (Annexure-6 relied upon):

- www.gardenoflife.com
- www.gardenoflife.co.uk
- www.gardenoflife.net.au
- www.gardenoflifecanada.com
- www.gardenoflifeuk.com
- www.gardenoflife-it.com

Complainant submits that it is evident from the above list of domain names, that the trade mark 'GARDEN OF LIFE' is forming part of domain name in almost all countries in the world for carrying on business activities of the Complainant.

(c) The Complainant has submitted that the disputed domain name/mark "www.gardenoflife.in" is identical or confusingly similar to the trade mark 'GARDEN OF LIFE' in which the Complainant has rights. That the disputed domain name www.gardenoflife.in gives rise to enormous confusion as to its origin because the disputed domain name uses the trade mark 'GARDEN OF LIFE' which is phonetically, visually, and structurally identical to the Complainant's trade mark 'GARDEN OF LIFE'. The Respondent has taken the Complainant's trade mark 'GARDEN OF LIFE' and has merely added ".in" representing the country India which does not make it distinctive.

(d) The Complainant submits that the Complainant has several domain names registered which incorporate the trade name 'GARDEN OF LIFE', as mentioned above.



Further, the disputed domain name will lead to confusion qua the Complainant's mark as search engines are likely to turn up hits for Respondent's website based on searches for GARDEN OF LIFE. The adoption of the disputed domain name which is identical to the Complainant's trade mark 'GARDEN OF LIFE' as well as the Complainant's websites www.gardenoflife.com & www.gardenoflife.co.uk is misappropriation of the Complainant's goodwill and reputation and constitutes acts of misrepresentation to the public at large that the Respondent's disputed domain name is associated with the Complainant, amounting to infringement, passing off, unfair competition, etc.

- (e) The blatantly dishonest and mala fide adoption of the disputed domain name by the Respondent will also inevitably lead to dilution of the inherent distinctiveness associated with the Complainant's well reputed trade mark GARDEN OF LIFE by reducing its capacity to identify and distinguish the services as originating from a particular source.
- (f) Accordingly, the Complainant submits that the disputed domain "www.gardenoflife.in" is liable to be considered identical/similar to the Complainant's trade mark 'GARDEN OF LIFE'.
- (g) The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. Complainant submits that Respondent has registered the same to block the Complainant from asserting its lawful rights and to extort money from the Complainant. The Respondent's registration of the disputed domain name is contrary to the conditions outlined under Para 4 (c) of the Policy and thus clearly shows that the Respondent has no legitimate interests in the disputed domain name but to tarnish the image of the Complainant.
- (h) It is submitted by Complainant that the Respondent's activities also prejudicially affect the Complainant's credibility and its goodwill. A perusal of the disputed domain name will show that the Respondent has registered the disputed domain name in the absence of any business connection, approval or consent from the Complainant. It is amply clear that the present is classic case of cybersquatting while riding upon the goodwill and reputation of the Complainant's well recognised mark 'GARDEN OF LIFE'. Therefore, it is clear that the Respondent has no legitimate interests in the disputed domain name, but has registered it with the intent for wrongful commercial gain and to misleadingly divert consumers who are looking to visit the Complainant's website www.gardenoflife.com.



- (i) Complainant has submitted that the Respondent deliberately chose to use the Complainant's prior registered, well reputed and distinctive 'GARDEN OF LIFE' mark within the disputed domain name with the likely intention of benefitting from the Complainant's worldwide reputation and to confuse Internet users. The registration of the Complainant's marks is prior to the registration of the disputed domain name and the Complainant has not authorized the Respondent to register the disputed domain name. The Respondent very likely knew about the Complainant and its mark, which is distinctive and well-recognized both worldwide and in India. It is thus evident that the Respondent has no legitimate rights or interest in the disputed domain name.
- (j) The Complainant has further submitted that the unlawful use by the respondent of the mark 'GARDEN OF LIFE' within the domain name itself is indicative of bad faith registration. It is submitted that there is actual evidence of bad faith use of the disputed domain on account of the re-direction to the domain name seller's website. Notwithstanding, even if the disputed domain name would not have been used, the same is no obstacle to finding bad faith, especially in the present case of cybersquatting. The Complainant relies on 'Telstra Corporation Limited v. Nuclear Marshmallows', WIPO Case No. D2000-0003, holding that even inactivity or "passive holding" by a Respondent may amount to bad faith use of a domain name.
- (k) Complainant submitted that the act of registration of identical domain immediately after launch of the Complainant's goods in India itself is indicative of bad faith. The Complainant apprehends that the Respondent might transfer or sell the domain name to some competing interest of the Complainant who may further develop the website at the disputed domain name and damage the goodwill and reputation of the Complainant even more by inserting prejudicial material in relation to the Complainant. This may lead to Complainant's mark and brand being completely tarnished and may prevent the Complainant's current and potential customers from availing Complainant's goods.
- (l) The Complainant submits that the possibility of the Respondent to blackmail the Complainant and compel it to buy the disputed domain name for a huge sum of money cannot be ruled out either. That the Respondent's registration and use of the disputed domain name is a clear case of cybersquatting, whose intention is to take advantage of the Complainant's immense reputation and its prominent presence on the internet in order to confuse the public to the detriment of the Complainant.



(m) Thus it is submitted that it is clear that the Respondent's registration of the disputed domain name www.gardenoflife.in is in bad faith, without sufficient cause, and is intended to take advantage of the Complainant's immense reputation and prominent presence on the internet in order to confuse the public to the detriment of the Complainant.

6) RESPONDENT:

The Respondent did not respond in these proceedings although notice was sent to the Respondent under the INDRP Rules.

7) DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or confusingly Similar:

The Disputed Domain Name incorporates the Complainant's 'GARDEN OF LIFE' mark without addition or alteration. The Complainant has submitted that respondent's domain name incorporates the Complainant's 'GARDEN OF LIFE' mark exactly, without addition or alteration.

It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity. Addition of generic terms to a well known trademark does not prevent a finding of confusing similarity between the disputed domain name and mark. It is a well established principal that when a domain name wholly incorporates a complainant's registered mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy. Further it is evident that the disputed domain



name "www.gardenoflife.in" is identical to the Complainant trademark except for the generic term ".in" appended to it. However, such differences can be ignored for the purpose of determining similarity between the disputed domain name and the Complainant's trademark as it is a generic and technical requirement and is non-distinctive and does not prevent a finding of confusing similarity between the disputed domain name and mark.

Further a TLD / ccTLD such as '.in' '.co.in' is an essential part of domain name. Therefore it cannot be said to distinguish the Respondents Domain Name <www.gardenoflife.in> from the Complainants trademark 'GARDEN OF LIFE'.

The Complainant has submitted evidence of its trademark registrations for the "GARDEN OF LIFE" mark in India as also in other Jurisdictions and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use. Further in addition to the above, the Complainant is also the owner of the domain names www.gardenoflife.com, www.gardenoflife.co.uk.

In *Motorola, Inc. vs NewGate Internet, Inc.* (WIPO Case D2000-0079), it was held that use of the trademarks can not only create a likelihood of confusion with the Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also creates dilution of the marks.

It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark.

The disputed domain name is accordingly found to be identical or confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

Rights and Legitimate Interests:

The second element requires the Complainant to put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Although the onus of proving that the Respondent lacks rights or legitimate interests in the disputed domain name



lies on the Complainant, the same may amount to 'proving in negative' hence may not be possible. Hence the Complainant has to make out a prima facie case that the respondent lacks rights or legitimate interests, whereafter, the burden of proof on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and has submitted that the Registrant does not own any registered rights in any trademarks that comprise part or all of the disputed domain name. It is further observed that the trademark 'GARDEN OF LIFE' was already registered in India (03/03/2020) when the Respondent registered the Disputed Domain Name (22/10/2023).

The Complainant states that prima facie, the Registrant has no rights or legitimate interests in respect of the disputed Domain Name. The Complainant has argued that due to extensive use of the 'GARDEN OF LIFE' mark globally and in India, the mark is distinctive and enjoys substantial goodwill, reputation and fame. It is found that the Complainant has acquired rights in the mark 'GARDEN OF LIFE' through use and registration and the Complainant has provided evidence of the mark being distinctive and having a substantial recognition. In the light of these facts and circumstances, it is found that the respondent's use of the 'GARDEN OF LIFE' mark which is distinctive of the Complainant and its products & services, does not constitute legitimate use or fair use of the mark by the Respondent.

It is found that the Complainant has provided evidence of its prior adoption of the 'GARDEN OF LIFE' mark. The Complainant has submitted that the use of the mark by the respondent is likely to mislead people and the respondent lacks rights to use the said trademark in the disputed domain name. The Complainant's submissions that the Respondent's use of mark in the disputed domain name is likely to mislead Internet users is plausible.

Use of the said trademark 'GARDEN OF LIFE' by the Respondent with the intention of attracting customers is likely to cause confusion and deception to those who encounter the disputed domain name. Internet users are likely to believe that the disputed domain name is in some way connected to the Complainant or is endorsed or authorized by the Complainant. Use of a trademark with the intention to derive benefit from the mark and to make improper commercial gains by such use is recognized as infringing use under INDRP Policy. Refer to, *Google LLC V Gurdeep Singh*, INDRP Case No.1184 (<googlepays.in>) where use of



GOOGLE mark in the domain name <googlepays.in> by the respondent in that case was found to lack rights or legitimate interests because the mark was used to attract customers by a respondent who was found to have no connection with the well known mark. The use of the Complainants 'GARDEN OF LIFE' mark by the Respondent, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.

The Respondent has not participated in these proceedings. The Complainant has categorically submitted that it has not consented, authorized or permitted the Respondent for use of the disputed domain name.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4 of the Policy has been met by the Complainant.

Bad faith

The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the 'GARDEN OF LIFE' mark. The trade mark 'GARDEN OF LIFE' was initially conceived and adopted by Garden of Life LLC in the year 2000 which was later acquired by Atrium Innovations in the year 2009. Atrium Innovations has now been acquired by the Complainant in the year 2018. At present, Nestlé is the legal owner of the said trade mark.

The disputed domain name has been registered on 22nd October 2023 whereas the trademark registration of 'GARDEN OF LIFE' mark was obtained by the predecessor of Complainant in United States of America on 29th January 2002 in Class 5 and in various other jurisdictions world wide thereafter. That Complainant is the registered owner of the said trade mark 'GARDEN OF LIFE' in India since March 3, 2020, under Class 5. These facts establish the Complainants prior adoption of the 'GARDEN OF LIFE' mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark in commerce for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value. The evidence filed by the Complainant clearly establishes the international recognition and reputation associated with the 'GARDEN OF LIFE' mark.

Further the evidence placed on record depicts that the Respondent has registered the Disputed Domain Name primarily for the purpose of selling or otherwise transferring the domain name



registration for valuable consideration. The evidence depicts that Respondent is not making any use of the impugned domain at all, and instead has listed it prominently for sale at another website (**Annexure-9**), thereby clearly illustrating their mala fide intentions to reap unjust profits therefrom. This only shows the *mala fide* intention of the Respondent to wrongfully gain monetary benefits at the cost of the goodwill and reputation of the Complainant's trademark 'GARDEN OF LIFE'.

It is observed that such acts constitute misrepresentation. Such acts are not only prejudicial to the rights of the Complainant but also to the members of trade and public. The activities of the Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's well-known and earlier trademark 'GARDEN OF LIFE' to improperly benefit the Respondent financially and are in violation of applicable laws. These activities demonstrate bad faith registration.

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts circumstances and the evidence indicate that the Respondent has used the 'GARDEN OF LIFE' Mark in the disputed domain name to intentionally mislead internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Similarly in the present case it is found that the use of the 'GARDEN OF LIFE' mark by the Respondent is likely to attract customers based on the Complainant's mark and Internet users are likely to be misled by the use of the trademark in the disputed domain name.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

Thus, in view of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.



DECISION

In view of the above findings it is ordered that the disputed domain name <www.gardenoflife.in > be transferred to the Complainant.



Deepali Gupta
Sole Arbitrator
Date: 16th January, 2024.