

**BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR
.IN REGISTRY
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)
INDRP ARBITRATION
INDRP Case No. 1786**

Disputed Domain Name: <SERVIER.CO.IN>

ARBITRATION AWARD

Dated 28.12.2023

IN THE MATTER OF:

LES LABORATOIRES SERVIER

50 rue Carnot

City, State SURESNES CEDEX

France

ZIP / Postal Code 92284

E-mail: juristes@iptwins.com Telephone: +33.142789312 Complainant

Versus

DingDing

Dingcorp

A3, JiaZhaoYe, JiangBei, Huicheng District,

HuiZhou, GuangDong,

China

City: HuiZhou

State / Province: California

Postal Code: 516000

Country: US

Phone: 86.17172121

Email: chromebooks@hotmail.com

Respondent

1. The Parties As stated in the Complaint , The Complainant in this

Complaint is LES LABORATOIRES SERVIER, 50 rue Carnot

Alok Kumar Jain

,SURESNES CEDE, France, ZIP / Postal Code: 92284 Telephone: +33.142789312. The Authorized representative of the Complainant in this Complaint is IP Twins, 78 rue de Turbigo, Paris, France-75003, Telephone: +33.142789312, E-mail: juristes@iptwins.com

- 1.1 Respondent in these proceedings i.e., the Registrant of the disputed domain <servier.co.in>, is DingDong Having contact details as under:

Dingcorp

chromebooks@hotmail.com), A3, JiaZhaoYe, JiangBei, Huicheng District, HuiZhou, Guangdong, China, City: HuiZhou State / Province: California Postal Code: 516000 Country: US, Phone: 86.17172121, Email: chromebooks@hotmail.com

2 **Domain Name and Registrar:-**

- 2.1 The disputed domain name is servier.co.in, registered on 17th of August 2023 with Dynadot LLC, IANA ID: 472 (Annex 4). The abuse contact email for the Registrar is abuse@dynadot.com.

3 **Procedure History**

- 3.1. 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 in accordance with 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 pursuant to the said Policy and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:

- 3.2. The Complaint was filed by the Complainant with NIXI against the Respondent .On 4.12.2023 I was appointed as Sole Arbitrator to decide the disputes between the parties. I submitted statement of Acceptance and Declaration of Impartiality and Independence as required by rules to ensure compliance with Paragraph 6 of the Rules. NIXI notified the Parties of my appointment as Arbitrator via email dated 4.12.2023 and served by email an electronic Copy of the Complainant with Annexures on the Respondent at the email addresses of the Respondent.
- 3.3. I issued notice to the parties via email dated 4.12.2023 directing the Complainant to serve complete set of Complaint on the Respondent in soft copies as well as in physical via courier /Post. The Respondent was directed to file its response within 10 days from the date of notice. No response was received from the Respondent within 10 days or thereafter till 24.12.2023. On 24.12.23 I intimated the parties that now the matter will be decided on its own

merit. Accordingly now the complaint is being decided on merit. No personal hearing was requested by any parties.

3.4 A Complete set of Complaint was served by NIXI in electronic form by email to the Respondent on 4.12.2023 at the email provided by the Respondent with WHOIS, while informing the parties about my appointment as Arbitrator. Thereafter notice was sent vide same trailing email. All communications were sent to Complainant, Respondent and NIXI by the Tribunal vide emails. None of the emails so sent have been returned so far. Therefore I hold that there is sufficient service on the Respondent through email as per INDRP rules. The Respondent has not filed any response to the Complaint.

3.5. Clause 8(b) of the INDRP Rules requires that the Arbitrator shall at all times treat the Parties with equality and provide each one of them with a fair opportunity to present their case.

3.6. Clause 12 of INDRP Rules provides that in 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 law.

Alok Kumar Jain

3.7 As stated above, the Respondent failed to file any Response to the Complaint despite opportunities and chose not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend itself.

3.8 Further Clause 13(a) of the Rules provides that an Arbitrator shall decide a Complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the Arbitrator deems to be applicable, as amended from time to time.

In these circumstances the Tribunal proceeds to decide the complaint on merit in accordance with said Act, Policy and Rules on Respondent's failure to submit a response despite having been given sufficient opportunity and time to do so.

Discussions and findings:

The Complainant has invoked Clause 4 of the Policy to initiate the Arbitration Proceeding.

Clause 4 of the INDRP Policy provides as under:

4. Class of disputes:

Alok Kumar Jain

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

(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; and

(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.

Therefore in order to succeed in the Complaint, the Complainant has to satisfy inter alia all the three conditions provided in clauses 4(a),4(b) and 4(c) quoted above.

4.1 Condition 4(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;

I have gone through the complaint and perused all the documents annexed with the Complaint.

As per averments made in the Complaint, The Complaint is based on the following Trademarks registrations:

- **EU trademark SERVIER n° 004279171, dated February 7, 2005, duly renewed and designating goods and services in international classes 05, 35, 41 42 and 44 (Annex 5)**

- **International trademark SERVIER** n° 814214, dated August 5, 2003, duly renewed, and designating goods and services in international classes 05, 35, 41, 42 et 44 (Annex 6)
- **International trademark SERVIER** (device) n° 571972, dated May 29, 1991, duly renewed and designating goods in international classes 01, 03 and 05 (Annex 7);
- **International trademark SERVIER** (device) n° 549079, dated January 19, 1990, duly renewed and designating goods and services in international classes 01, 03, 05, 10, 16, 35, 41 and 42 (Annex 8),
- **Indian trademark SERVIER** n°1263241, dated January 27, 2004 and designating goods and services in international class 05, 35, 41 and 42 (Annex 9).

It is evident that the Complainant has been continuously and extensively using the registered trademark **SERVIER** in commerce since its adoption in 1990 – and thus its rights in the **SERVIER** Marks are well established. Moreover, since the Disputed Domain Name has only been registered in the year 2023, it is much later to the Complainant's statutory rights in the **SERVIER** Marks.

It is evident from above and documents annexed with the complaint that the complainant has sufficiently established its rights in and to the ownership of the **SERVIER** Trademarks.

A mere perusal of the disputed domain name '**SERVIER.CO.IN**' of the Registrant/Respondent shows that the Respondent has used the Complainant's trading mark

'SERVIER' in its entirety. The disputed domain name third level 'SERVIER' is identical to the 'SERVIER' trade marks of the Complainant. It is well established that the addition of a SLD such as "co.in" is not significant in determining whether the disputed domain name is identical or confusingly similar to the mark.

It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*. Further, a TLD/ccTLD such as ".in" is an essential part of domain name. Therefore, it cannot be said to distinguish the Respondent's domain name <SERVIER.CO.IN> from the Complainant's trademark **SERVIER**. This has been held by prior panels in numerous cases, for instance in *Dell Inc. v. Mani, Soniya INDRP/753*. In *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "**AMERICAN EAGLE**", having been created by the Complainant much before the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that,

"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon 'ble

Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant. ”

The Complainant has acquired rights in the trade mark **SERVIER** by way of trademark registrations, and by virtue of use as part of their company since much prior to the date on which the Respondent created the impugned domain <**SERVIER.CO.IN**> incorporating the Complainant's identical company name, trade mark and trade name **SERVIER** in toto.

The Respondent has not filed any response to the complaint as such all the averments of the complainant has remained unrebutted.

In view of the above facts and submissions of the complainant, and on perusal of the documents annexed with the Complaint, I hold that the Disputed Domain Name <**SERVIER.CO.IN**> of the Registrant is identical and or confusingly similar to the trademark **SERVIER** of the Complainant.

Alok Kumar Jain

4.2 **Condition no.4 (b) the Registrant has no rights or legitimate Interest**

The Complainant stated in the Complaint that the Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name as the Respondent is not commonly known by the disputed domain name, which redirect towards a parking page and is offered for sale (see Annex 13). The Respondent cannot claim to have been legitimately known under the name SERVIER. Further the Complainant verifications did not allow to find any clue of preparation to use the disputed domain name in connection with a bona fide offering of goods or services, as it redirects towards parking page and is offered for sale (see Annex 13). It is further stated that the Respondent has never been granted authorization, license or any right whatsoever to use the trademark of the Complainant. The Respondent is not commercially linked to the Complainant. The adoption and extensive use by the Complainant of the trademarks SERVIER predate the registration of the disputed domain name by the Respondent, the burden is on the Respondent to establish rights or legitimate interests it may have or have had in the domain name. And the Respondent has failed to prove the circumstances referred to in Clause 6 .

Alok Kumar Jain

The Complainant has established its rights in the trade mark **SERVIER**. The mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. In *Deutsche Telekom AG v. Phonotic Ltd.* (WIPO Case No. D2005-1000), it has been held that “*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*”. Therefore, any use of the Disputed Domain Name by the Respondent is not a legitimate noncommercial or fair use of, and it has no rights or legitimate interests in, the Disputed Domain Name.

The inclusion of the well-known mark ‘**SERVIER**’ in the Disputed Domain Name reflects the malafide intention of the Respondent to use the Dispute Domain Name for earning profits. Such a conduct demonstrates anything but a legitimate interest in the domain name. **The Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516** wherein it was held “*It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii) when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark*”.

The Respondent has not filed any response as such the facts stated in the complaint had remained unrebutted. Further the

Respondent has failed to satisfy the conditions contained in clause 6(a),(b) and 6(c) of INDRP Policy.

On the contrary it is evident that the Registrant has no rights or legitimate interest in respect of the Disputed Domain Name and has never been identified with the Disputed Domain Name or any variation thereof. The Registrant's use of the Disputed Domain Name will inevitably create a false association and affiliation with Complainant and its well-known trade mark **SERVIER**.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the Respondent has no rights or legitimate interests in respect of the domain name;

Accordingly I hold that the Registrant has no rights or legitimate interests in respect of the Disputed Domain Name.

4.3 Condition 4(C):the Registrant's domain name has been registered or is being used in bad faith

Clause 7 of INDRP Policy provides as under:

Clause 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 Complainant is vested with worldwide statutory rights in its **SERVIER** Marks earliest registration being in the year 1990 in multiple classes. The Respondent's registration of a Disputed Domain Name wholly incorporating the Complainant's well-known house mark is of concern due to the

grave likelihood of creating confusion in the minds of the public.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith, for the following reasons.

Firstly, the Complainant states that the Servier Group is so widely well-known (Annexes 10, 11 and 14) that it is very unlikely that the Respondent ignored the rights of the Complainant on the trademarks SERVIER.

Secondly, "Servier" is the surname of the founder of the Complainant and an arbitrary, fanciful term, devoid of any meaning in any dictionary except the German dictionary ("servier" is translated in "serve"), which should not be considered as relevant in this case. To the best of the Complainant's knowledge. The combination of the distinctiveness of the Complainant's trademark and its extensive use across the world makes it highly unlikely that the Respondent did not know about the Complainant before the registration of the disputed domain name. The Complainant contends that the Respondent cannot claim to have registered the disputed domain name due to a dictionary meaning or a supposed value as generic term or expression.

Considering the fancifulness of "servier" in the English dictionary (The Respondent is based in the USA, see Annex 4)

and its intensive use (Annexes 10, 11 and 14), the Complainant contends that there is no way the registration of the disputed domain name is a mere coincidence. On the contrary, the Complainant strongly believes that the disputed domain name has been registered with the Complainant's trademark in mind.

Thirdly, the Complainant performed a reverse-whois search on the Respondent email address and found that the Respondent email address is or has been associated to multiple domain names identical to famous Trademarks. See Annex 17. The Respondent has been involved in at least one INDRP complaint involving a third-party trademark. See Annex 18.

The Complainant contends that these findings indicate a pattern of conduct from the Respondent consisting in the registration of domain names containing third-party trademarks. This is another indication of the bad faith of the Respondent in the Registration of servier.co.in. The Complainant adds that the Respondent indicates being from the USA on the WHOIS, while also indicating a postal address located in China (Annex 4bis). This behavior indicates bad faith as the Respondent seems to cover his tracks by indicating bogus information on the WHOIS.

Fourthly, The Complainant contends that the disputed domain name is also being used in bad faith. The disputed domain name is offered for sale (Annex 13). While the sale of domain

names is not *per se* an indication of bad faith, it is well established that offering a domain name identical to a distinctive, intensively used trademark such as **SERVIER** for sale directly fall within the example of evidence of bad faith described by Paragraph 7(a) of the Policy (Annex 2).

The Complainant further adds that the Respondent is also attempting to generate commercial gains by associating the disputed domain name to a parking page displaying Pay-per-click commercial links. This is yet another evidence of a bad faith use in the presence of a trademark such as **SERVIER**. See Policy paragraph 7(c) (Annex 2). Thus Considering all the elements above, namely: the reputation of the Complainant, its intensive use, the distinctiveness of the trademark **SERVIER** and the pattern of registration demonstrated by the Respondent, the Complainant contends that the disputed domain name was registered and is being used in bad faith by the Respondent. The Disputed Domain Name was adopted/ registered by the Respondent in the year 2023 which is much subsequent to the Complainant's adoption and use of the **SERVIER** Marks and despite being aware of the Complainant's well-known trade mark and trade name and the goodwill attached to the same. Such conduct of the Respondent clearly reflects its dishonesty and shows the mala-fide intention of the Respondent. Registration of a domain name containing a well-known mark is strong evidence of bad faith.

Therefore from perusal of documents annexed with the complaint and the averments made in the complaint it is clear that the Respondent got the Disputed Domain Name registered in bad faith and in contravention of Paragraph 4(iii) of the Policy.

In this regard the decision of prior Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* can be referred wherein it was stated that:

“The choice of the domain name does not appear to be a mere coincidence, hut a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration. ”

The Respondent had no reason to adopt an identical name/mark with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

In view of above facts, submissions of the Complainant and on perusal of the documents annexed with the Complaint ,I find that the Complaint has proved the circumstances referred

in Clause 7(a)(b) and (c) of INDRP policy and has established that the registration of disputed domain name is in bad faith.

Accordingly I hold that the Registrant's Domain Name has been registered in bad faith.

Decision

In view of the foregoing, I hold that the Disputed Domain Name is identical and or confusingly similar to the Complainant's well-known 'SERVIER' Trademarks and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith.

In accordance with the INDRP Policy and Rules, I direct that the Disputed Domain Name registration be transferred to the Complainant.

Delhi
Dated 28.12.2023

Alok Kumar Jain
Alok Kumar Jain
Sole Arbitrator