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N 836044

**BEFORE THE SOLE ARBITRATOR UNDER THE
.IN DISPUTE RESOLUTION POLICY**

IN THE MATTER OF

Double Eagle Brands NV,
Kaya W.F.G Mensing 32,
Willemstad, Curacao,
(Formerly part of Netherlands Antilles).

... The Complainant

Vs.

Mr. Steely Black,
Domains Masters,
3Z, Jiangsu,
China.

... The Respondent

THE PARTIES

The complainant in the present proceeding is Double Eagle Brands NV, Kaya W.F.G Mensing 32, Willemstad, Curacao, (Formerly part of Netherlands Antilles).

The complainant in these proceedings is represented through its authorised representative, DePenning & DePenning. Patents Trademark Designs Copyright, 120 Velachery Main Road, Guindy, Chennai - 600032, India.

The respondent in this proceeding is Mr. Steely Black. Domains Masters, SZ, Jiangsu, China (according to Whois database).

THE DOMAIN NAME, REGISTRAR AND REGISTRANT

The Domain Name in dispute is KETELONE.CO.IN. The Registrar is A to Z Domains Solutions Pvt. Ltd. The Registrant is Mr. Steely Black, Domains Masters, SZ, Jiangsu, China.

PROCEDURAL HISTORY:

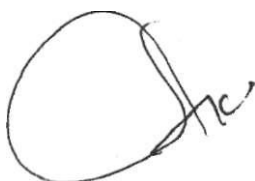
I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name KETELONE.CO.IN.

In Registry has supplied the copy of the Complaint and Annexures to me.

On 23.02.2011, I sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 23.02.2011, I sent an email to Complainant requesting them to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 23.02.2011 with the instructions to file his say latest by 10.03.2011.

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On 23.02.2011, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. According to this mail copy of the complaint was duly sent to the postal address of the Respondent which was returned as the address of the Respondent was bogus.

On 08.03.2011, in the **interest of** justice the **Counsels/**Representative of the Complainant or the Complainant itself was directed to serve the copy of the complaint to the Respondent via an email also and supply the proof for the same.

Thereafter in the interest of justice and fairness, on 11.03.2011, a reminder was sent to the Counsel of the Complainant to submit the proof of serving of copy of complaint to the Respondent via an email.

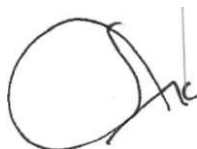
On 11.03.2011, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant via an email which was returned back due to not enough space provided in the inbox of the Respondent.

On 17.03.2011, the Respondent was directed by the Tribunal to respond or communicate any address within 15 days, latest by 31.03.2011, as to where the copy of the complaint can be served , else the Tribunal shall pass an exparte decree against the Respondent considering the present facts and circumstances of the matter.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and Annexures / document.

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FACTUAL BACKGROUND:

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

The Complainant in the proceedings is Double Eagle Brands N.V dealing in the business of providing alcoholic beverages worldwide. The Complainant manufactures and markets various alcoholic beverages and one brand being premium Vodka under the name of Ketel One.

The Complainant is a registered proprietor of various trademarks with the term "KETEL ONE" in various countries including India since 1983, a list of which is provided by the Complainant.

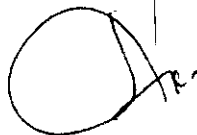
The complainant has acquired worldwide public recognition and goodwill in connection with alcoholic beverages.

The Complainant promotes goods online, using the Internet and worldwide web through their well known domain name "ww.ketelone.com" which was registered on 29.7.1997 and as well as through various other country level domains (ccTLD)s.

The Complainant owns the intellectual property of all the worldwide trademark applications and registrations and domain name registrations of the brand name "KETEL ONE".

In 2005 only, 17.9 million USD approximately were spent on advertising for the KETEL ONE trademark in United States of America. These products also are the 8th largest selling brand of Vodkas in USA.

The Complainant has also claimed that search on internet shows that KETEL ONE words take us to their website www.ketelone.com. It also tops the rankings with these words on making search and there are around 1, 33,000 hits on average daily.



The Complainant asserts that the term "KETEL ONE" has no descriptive meaning in the English language and was created by the Complainant for use in connection with their products.

The Respondent's domain name "KETELONE.CO.IN" was registered on 28.09.2010 by Mr. Steely Black which is identical to the said mark "KETEL ONE" and domain name "KETELONE.COM" in which the Complainant has rights on account of prior registrations and use all over the world.

To resolve the dispute, the Complainant contacted the Respondent through its legal adviser, where the Respondent offered his domain name for sale initially for EUR 3000, then EUR 1500 and lastly for \$ 5000 USD. But the Complainant refused this offer because this domain name is identical to its brand name "KETEL ONE" and this offer is far in excess than the pocket expense for registering the disputed domain name.

This act of the Respondent establishes malafide intention of his part to merely ride on the goodwill associated with the Complainant.

Hence the present complaint is made.

PARTIES CONTENTIONS:

Complainant

The Complainant contends as follows:

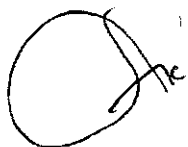
The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.

The Respondent has no rights and legitimate interest in respect of the domain name.

The Respondent has registered and is using his domain name in bad faith.

Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.



DISCUSSIONS AND FINDINGS:

As earlier pointed out; the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"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"*.

As mentioned above fair opportunity has been given to the Respondent to file the reply but no response has been received from his side. Therefore, the Arbitration proceedings have been conducted ex parte.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable"*

In the present circumstances, the decision of the Arbitrator is based upon the Complainant contentions and evidence and conclusion drawn from the Respondent's failure to reply. Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark "KETEL ONE".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

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



BASIS OF FINDINGS:

The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant contends in the complaint that the domain name of the respondent i.e. <ketelone.co.in> is identical and confusingly similar to KETEL ONE, its trademark and its domain names associated like <ketelone.com>.

It is further stated that the complainant is the registered proprietor of the "KETEL ONE" trademark in numerous countries in the world including INDIA and has gained significant reputation and its mark can be termed as a well known brand. The complainant is also the registrant and proprietor of various Domain name registration at International and domestic level.

Thus the Complainant has the right over the name "KETEL ONE" and Respondents domain is also confusingly similar to it. In support of this, the judgment of Monster.com (India) Pvt. Ltd. v. Domain Leasing Company, INDRP/002 (May 20, 2006) has been relied upon .

The Complainant has further contended that merely by creating a domain name with "CO.IN" is not sufficient to make the domain name distinct and hence the disputed domain name is confusingly similar to the Complainant's domain name.

The judgment of Lego juris A/S v. Robin Martin, INDRP/118 (February 14, 2010) has been relied upon in support of the above submission that the addition of country code ("CTLD") in the domain name is not sufficient to distinguish from the mark and does not change the overall impression of the designation as being connected to a trademark of the Complainant.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.



The Registrant has no rights or legitimate interests in the respect of the domain name

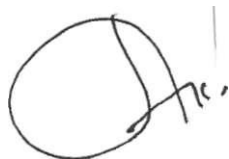
According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i) *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;*
- ii) *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*
- iii) *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.*

- a. While considering paragraph 7 (i) of the .IN Dispute Resolution Policy, "*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 bonafide offering of goods or services* ", the Complainant has contended that Respondent has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it.

See: *Madonna Ciccone v. Dan Parisi*, ICANN Case No.D2000-0847,in which it was held that a use which intentionally trades on the fame of another cannot constitute a 'bona fide' offering of goods or services

Whereas it also clear that once a Complainant makes a prima facie case, then the burden shifts to the Respondent to establish rights or legitimate interests in the disputed domain name. The above point has been discussed in the judgment of

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Croatia Airlines d.d. v. Modern Empire Internet Ltd, WIPO case No. D2003-0455, where it was held that 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, respondent carries the burden of proving rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4 (a) (ii) of UDRP.

- b. While considering paragraph 7 (ii) of the .IN Dispute Resolution Policy, "*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*", the Complainant has stated that Respondent is neither commonly known by the disputed name, nor it is a personal name.

The Complainant has further contended that Respondent is not engaged in any business or commerce under the domain name. For this submission the judgment of Morgan Stanley v. Keep Guessing, INDRP/024 (June 27, 2007), has been relied upon, where it was held that Respondent has failed to show that he has a right or legitimate interest in the domain name, as he is neither known by the domain name, nor is it his personal name.

- c. While considering paragraph 7 (ii) of the .IN Dispute Resolution Policy, "*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*", the Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name.

According to Complainant, disputed domain name has been only adopted by the Respondent for commercial gain. The sole purpose of the Respondent is to divert Internet users to its web site. The judgment of Accor v. Tang Wei, INDRP/127 (February 24, 2010) has been relied upon to prove the above contentions.

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The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

The Registrant domain name has been registered or is being used in bad faith

The Complainant alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website of the Complainant and also to deceive the consumers into believing that there is a connection or association between the Complainant and Respondents website.

The judgments of Luxottica Holding Corp. V. Lokesh Morade, INDRP/139 (April 28, 2010) and Expedia Inc v. European Travel Network Case No. D2000-0137 WIPO Arbitration and Mediation Centre have been relied upon to prove the above mentioned contentions.

The Complainant also alleges that the Respondent has registered the domain name only with the intention and purpose of sale and has refused to demands of the Respondent made in lieu of domain name in question. In support of this contention the judgment of Adidas-Saloman AG V. Vincent Stipo. WIPO Case No.D2001-0372, has' been relied upon, where it was held that, registering a domain name for the primary purpose of offering to sale, rent, or otherwise transfer the domain name for an amount in excess of the registration cost is evidence that a domain name was registered in a bad faith.

Another judgment of Ferrari S.P.A V. American Entertainment Group Inc., WIPO Case No. D2004- 0673. was referred to prove this contention.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).



DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint. In the facts and circumstances of the case it can be presumed that only purpose for the registration of the disputed domain name was to capitalized on the fame and reputation of Complainant and to make monetary benefit.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <ketelone.co.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 8th day of April, 2011.

A handwritten signature in black ink, appearing to read 'Ashok Kumar Singh', is written over a vertical line that runs through the center of the page.

Ashok Kumar Singh

Sole Arbitrator

Date: 8th April, 2011