

दिल्ली DELHI

AA 667280

ARBITRATION CASE NO. 1 OF 2012

IN THE ARBITRATION MATTER OF:-

Merck KGaA

COMPLAINANT

VERSUS

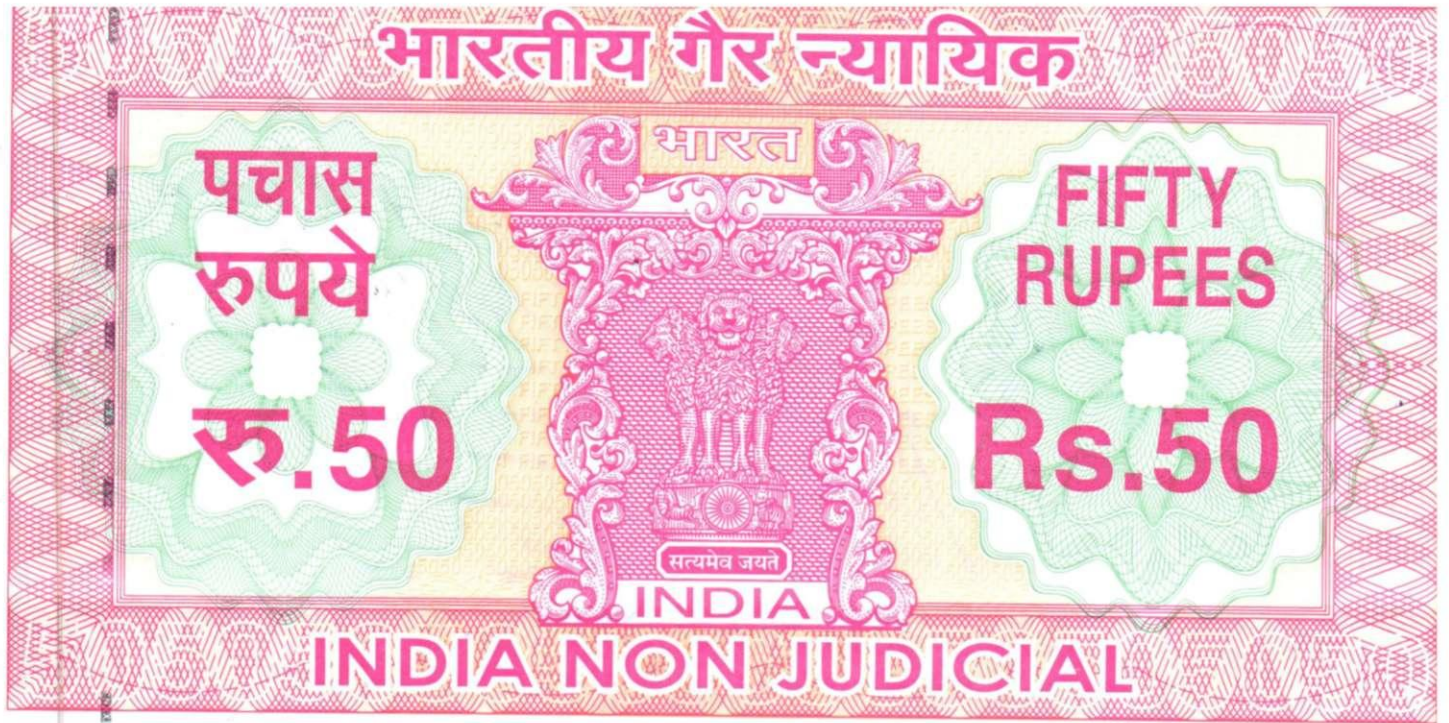
Guan Rui

RESPONDENT

AWARD

The present dispute relates to the registration of the domain name www.merckserono.co.in in favour of the Respondent.

The Complainant has filed the instant complaint challenging the registration of the domain name [<www.merckserono.co.in>](http://www.merckserono.co.in) in favour of the Respondent. The complainant has stated that it was formerly known as E. Merck and is a well known, reputed and established pharmaceutical company since over 300 years in Germany, trading in the name and style of MERCK. It has stated that it is the registered



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proprietor of the trade mark MERCK vide registration Nos. 1045475 in Class 9, 1045471 in Class 1 and 1046192 in Class 5, which have been registered in India. The copies of which have been filed alongwith this complaint. The Complainant has further stated it has started in operations in India since the year 1967 through its Indian subsidiary company Merck Ltd. and is still continuing till date.

In addition to Indian operations, the complainant in its complaint has also stated about its operations outside India, in various countries. The copies of registration certificates concerning its trade mark MERCK have also been filed in this complaint. The details and figures of sales conducted by the complainant for the years 2008, 2009 and 2010 have been placed on record.

The complainant has contended that the Respondent is allegedly an individual residing in China and has no right or interest in respect of the disputed domain name. Therefore in accordance with the provisions of Paragraph 3 (b) (VI), the Respondent has given an incorrect representation.

I entered upon reference regarding the instant dispute on 27th January 2012 however due certain reason the matter could not proceed and again a notice was sent to the

Respondent on 1st March 2012 calling upon for their response to the said complaint. However, after granting considerable time to the Respondent, there has been no response. Accordingly, the Respondent is proceeded ex-parte.

On consideration of entire complaint as well as the documents filed along with it, I am of the view that the complainant who has established proprietary right over the mark **MERCK** by showing its registration in various countries as well as in India. The business of complainant in field of pharmaceutical preparations and products has been shown by the complainant and has been proved by evidences in support of it.

Furthermore, the complainant has been able to show it is the sole and exclusive proprietor of its trade mark MERCK, for which it has placed decisions rendered by WIPO, protecting the said trade mark in its favour. Also it has 1087 registered domain names in various countries, again for which it is placed all list of documents to support its stand. Therefore, in view of such facts the complainant has established the right, title and interest over the mark **MERCK**.

The complainant's grievance is that the Respondent has registered the domain name <www.merckserono.co.in> in bad faith. It has contended that the use of the instant domain name by the respondent is not bonafide for the reason that the Respondent is an individual and has no right or legitimate interest in respect of the disputed domain name and that the Respondent has no reason to adopt the disputed domain name as the mark MERCK does not in any way connect to him. I find the contention of the complainant quite valid and with substance. Eventhough the Respondent has not entered his appearance and defended the claims of the complainant, but I find it hard to believe that the Respondent has a legitimate right or claim in using the disputed domain name. The only intention use of domain name was probably to sell or to benefit commercially.

Considering such facts and circumstances I am of the view that the complainant as a proprietary right over the mark **MERCK** and therefore, I deem it fit and proper to allow the prayer (b) of the complainant in its favour and direct the



registry to transfer the said domain name i.e. <www.merckserono.co.in> in favour of the complainant.

Parties to bear their costs.



(NIKILESH RAMACHANDRAN)

ARBITRATOR

Dated 31st March 2012.