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K. SANKAR (S.V.)
L. No: 1481/04
Nagar, Chennai-17

BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: November 10, 2016

Pentair Inc.

5500 Wayzata Blvd,

Suite 800, Golden Valley,

MN 55416 U.S.A.

COMPLAINANT

VERSUS

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Bai Xiqing

Bao Shan Qu

Shanghai

RESPONDENT/REGISTRANT

DISPUTED DOMAIN NAME: "PENTAIR.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is represented by Mr. Vinod Khurana, Khurana & Khurana, Advocates and IP Attorneys, Noida.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Bai Xiqing.

2. **The Dispute:** The domain name in dispute is PENTAIR.IN. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is GoDaddy.com, LLC (R101-AFIN)

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	26.09.2016
2.	Date on which consent was given to act as an Arbitrator	26.09.2016
3.	Date of appointment of Arbitrator	30.09.2016
4.	Date on which the Hard copy of the complaint was received	03.10.2016
5.	Date on which notice was issued to the Respondent	04.10.2016
6.	Due date for filing of Counter Statement by the Respondent	11.10.2016

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4. Procedural History

4.1. 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 ("Rules") were approved by NIXI on June 28, 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.

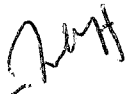
4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).

4.4. On October 04, 2016, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within 7 days, i.e. on or before October 11, 2016.

5. Factual Background:

5.1. The Complainant is Pentair Inc a part of the internationally famous Pentair Group. The Complainant, through its predecessors-in-interest, affiliated companies and licensees, is a



prominent name acknowledged worldwide in the water technology industry since 1966. The Complainant operates in India through Pentair Water India established in 1997, a 100% subsidiary of Pentair,. The Complainant has coined and adopted the trade name and trademark "PENTAIR" with respect to its goods and services. The Complainant has registered trademarks for the mark "PENTAIR" in USA, the European Community, Republic of Korea, Norway etc. The Complainant has filed application for registration of the mark 2012 in India.

5.2. The Respondent registered the disputed name <PENTAIR.IN> on 25th March, 2013.

6. Parties Contentions

6.1. Complainant's Submission:

6.1.1.The Complainant has registered its trademark "PENTAIR" which is distinctive and has an established reputation in many countries in the world.

6.1.2.In India, the Complainant has applied for registration with the Indian Trademark Registry for its trademark "PENTAIR" in Class 7 under trademark Application numbers 2279674, 2348415, 2379830 and 2380737 on 8th February 2012, 14th June 2012, 14th August 2012 and 16th August 2012 respectively.

6.1.3. The Complainant has also won various recognitions and accolades for its products and services.

6.1.4.The Complainant claims that Pentair Inc. is a leading global provider of water & fluid solutions, valves & controls and technical solutions since the year 1966 and is a diversified operating company with 66 offices across 37 countries.

6.1.5.The Complainant claims that they adopted the trade mark "PENTAIR" and have been using the same for many decades since its inception and the mark since its adoption has been developed, protected, nurtured and promoted an exclusively used by the Complainant for

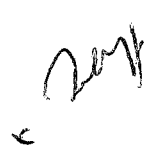
more than 50 years across various jurisdictions. Owing to the use of the mark in respect of water & fluid solutions, valves & controls and technical solutions, the Complainant's brand has gained phenomenal recognition and is one of the most valued brands internationally and has trans-border and spill-over reputation in India.

6.1.6. The Complainant claims that, either through its own or associate company, it owns the trade mark "PENTAIR" and its variants which are registered or are progressing at different levels of registration at Trade Mark Registries across various designated countries including India and this shows the Complainant's perseverance in securing and protecting their intellectual property for its brand name.

6.1.7. The Complainant claims that the Complainant's Trade Mark "PENTAIR" and its domain names pentair.com represent its invaluable proprietary rights and the Complainant vigorously enforces and vehemently defends such rights against any act of infringement and passing off. The Complainant also keeps a close watch on any activity resulting in transgression of its Intellectual Property Rights and is always prepared to take proactive measures against such acts.

6.1.8. The Complainant has to its credit various websites such as <http://www.pentair.com/>, <http://www.pentair.co.in/>, <http://pentairaqua.com/>, registered on 17th October, 1996, 30th July, 2012 and 30th September, 2009 respectively and which have been used by the Complainant extensively since their registration.

6.1.9. The Complainant learnt that the disputed domain name had been registered by the Respondent on 25th March, 2013, more than 20 years after the Complainant had its domain name, and 15 years since the registration of the trademark "PENTAIR" by the Complainants. The Complainant claims that the Respondent has offered the disputed domain name for sale both on the resolving website and through the auction platform,



SEDO for USD 3,500 and has displayed various sponsored links to the Complainant's competitors' products on the website.

6.1.10. The Complainant argues that the domain name used by the Respondent <pentair.in> is identically and confusingly similar to the Complainant's trade name "PENTAIR" beyond any doubt of imagination, and because the Respondent uses the name of the Complainant in its entirety in which the Complainant has common law as well as statutory trademark rights, it is bound to create confusion in the minds of the user public.

6.1.11. The Complainant claims that the Respondent has no rights and legitimate interests in the disputed domain name nor has it acquired Trade Mark(s) by the name/comprising "PENTAIR" like the Complainant. The Respondent is not authorised or licensed by the Complainant to use its trademark/trade name.

6.1.12. The Complainant further claims that the disputed domain name was registered and used in bad faith as the Respondent seeks to make unlawful gains out of the disputed domain name by offering the disputed domain name for sale both on the resolving website and through the auction platform, SEDO for USD 3,500 and hosting pay-per-click links on the domain name. The disputed domain name carries sponsored links including PENTAIR WATER FILTERS and PENTEK WATER FILTERS (wherein PENTEK also belongs to the Complainants) which when clicked direct users to competitors' websites and are likely to result in deception and confusion to the internet users. The Complainant claims that the Respondent has registered the disputed domain name with an intention of attracting or attempting to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of services on the

Respondent's website and to attempt to prevent the Complainant from reflecting the mark in a corresponding domain name.

6.1.13. In support of its contentions, the Complainant relied on the decisions in the cases of *OSRAM GmbH v. Yuri A Ivanov* (Case No. D2009-0692), *SOCIETE DES PRODI ITS NESTLE SA, SWITZERLAND v. NESCAFE Limited, United Kingdom* decided on May 24, 2009, *Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007), *Vance Int'l, Inc. V. Abend*, FA 970871 (Nat. Arb. Forum June 8, 2007), *Bank of Am. Corp. v. Nw. Free Cmty. Access*, FA 180704 (Nat. Arb. Forum Sept. 30, 2003), *REDIFF.COM INDIA LIMITED v. Mr. ABHISHEK VERMA AND iADVANCE MEDIA* (INDRP/001) decided on April 3, 2006, *Wrenthead.com, Inc. v. Hammersla*, D2000-1222 (WIPO Dec. 12, 2000), *Det Berlingske Officin A/S v. BWI Domain Manager* Case No. D2007-1717, *Arcelor Mittal Legal Affairs Corporate, France v. Simon Ting Nelto BrandsInc., China* decided on May 10, 2012 and *Netgear Inc v. Chen Shenglu* decided on 15th September, 2006.

6.1.14. The Complainant requests for the following relief: "that the disputed domain name <PENTAIR.IN> be transferred to the Complainant".

6.2. Respondent:

6.2.1. The Respondent did not file any reply to the Complaint.

7. Discussion and Findings

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1.The domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2.The Respondent has no rights or legitimate interests in respect of the domain name; and

7.2.3.The Respondent's domain name has been registered or is being used in bad faith.

7.3. Identical or Confusingly Similar

7.3.1.The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

7.3.2.It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has established that it has rights in the trademark "PENTAIR" in numerous jurisdictions including India. The documents filed by the Complainant also show that it has used the mark extensively for a considerable period. Evidence of use of the mark for several years by the Complainant undoubtedly shows its rights in the mark.

7.3.3.The Complainant has established that it has rights in the trademark "PENTAIR".

7.3.4.The disputed domain name incorporates the trademark "PENTAIR" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.

7.3.5.The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

7.4.1.The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name that the Respondent has registered the domain name "pentair.in" mala fide with the sole motive to encash upon the goodwill and reputation of the Complainant.

7.4.3. The Complainant further states that the Respondent having no legitimate interest is corroborated by the fact that the domain in question was registered three and a half years ago on 25th March 2013 and the website has not been activated. Rather, it has been put up for sale both on the resolving website and through the auction platform, SEDO for USD 3,500 and has displayed various sponsored links to the Complainant's competitors and their product on the resolving website.

7.4.4. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain.

7.4.5. The Respondent has not responded in these proceedings and has not provided any material to show rights in the disputed domain name. The Arbitrator finds the material on record does not show the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.6. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a bona fide use under the Policy.

7.4.7. The Arbitrator finds the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

7.5.2. The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "PENTAIR", and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose. The disputed domain name carries pay-per-click views and sponsored links to the products and services of the Complainant and the Complainant's competitors.

7.5.3. The Complainant further states that bad faith is corroborated by the fact that the domain in question was registered three and a half years ago on 25th March 2013 and the website has not been activated. Rather, it has been put up for sale both on the resolving website and through the auction platform, SEDO for USD 3,500.

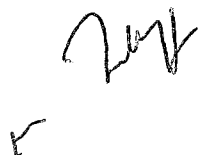
7.5.4. The Complainant's prior adoption of the mark predates the Respondent's domain name registration and the registration of a name that is so obviously connected with the Complainant is suggestive of the Respondent's bad faith.

7.5.5. The Arbitrator finds the Complainant has established its prior adoption and rights in the trademark "PENTAIR". Further, the Complainant's trademark applications were clearly made before the disputed domain name was registered. The evidence on record shows that the Complainant's trademark is well known. Thus the choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.

7.5.6. To corroborate the allegations of bad faith of the Respondent in the disputed domain name, the Complainant states that the Respondent in the instant case has already been a part of various domain name disputes such as *BASF SE v. Bai Xiqing* FA 1103001379971, *Intesa Sanpaolo S.p.A v. Bai Xiqing* DNL2011-0054 and *Syngenta Participations AG Intellectual Property Management Domain Name (a department within Syngenta Participations AG) v. Bai Xiqing* DPE2012-0003 where its modus operandi is identical to its actions in the instant case.

7.5.7. The Registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant.

7.5.8. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or

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other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanation for the registration and use of the disputed domain name by the Respondent.

7.5.9. The Respondent's intention to sell the disputed domain name is apparent from the advertisement for sale of the disputed domain name. This indicates that the Respondent has engaged in registration of the disputed domain name in bad faith.

7.5.10. In a previous decision in the case of (INDRP/619) *Reebok International Limited v. Zhaxia*, decided on September 15, 2014 wherein the Dispute domain name was registered for the purpose of sale, the Arbitral tribunal observed that the Respondent has no legitimate rights or interests in the disputed domain name and there was a mala fide intent for registering the disputed domain name other than for commercial gains, and that the intention of the respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the complainant to have peaceful usage of the complainant's legitimate interest in using their own trade names.

7.5.11. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

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



8. Decision

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name <PENTAIR.IN> to the Complainant.

8.3. The Award is accordingly passed on this the 10th day of November, 2016.

Place: Chennai



Dr. Sudhir Raja Ravindran
Sole Arbitrator