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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR

IN DOMAIN NAME DISPUTE RESOLUTION POLICY

(INDRP)

IN RE:

Samsung Electronic Co. Ltd.
416 Maetan-Dong
Yeongtong-Gu
Suwon-Si, Gyeonggi-Do

Republic of Korea. . . . **.Complainant**

Through

Sudhir D. Ahuja,

complainant's constituted attorney.

E-mail: litigation@dpahuja.com

Versus

Vishal Didwania
Netdomains4u
15 Meridian Plaza
Hyderabad-500016
India

E-mail: vishalddidwania@gmail.com

Respondent

Sanjay Kumar Singh

1. THE PARTIES:

The complainant Samsung Electronic Co. Ltd, 416 Maetan-Dong Yeongtong-Gu, Suwon-Si, Gyeonggi-Do, Republic of Korea .

(Complaint has been filed through Sudhir D. Ahuja, complainant's constituted attorney. E-mail: litigation@dpahuja.com

Respondent is Vishal Didwania, Netdomains4u, 15 Meridian Plaza, Hyderabad-500016, India. E-mail: vishaldidwania@gmail.com

2. DOMAIN NAME AND TRADEMARK IN DISPUTE:

Domain name of the respondent is "Samsung.in" '

The trademark of the complainant is "SAMSUNG".

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "Samsung.in"
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.

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6. The complainant has stated in his complaint that the domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights. The complainant has further submitted that it is one of the world's leading electronics companies, specializing in digital appliances and media, semiconductors, memory, and system integration. The complainant is recognized as one of the world's leaders in digital technology and remains one of the world's top companies in patents with several thousand researchers representing billions of US Dollars investment in research and development. The use of the name trademark SAMSUNG by the Complainant shall be deemed include all use by its assigns, agents, licensees and all subsidiary and allied companies/entities belonging to and forming part of the international Samsung Group of companies.

The complainant has further submitted that its predecessor company was established in 1938 under the trade name and trademark 'Samsung' (meaning 'stars in Korean language). Since inception, the expression 'Samsung' was always and still is the, essential and principal part of the complainant's corporate name, trading style, brand name and trademark. Over the past seven years, the complainant company has grown to become a conglomerate spread over the entire globe and strong commercial presence in practically every country. The complainant's vast and diverse range of products include mobile phones, personal computers, MP3 players, television, 3G and multimedia phones and telecommunication systems; printer; camera; premium home appliances; semiconductors and LCDs; memory devices (dynamic and static random access, flash

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memory and solid state drives) By virtue of extensive commercial operations backed by substantial sales promotional efforts, the mark/ name 'Samsung' has become distinctive of the complainant in the eyes of the consumers and a household name all over the world, including India. The complainant has annexed and marked as **Exhibit "A"**, the DOCUMENTS, NEWS ARTICLES, AND MEDIA RELEASES OVER THE PAST MANY YEARS.

The complainant has also submitted that it is the owner of several 'Samsung' domain names and operates dedicated and official websites for its existing and potential consumers, concerned industry sectors, and casual visitors from different countries and jurisdictions.

The complainant has also submitted that the domain name <Samsung.com> of the complainant was created on 29 November, 1994. The complainant is the registered proprietor of the trademark SAMSUNG in virtually every major country of the world. In India, the Complainant is the registered proprietor of the trademark SAMSUNG since 1993, and has obtained/ applied for registration of the mark and its variants in several class of the International Classification. The complainant has filed Copies of some registration as **Exhibit c.**

The complainant has alleged that the Respondent has registered the domain name, <Samsung.in> which is identical to the registered trademark and corporate name/ trade name "SAMSUNG" of the Complainant. The Respondent has no rights or legitimate interests in respect of the disputed domain name. "Samsung" is neither the legal nor the corporate name of the

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Respondent, who is not doing any business under that name.

The complainant has alleged that the complainant's trademarks are particularly strong and have gained secondary meaning due to their continued use in connection with the complainant's vast range of exclusive products and services. Due to the wide recognition and goodwill accrued in the complainant's marks as being synonymous with premium products and services, it is obvious that the Respondent is relying on such recognition and goodwill of the complainant to sell the disputed domain name at a profit. The complainant has averred that the Respondent has no legitimate interest and no basis to claim non commercial fair use or, under the circumstances, any kind of use of the complainant's mark SAMSUNG, except to make unlawful profit there from.

The complainant has alleged that the Respondent does not use the mark/ name SAMSUNG as his business name/ corporate name and neither does he use the said mark/ name for any legitimate commercial purposes. The domain name has been registered and is being used bad faith.

The complainant has alleged that the domain name <Samsung.In> was registered in bad faith. By registering the disputed domain name for no apparent legitimate purposes and holding on to the same with absolutely no justification, except to make wrongful profit there from, the Respondent has proved his bad faith intent. Non-use and passive holding are evidence of bad -faith registration-

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The complainant has alleged that the Respondent has also made unauthorized use the complainant ;s trademark by incorporating it as an essential part of its domain name and thereby aiming to induce the public to believe that the respondent's domain name has been created by the complainant and/or Hs the complainant's approval. The Respondent has misappropriated and misused the complainant's immense goodwill and reputation.

The complainant has alleged that the domain has been created and registered in bad faith, because if the Respondent or any third party had hosted a website with the domain name, <Samsung.in>, that would have caused added confusion and serious deception, misleading the visitors to that site into believing that there was definite connection between the website and the complainant and /or its Indian subsidiary.

The complainant as such has prayed for an award in the above matter for transfer of the domain name 'Samsung, in' in favour of the complainant.

On 10-05-2010, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence.

A copy of complaint has already been sent to the respondent by the .In Registry. Upon receipt of the complaint, the Arbitrator sent a notice dated 10-05-2010 to the respondent to send his defence / counter to the complaint alongwith supportive documents /

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evidence at his e-mail address within 7(seven) days from receipt. But the respondent did not come forward and did not send his defence / counter to the complaint.

Failing to send the defence / counter by the respondent, the Arbitrator again sent a notice dated 22-05-2010 by giving another opportunity to the respondent to send his defence / counter to the complaint within five days with further notice that in default of non-filing or sending of the defence / counter to the complaint, award would be passed ex-parte on merits of the complaint.

The respondent requested for time on 26-05-2010 for submitting reply to the notice.

Considering the request of the respondent, the Arbitrator granted time on 01-06-2010 directing the respondent to send his defence / counter to the complaint within two days with further notice that in default of non-filing or sending of the defence / counter to the complaint, award would be passed ex-parte on merits of the complaint. Notice was also given that it is last and final opportunity and no further time shall be granted to the respondent.

Inspite of repeated notices, the respondent has again not come forward and has not sent any reply / defence / counter to the either notice or complaint to the Arbitrator till date.

Therefore, this matter is being decided on the merits of the complaint and as per law of the land.

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OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

The complainant has relied upon the decisions under INDRP.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & "Siffy" were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Hence the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name. The respondent has not submitted any reply / defence / document/evidence to the complaint of the complainant in spite of repeated notices from the arbitrator.

Thus the conclusion is that the domain name 'Samsung.in' is identical and confusingly similar to

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the trademark of complainant ' SAMSUNG' and the complainant has established that it has right in the trademark.

Whether the respondent's domain name has been registered or is being used in bad faith

Keeping in view aforesaid facts and circumstances it is clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has not come forward to file any response/reply to the complaint and has neither provided any substantial evidence in its support.

Thus the conclusion is that the respondent has got registered his domain name 'Samsung.in' in bad faith.


RELIEF

The complainant has established in his complaint that the domain name of respondent is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights. The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled to transfer of domain name 'Samsung.in' to him, as he has established his bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry.

No order as to costs.

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Date: 26-06-2010.


(Sanjay Kumar Singh)
Arbitrator