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NATIONAL INTERNET EXCHANGE OF INDIA
Incube Business Centre, 5th Floor,
18, Nehru Place,
NEW DELHI – 110 019

Speakasia Online Pte. Ltd., v. Mr. Gagandeep Randhawa

AWARD

1. The Parties

The Complainants are Speakasia Online Pte. Ltd., 10 Ubi Crescent, #07 – 68, Ubi Techpark, Singapore, 408564 Singapore

The Respondent is Mr. Gagandeep Randhawa, 25, Vishwadarshan, Marol, Mumbai 400 058, India

2. The Domain Name and Registrar

The disputed domain name is <www.speakasiaonline.in>. The said domain name is registered with www.registry.in.

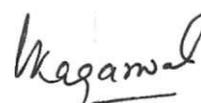
Gagandeep

3. Procedural History

- (a) An undated Complaint has been filed with the National Internet Exchange of India, New Delhi. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are annexed as Annexure A with the Complaint. It is confirmed that the Respondent is listed as the Registrant of the disputed domain name and provided the contact details for the administrative, billing, and technical contact. The National Internet Exchange of India verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The National Internet Exchange of India appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on June 13, 2011. The arbitrator received the Complaint on June 18, 2011. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Rules, on June 22, 2011 the Sole Arbitrator through registered letter formally notified the Registrant/Respondent of the Complaint. The Registrant/Respondent was required to submit his defence within 15 days from the date of receipt of the letter, that is, by July 7, 2011. The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will proceed ex-parte.
- (d) The said registered letter has however been returned by the postal authorities to the sole arbitrator on July 8, 2011. Thus, no reply has been received from the Respondent. Accordingly, the Respondent's default has been notified.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:



Complainant's activities

The Complainant Speakasia Online Pvt. Ltd., 10 Ubi Crescent, #07 - 68, Ubi Techpark, Singapore, 408564 Singapore is a private limited company incorporated on December 15, 2006 according to the Companies Act (Chapter 50) of Singapore. The Complainant owns a Consumer Empowerment portal www.speakasiaonline.com. The Complainant is the integrated online survey group. It participates with manufacturers of products and service providers in advertisements and surveys, product demonstrations and presentations, product sales and product references. The method of working is that the consumers of various products fill up a survey form provided by the Complainant and submit the same to the Complainant. Through these survey forms the Complainant comes to know the opinion of consumers about various products. This opinion helps the manufacturers of products in many respects.

Complainant has stated in the Complaint that various trademark registration applications are pending in different countries including India under different classes, such as, class 9, class 16, class 35, class 41, etc.

Respondent's Identity and Activities

Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that its name is Speakasia Online Private Limited. The disputed domain name is <www.speakasiaonline.in>. Thus, the disputed domain name contains the complete name of the Complainant. The deletion of the words "Private Limited" or addition of the words "in" is insignificant. In support of its contention, the Complainant has relied on the decision of *Lego juris v. Robin Martin*, ENDRP/118; *Vat Holdings v. Vat.com* (WTPO Case No. D2000-0607) and *Western Bonded Products dba Flex*

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Foam v. Webmaster.com (Case No. FA0095286). Thus, the Respondent's domain name is phonetically, visually and conceptually identical as that of the Complainant.

Also that the Complainant is first to conceive, adopt, use and promote the name Speakasia in respect of the online survey group in the Asian sub-continent. The Complainant is well known to its customers as well as in business circles as Speakasia Online in many countries.

In relation to element (ii), the Complainant contends that the Registrant/Respondent (as an individual, business, or other organization) has not been commonly known by the mark or name "Speakasiaonline". Further, the Registrant/Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

In support of his contentions, the Complainant has relied on the cases of Sensient Technologies Corporation & Sensient India Private Limited v. Mr. Duan Zuochun; Franklin Resources Inc. & Franklin Templeton Asset Management (India) Private Limited v. Mr. David Dlugitch.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.speakasiaonline.in> by the Registrant/Respondent is to mislead the general public and the customers of the Complainant. The registration of the domain name and subsequently diverting the users to another website wherein some of the contents of the website of the Complainant are copied, is done by the Registrant/Respondent only for the purpose of defrauding the public.

The Complainant has stated that the use of a domain name that appropriates a well known name to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

B. Registrant/Respondent

The Registrant/Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.speakasiaonline.in> or any trademark right, domain name right or contractual right. Therefore, the Respondent has no legal right or



interest in the disputed domain name.

6. Discussion and Findings

The Rules instruct this Arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the IN Domain Name Dispute Resolution Policy (INDRP), the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

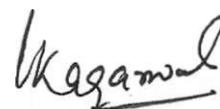
According to paragraph 4 of the said Policy, the Complainant must prove that:

- (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 that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered and is being used in bad faith;

A. Identical or Confusingly Similar

As per the whois information, the Registrant/Respondent has created the disputed domain name <www.speakasiaonline.in> on February 4, 2010. The expiration date is February 4, 2012. The disputed domain name <www.speakasiaonline.in> contains the entire name of the Complainant, which is Speakasia Online Private Limited. Merely by deleting the words "Private Limited" or by creating a domain name with "in" is not sufficient to make the domain name distinct.

Further that, on opening the website of the Registrant/Respondents <speakasiaonline.in>, it resolves to another website <speakindiaonline.com> which is alleged to be a chat forum. The Complainant has stated that the applications of the Complainant for the registration of the trademark are still pending in various countries. The Complainant has nowhere stated in its Complaint that its trademark or service mark has been registered in any country. But that should not deprive the Complainant of the fact that the disputed domain name is identical or confusingly similar to the name of the Complainant.



In the case of *Farouk Systems Inc., v. Yishi*, Case No. D2010-0006 it has been held that the domain name wholly incorporating a complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the addition of other words to such marks.

Therefore, I hold that the domain name <www.speakasonline.in> is confusingly similar to the Complainant's marks.

B. Rights or Legitimate Interests

According to paragraph 7 of the INDRP, the Registrant may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Respondent'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.

The Registrant's response is not available in this case. There is no evidence to suggest that the Registrant/Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Registrant/Respondent has no rights or legitimate interests in the disputed domain name.

The name "Speakasia Online" has acquired unique importance and is associated with the Complainant. A mention of the said mark establishes an identity and connection with the Complainant. The Registrant/Respondent is known by the name of Mr. Gagandeep



Randhawa. It is evident that the Registrant/Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Registrant/Respondent to use its name or to apply for or use the domain name incorporating the said name. The Registrant/Respondent is not offering any goods or services under the disputed domain name. Rather, the registrant is merely diverting the internet users to a third party website. Therefore, the Registrant is not using the disputed domain name for bona fide offering of goods or services.

It has been held in the cases of *American Home Products Corporation v. Ben Malgioglio*, WIPO Case No. D20000-1602 and *Vestel Elektronik Sanayi Ve Ticaret As v. Mehmet Kahvect*, WIPO Case No. D2000-1244 that a passive holding of a domain name is an evidence of a lack of legitimate rights and interests in that name.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain name.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) 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 is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) 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 it has engaged in a pattern of such conduct; or
- (iii) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or



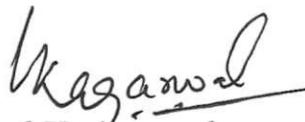
- (iv) By using the domain name, the Registrant has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Registrant/Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's name. The Registrant's/Respondent's registration of the domain name <www.speakasiaonline.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Registrant/Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Registrant/Respondent in bad faith.

7 Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the name in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.speakasiaonline.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 11th July 2011