



தமிழ்நாடு தமில்நாடு TAMILNADU
35484. S. Muralidharan.
27/10/2014 Chennai

AT 148319
M. YOAGANATHAN
STAMP VENDOR
L.No. 13812/B3/93
TRIPLICANE, CHENNAI

BEFORE S SRIDHARAN, SOLE ARBITRATOR

OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 19th October 2014

AB Electrolux, Sweden

Versus

Complainant

GaoGou of YERECT, Canada

Respondent

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1. The Parties

- 1.1 The Complainant, AB Electrolux, is a Swedish joint stock company founded in 1901 and registered as a Swedish company in 1919 having its principal office St Goransgatan 143, 105 45 Stockholm, Sweden. The Complainant is represented by Stina Pilotti of CSC Digital Brand Services AB at Saltmätargatan 7, Box 3396, 103 68 Stockholm, Sweden.
- 1.2 Respondent is GaoGou of YERECT at Suite 1100 South Tower, 175 Bloor Street, East, Toronto, M4W 3R8 CA,

The Domain Name and Registrar

- 1.3 The disputed domain name <zanussi.in> created on 26.09.2012 is registered with IN registrar d.b.a. inregistrar.com (R123-AFIN).

2. Procedural History

- 2.1 On 19th September 2014, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On the same day, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 23rd September 2014, I received hardcopy of the Complaint.
- 2.3 On 25th September 2014, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 25th September 2014 I received soft copy of the Complaint from the Complainant.
- 2.5 I have sought vide email dated 12th October 2014 certain clarifications from the Complainant. The Complainant vide email dated 15th October 2014 answered my questions.
- 2.6 Respondent has not filed any response to the Complaint.

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- 2.7 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

- 3.1 Complainant is founded in 1901 and registered as a Swedish company in 1919. Complainant is a world leading producer of appliances and equipment for kitchen and cleaning. Complainant is also one of the largest producers in the world of similar equipment for professional users.
- 3.2 Complainant is selling more than 40 million products to customers in 150 countries every year including in India. It focuses on innovations that are thoughtfully designed, based on extensive consumer insight, to meet the real needs of consumers and professionals. Complainant's products include refrigerators, dishwashers, washing machines, vacuum cleaners and cookers sold under brands such as ELECTROLUX, ZANUSSI, ZANUSSI-ELECTROLUX, Zanussi, Eureka and Frigidaire. In 2013 Complainant had sales of SEK 109 billion and 60,800 employees.
- 3.3 The trademark ZANUSSI has acquired the status as well-known trademark for appliances and equipment for kitchen, cleaning and outdoor products due to extensive and long-term use on products and services of the Complainant. The Complainant had spent enormous expenses in connection with the production, distribution and advertising. As a result, the trademark and the products and services designated by this trademark are connected with good reputation and international recognition. ZANUSSI trademark and brand have been recognized as being famous. For instance, a list of the official top 500 Superbrands for 2014, provided by Superbrands UK, shows ZANUSSI as number 1 of their category, namely "Household - Appliances".
- 3.4 The Complainant vide its email dated 15th October 2014 informed the following: In India, the Complainant started using the mark ZANUSSI from 30th June 1973. The Complainant has obtained registration for the mark ZANUSSI in India under Application No.289082. The Complainant has created the domain name www.zanussi.com on 17.11.1995.
- 3.5 The mark ZANUSSI is in possession of substantial inherent and acquired distinctiveness. The awareness of the trademark ZANUSSI is considered in the whole Community to be significant. According to the provisions of Article 6bis of the Paris Convention for protection of Industrial Property ("PC") confirmed and extended by Article 16.2 and Article 16.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), the statute of a well-known trademark provides the owner of such a trademark with the right to prevent any use of the well-known trademark or a confusingly similar denomination in connection with any products or services (i.e. regardless of the list of the products and services for which the trademark is registered). Thus, the protection for ZANUSSI goes far beyond appliances and equipment for kitchen, cleaning and outdoor use and goods similar to equipment for kitchen, cleaning and outdoor use.
- 3.6 The Complainant issued cease and desist letter on December 19, 2013 via email to the Registrant (GaoGou) of the disputed domain name. In the cease and desist letter, the Respondent was advised that the unauthorised use of the trademark ZANUSSI within the disputed domain name violated the rights in the Complainant's trademarks. Cease of use and immediate transfer of the disputed domain name was requested. Despite reminders sent on January 3, 2014 and January 8, 2014, no reply was received. Since the efforts of trying to solve the matter amicably were unsuccessful, the Complainant has chosen to file this complaint.

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- 3.7 The Complainant has filed annexures 1 to 12 along with the Complaint.

B Respondent

- 3.8 The Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

4. Parties Contentions

A Complainant

- 4.1 The disputed domain name <zanussi.in> is identical to the Complainant's registered trademark ZANUSSI. The trademark is registered in Canada as well as in other major jurisdictions such as Europe and Southern Pacific. The disputed domain name incorporates the Complainant's trademark ZANUSSI in its entirety. The disputed domain is identical to the Complainant's trade mark except for the country code top level domain (cc TLD) ".in" identifier. The ccTLD can be disregarded for purposes of assessing similarity of the domain name to the trade mark. As such, consumers looking for ZANUSSI may instead reach the Respondent's website. Therefore the disputed domain name is confusingly similar to the Complainant's trade mark.
- 4.2 The Respondent has no rights or legitimate interests in the disputed domain name <zanussi.in> as the Respondent has not been given any authorization to use the Complainant's mark. Further, the Complainant has not licensed nor otherwise permitted the Respondent to use its name or trade mark or to apply for or use the disputed domain name <zanussi.in> incorporating ZANUSSI mark.
- 4.3 Further, the Respondent is not known by the disputed domain name <zanussi.in> and has no trade mark rights in the name as far as the Complainant is aware. The Respondent has not used or made demonstrable preparations to use the disputed domain name <zanussi.in> in connection with a bona fide offering of goods or services and is not making legitimate, non-commercial or fair use of the disputed domain name. By doing this, the Respondent is misleading Internet users to a commercial web site and consequently, the Respondent is tarnishing the trademark ZANUSSI. Such use as sponsored links cannot be considered a bona fide offering of goods or services. The Respondent has not rebutted the Complainant's rights in the disputed domain name <zanussi.in> and has not produced any documents or submissions to show his interest in protecting his own right and interest in the disputed domain name <zanussi.in>. Thus, it is clear that the Respondent has no right or legitimate interest in respect of the disputed domain name <zanussi.in>. It is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of a third party.
- 4.4 Since the Complainant's mark ZANUSSI is a famous and well-known mark and is registered in many countries including the country of the Respondent, it is unlikely that the Respondent did not know about the Complainant's rights in the mark or the disputed domain name <zanussi.in>. The Respondent registered the disputed domain name <zanussi.in> on September 26, 2012 which is subsequent to when the vast majority of the trademarks for ZANUSSI were registered. The Respondent has had time to demonstrate its rights and/or legitimate interest in the disputed domain name but has failed to do so. Instead the Respondent has intentionally chosen a domain name based on a registered trademark in order to generate traffic to a site with sponsored links. By doing this, the Respondent is misleading Internet users to commercial web sites of others and consequently, the Respondent is tarnishing the trademark Zanussi. The Respondent is trying to sponge off the Complainant's world famous trademark."
- 4.5 There is no evidence that the Respondent has become known by the disputed domain name anywhere in the world. It is evident that the Respondent has no legitimate interest in

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the disputed domain name. Based on the evidence adduced by the Complainant, it must be concluded that the Respondent has no rights or legitimate interests in the disputed domain name <zanussi.in>.

- 4.6 The failure of the respondent to respond to a cease and desist letter, or a similar attempt at contact is relevant in a finding of bad faith.
- 4.7 The Respondent is today not using the Domain Name in connection with a bona fide offering of goods or services. Instead the Respondent has intentionally chosen the disputed domain name based on a registered trademark in order to generate traffic a site with sponsored links. By doing this, the Respondent is misleading Internet users to commercial web sites and consequently, the Respondent is tarnishing the trademark ZANUSSI. The Respondent is trying to sponge off the Complainant's world famous trademark.

Pay Per click links

- 4.8 Through advertising programs, the Registrars place contextually relevant advertisements on a parked domain name. Each time a visitor clicks on one of the advertisements displayed on the page, the advertising partners pay a certain amount. That revenue is split between the service provider and the domain owner, in accordance with the applicable revenue-sharing plan (this can obviously differ from Registrar to Registrar). For example, customers who sign up for the 80% revenue share plan receive 80% of the generated revenue while the remaining 20% goes to the service provider. Several factors contribute to the EPC (earning per click) – the traffic origin, the type and position of the advertising link a visitor clicked on, how much advertiser competition there is for the keyword used, and the keyword genre, among others. The actual revenue generated when a visitor clicks an advertisement varies and is determined by the specific advertisement on which the visitor clicked. A number of factors define which advertisements are displayed on the page, including the quality of the domain and the amount and nature of traffic your page receives. Registrants will normally be deemed responsible for third party material or "automatically" generated material (e.g. pay-per-click advertising found to be targeting complainant trademark value) appearing on a website at a disputed domain name, unless registrants can show some good faith attempt to have such material removed.
- 4.9 Consequently, by referring to the above-mentioned, the Respondent should be considered to have registered and to be using the disputed domain name <zanussi.in> in bad faith.

B. Respondent

- 4.10 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5. Discussion and Findings

- 5.1 Respondent has not filed his response. I have not received any communication from him until the date of this award. Therefore, I am proceeding to determine this Complaint on the basis of the materials available on record.
- 5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:
- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

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- (II) Respondent has no rights or legitimate interests in respect of the domain name; and
- (III) Respondent's domain name has been registered or is being used in bad faith.

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark Zanussi. Complainant has been using Zanussi as a trade mark continuously since 30th June 1973 in India. The Complainant owns numerous registrations for the trade mark ZANUSSI in many countries around the world including India. In India, the first registration of the Complainant under Application No. 289082 dates back to 30.6.1973. The Complainant's domain name www.zanussi.com was created on 17.11.1995. The disputed domain name zanussi.in was created on 26.09.2012. Obviously, the Complainant is the prior adopter of ZANUSSI mark. The above facts have established that the Complainant has statutory and common law rights in respect of its ZANUSSI mark.

5.5 The Complainant's ZANUSSI mark is famous and well known throughout the world including India. It is clearly seen that the disputed domain name zanussi.in wholly incorporates the prior registered mark ZANUSSI of the Complainant. The expressions .in and .com need to be discarded while comparing the marks with the domain names. The disputed domain name zanussi.in is similar to the Complainant's domain name www.zanussi.com.

5.6 I, therefore, find that:

- (a) The Complaint has common law and statutory rights in respect of its ZANUSSI mark.
- (b) The disputed domain name zanussi.in is:
 - (i) Similar to the Complainant's prior registered trade mark ZANUSSI and
 - (ii) Similar to the Complainant's domain name www.zanussi.com.

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.7 It is already seen that:

- (a) The Complainant is the prior adopter and user of the ZANUSSI mark. The Complainant's ZANUSSI mark is well known in many countries across the globe including India.
- (b) The Complainant's ZANUSSI mark was adopted in the year 1973. The first Indian registrations for the mark ZANUSSI was obtained in 1973. The Complainant's domain name www.zanussi.com was created on 17.11.1995. The disputed domain name zanussi.in was created on 26.09.2012.

5.8 Respondent did not register the disputed domain name until 26.09.2012. Complainant has adopted and used the mark ZANUSSI and a domain name containing the mark ZANUSSI

before Respondent registered the disputed domain name <zanussi.in>. It is unlikely that the Respondent was unaware of existence of Complainant's trademark and domain name rights before registering the disputed domain name <zanussi.in>.

- 5.9 I have visited the web site of the Respondent under the disputed domain name <zanussi.in>. It has led to a web page having so many sponsored links and containing a notice prominently at the top:-

The domain Zanussi.in is listed for sale. Click here to inquire about this domain name.

And a click of this link leads to another web page. This web page asks you to fill in your bid amount for the sale of the disputed domain name <zanussi.in>. It is obvious that the Respondent never intended to use the disputed domain name <zanussi.in> in connection with a bona fide offering of goods or services and has simply parked it for sale.

- 5.10 In the absence of any reply from the Respondent, I agree with the contentions of the Complainant:
- (a) The Complainant has not licensed nor otherwise permitted the Respondent to use its name or trade mark or to apply for or use the disputed domain name <zanussi.in> incorporating ZANUSSI.
 - (b) The Respondent is not known by the disputed domain name <zanussi.in> and has no trade mark rights in the name as far as the Complainant is aware. The Respondent has not used or made demonstrable preparations to use the disputed domain name <zanussi.in> in connection with a bona fide offering of goods or services and is not making legitimate, non-commercial or fair use of the disputed domain name <zanussi.in>. By doing this, the Respondent is misleading Internet users to a commercial web site and consequently, the Respondent is tarnishing the trademark ZANUSSI.
- 5.11 Therefore, I have no hesitation to hold, for the above reason that the Respondent has no right or legitimate interest in respect of the disputed domain name <zanussi.in>.

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

- 5.12 The Complainant is the proprietor of the mark ZANUSSI. Complainant has been using ZANUSSI as a trade mark continuously since 1973. The first Indian registration for the mark ZANUSSI was obtained in 1973. The Complainant's domain name www.zanussi.com was created on 17.11.1995. The disputed domain name <zanussi.in> was created on 26.09.2012. Obviously, Complainant's rights in the ZANUSSI mark pre-date Respondent's registration of the disputed domain name <zanussi.in>. The Respondent could not have ignored, rather actually influenced by, the well-known ZANUSSI mark of the Complainant at the time he acquired the disputed domain name <zanussi.in>.
- 5.13 As seen above, Respondent is currently not using the disputed domain name <zanussi.in> in any manner. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <zanussi.in> is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered ZANUSSI mark.
- 5.14 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's ZANUSSI mark. The Complainant issued cease and desist letter on December 19, 2013 via email to the

Registrant (GaoGou) of the disputed domain name. In the cease and desist letter, the Respondent was advised that the unauthorised use of the trademark ZANUSSI within the disputed domain name violated the rights in the Complainant's trademarks. Cease of use and immediate transfer of the disputed domain name was requested. Despite reminders sent on January 3, 2014 and January 8, 2014, no reply was received.

- 5.15 Thus it is clearly established that Respondent registered the disputed the disputed domain name <zanussi.in> in bad faith.
- 5.16 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <zanussi.in> into any fair/useful purpose. Respondent not even considered it worth responding the complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

6. Decision

- 6.1 For all the foregoing reasons, the Complaint is allowed as below.
- 6.2 It is hereby ordered that the disputed domain name <zanussi.in> be transferred to the Complainant.
- 6.3 Respondent is ordered to pay the Complainant a sum of Rs.10,00,000/-(Rupees ten lakh only) towards costs of the proceedings.


S. Sridharan
Arbitrator