



दिल्ली DELHI

H 156347

**VISHESHWAR SHRIVASTAV  
SOLE ARBITRATOR  
IN  
ARBITRATION PROCEEDINGS OF DOMAIN NAME  
"danone.in"**

**COMPAGNIE GERVAIS DANONE ..COMPLAINANT  
AND  
DIGITECH SOFTWARE SOLUTIONS ..RESPONDENTS**

**AWARD**

1. The undersigned was nominated as Arbitrator in the present case which is a dispute for the domain name "danone.in" between Compagnie Gervais Danone herein after referred to as "Danone" and Digitech Software Solutions and thereafter the undersigned sent his statement of impartiality

on 9<sup>th</sup> April of 2009 vide his communication dated 10<sup>th</sup> April, 2009 to NIXI as per .INDRP Rules..

2. Thereafter this Tribunal received a communication dated 10/04/2009 from the respondent Mr. Narinder Bansal of Digitech Software Solutions stating that he has received a communication from the Complainant his email read as under:

"I have recd the hard copy of the same. Infact there is nothing like dispute in the whole matter. The domain was registred by one of my client along with others from USA & he never turned up after registering it. On renewal of danone he couldnt be contacted, I even mailed him which he not replied and not even paid for the domain registration & renewal fee. When the law firm contacted me I have told them that I am ready to trasnfer the domains. I asked them to show me authorisation letter from Group Danone for the same which they did but it doesnt show that it was for domain danone.in. Infact the emails of danone on which they have sent CC mail doesnt exists. When I try to confirm about the identity from that email it bounced back. I have already given them the authorisation code for the same but they never satisfied.

Sir, we are a website devleopment company which also provide domain registration services to our client. I have no objection in transfereing the domain to Danone as its of no use to me. I dont want any litigation even



after this from Danone pursuing me that how I have transfered the domain to any firm which has no proof that it is authorised by Group Danone. Infact in my absence my office manager asked Danone for domain registration fee. When I rejoined office and I come to know I asked them not to pay the domain registration fee which is just (USD 30 for 2 yrs for danone.in which is our registration charges for the same).

At the end I have nothing to object in domain transfer except their genuinity. I want this to be transfered through NIXI so in future I am clear about my position.

For your refrences I am also attaching all the correspondence along with emails those bounced due to non-existance of email address of danone."

3. By its communication dated 20<sup>th</sup> April, 2009 this Tribunal called upon the respondent to submit their reply to the complainant as well as directed the parties i.e., Danone and Digitech Software Solutions to file their evidence by way of affidavit.
4. That the affidavit sworn on 19.9.09 was received from Mr. Narinder Bansal on behalf of Digitech Software Solutions in which he stated on oath as under:

" 1 . That the deponent was a reseller of domains.

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2. That the domain danone.in was registered for one of his client Mark Thomas (Exhibits 1, 2 . & 3 ) .

3. That during renewal the domain was shifted to deponent's panel hence the contact detail shows deponent's name.

4. That when the Law Firm i.e. Dreyfus et associates contacted the deponent for the domain, the deponent gave them authoization code required for transfer for domains and asked for any authorization letter from the complainant as this can't be established that the firm is representing the complainant. Even in the last signed letter dated 15-May-09 sent by email, the complainant's contact information is of the law firm like email, phone & fax no.

5. That the deponent has never demanded any money except the domain registration cost (USD 32).

6. That the deponent has been into domains reselling from last 9 years & very well aware of domains related legal issues hence the deponent never think of bad faith.

7. That the domain macmillan.in (as pointed out by the law firm) was registered by one of our customer Macmillan Insulations India Pvt Ltd (Exhibit 4). During mass shifting of domains to one panel to another the domain macmillan.in contact

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info was changed. During the arbitration hearing the company, H.M.PUBLISHERS HOLDINGS LIMITED itself provided 2 different records of IN registry which shows the domain earlier on Macmillan Insulations India Pvt. Ltd.'s name, while later on it changed to deponent's name. Even enough document in support of that were provided by Macmillan Insulations India Pvt Ltd were provided to prove that the domain belongs to them. Even the website currently running on the domain is of Macmillan Insultaions India pvt Ltd (Exhibit 5). In danone.in domain case, the deponent's customer Mark Thomas eloped long time back so he cant gave enough proof to prove that domain belongs to Mark Thomas. As the macmillan.in case was with the same Arbitration Tribunal, yourself is very well aware of the deponent's position.

8. That the deponent has never denied for domains transfer. The domain in question is transferred to the company, COMPAGNIE GERVAIS DANONE after verifying the all facts."

5. That apparently due to the complainants being located in France and represented through a French firm where apparently different form of pleadings and proceedings is followed, a lot of time was consumed by the said attorneys to understand the procedure to be followed but in the end they complied. Due to above this Tribunal had to extend the time by 30 days from 9<sup>th</sup> June, 2009 to 9<sup>th</sup> July,2009 for publishing the award.



6. That this Tribunal after going through the complaint found that complaint has not been signed by any authorized person of Danone and even there was no power of attorney in favour of the counsels M/s Dreyfus and Associates. Hence this Tribunal vide its order dated 29.5.09 directed them to send an affidavit as well as a POA by a person duly authorized by Danone authorizing M/s Dreyfus and Associates to act as their attorneys. That the same having been completed this Tribunal records as under:

The complainants inter alia have claimed as under:

The Complainant, i.e. COMPANIE GERVAIS DANONE, is a subsidiary of the French company GROUPE DANONE which is a company incorporated under the French Law.

It is the Complainant's claim that its main brand DANONE originated around 1919 in Barcelona, Spain when it was launched for yogurts. At that time, DANONE was the result of the collaboration between Isaac CARASSO and Elie METCHIKOF, the director of the Pasteur Institute.

Later on DANONE quickly internationalized itself and started to commercialize its products in France. Around 1932, DANONE opened its factory for fresh dairy products at Levallois-Perret, France.

That in 1967, DANONE merged with the company GERVAIS and formed GERVAIS DANONE developing its activities in several sectors.

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That in 1973, GERVAIS DANONE merged with BSN to form BSN-GERVAIS DANONE, France's largest food and beverage group with consolidated sales in 1973 of approximately 1.4 billion euros, consisting of 52% food and beverage sales.

That as on date COMPANIE GERVAIS DANONE is a worldwide leading company in fresh dairy products, bottled water, baby food and medical nutrition. DANONE employs nearly 90,000 people in all five continents and it is the global leader in dairy products and number two in bottled water.

It is claimed that DANONE represents almost 20% of the international market in fresh dairy products and is present in 40 countries. In 2007, DANONE reinforced its positioning as a global leader in the consumer goods industry, with a growing emphasis on healthy nutrition. To fortify their claims the Complainants rely on **ANNEX 3**.

It is further stated that the Complainant's trademark DANONE has been used on labeling, packaging and promotional literature for its products and has been prominently displayed in supermarkets and grocery stores in various regions around the world.

That the Complainant noticed that the disputed domain name has been registered on June 18, 2007 and as per the Whois database search the said domain name is registered by the Respondent and the said domain name is inactive. The Complainant relies upon **ANNEX 1** to substantiate their Claims.

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It is brought to the notice of this Tribunal by relying on ANNEX 4 that before start of the present Proceedings Complainant sent a letter of cease-and-desist by e-mail and registered letter dated July 08, 2008 to Respondent based on its trademarks rights asking the same to amicably transfer the disputed domain name.

That it is further alleged that after numerous reminders, Respondent finally answered to the cease-and-desist letter. At first, it seemed the Respondent was ready to transfer the domain name danone.in but later on, Respondent made quite clear that he expected money in exchange of the domain name. Reliance was placed on **Annex 18**.

That as no amicable settlement could be found, Complainant was forced to start a dialogue with NIXI in order to obtain a transfer of the disputed domain name. This dialogue was stopped for administrative reasons. However, another email from Respondent gave the feeling that Respondent was ready to transfer the domain name. Unfortunately, despite Complainant's various efforts to settle the matter amicably, it was clear that Respondent was not ready to transfer the domain name. Reliance was placed on **Annex 19**.

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The Complainant bases his allegations and claim to the disputed domain on the following grounds as contained in their Complaint the relevant part of which is reproduced as under:

**The domain name registered by the Respondent is identical to the trademark of the Complainant**

(Policy, para.4 (i); Rules, para. 3(b)(vi)(1))

COMPAGNIE GERVAIS DANONE is the owner of numerous DANONE trademarks registered in India, among which the following:

- **DANONE + LOGO** n°547875 filed on October 29, 2004, registered on October 29,, 2004 and covering goods in classes 5,29, 30, 32, 35 and 38 ;
- **DANONE** n° 635493 filed on August 01, 1994, registered on November 04, 2004 and covering goods in class 30;
- **DANONE + logo** n°687985 filed on November 23, 1995, registered on October 30, 2003 and covering goods in class 30;
- **DANONE + logo** n°687987 filed on November 23, 1995, registered on June 26, 2006 and covering goods in class 29;

Copies of the above cited trademarks' registrations are provided as **ANNEX**

**5.**

COMPAGNIE GERVAIS DANONE is also the owner of numerous DANONE trademarks protected throughout the world, among which the following:



DANONE n° 639073, registered on January 06, 1995 renewed and covering goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42.

DANONE + logo n° 649535, registered on December 01, 1995 renewed and covering goods and services in classes 5, 29, 30, 31, 32 and 42.

DANONE n° 228184, registered on February 02, 1960 renewed and covering goods in classes 1, 5, 29, 30, 31, 32 and 33.

DANONE + logo n° 482337, registered on January 23, 1984 renewed and covering goods in classes 5, 29, 30 and 32.

DANONE + logo n° 667644, registered on January 21, 1997 renewed and covering goods in classes 5, 29, 30 and 32.

DANONE + logo n° 667645, registered on January 21, 1997 renewed and covering goods in classes 5, 29, 30 and 32.

DANONE + logo n° 667646, registered on January 21, 1997 renewed and covering goods in classes 5, 29, 30 and 32.

DANONE + logo n° 667837, registered on January 21, 1997 renewed and covering goods in classes 5, 29, 30 and 32.

DANONE + logo n° 668079, registered on February 03, 1997 renewed and covering goods in classes 5, 29, 30 and 32.

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- **DANONE** + logo n° 849889, registered on October 29, 2004 and covering goods and services in classes 5, 29, 30, 32, 35, 38 and 43.

Copies of the above cited trademarks' registrations are provided as **ANNEX 6**.

COMPAGNIE GERVAIS DANONE is also the owner of numerous DANONE trademarks filed in the European Community, among which the following:

- **DANONE** n° 006765051 filed on March 10, 2008 covering goods in classes 5, 29, 30 and 32.
- **DANONE NATIONS CUP** + logo n° 004984662 filed on March 29, 2006 covering goods and services in classes 16, 29 and 41.
- **TRUST BY DANONE THE DANONE WAY OF DOING BUSINESS** + logo n° 003855731 filed on June 02, 2004 covering goods and services in classes 16, 28, 35 and 41.
- **DANONE** + logo n° 000849889 filed on October 29, 2004 covering goods and services in classes 5, 29, 30, 32, 35, 38 and 43.

Copies of the above cited trademarks' registrations are provided as **ANNEX 7**.

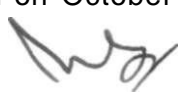
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Additionally, Complainant is also the owner of several domain name including <danone.com>, <danone.fr>, <danone.us>, <danone.tv>, <danone.net> and <danone.eu> (**ANNEX 8**).

The predominant part of the disputed domain name is "DANONE", the registered trademark of Complainant. The presence of the country code top level domain <.in> is insignificant.

Indeed, it is well established in domain name cases that the suffix to indicate the top level of the domain name can be disregarded for the purpose of determining confusing similarity to the trademark in which Complainant has rights (INDRP Dispute Decision n°L-2/1/R1 <Pepsico.in> decided on April 24, 2006; INDRP Dispute Decision n°L-2/1/R4 <Mothercare.in> decided on April 27, 2008 ; INDRP Dispute Decision n°L-2/9/R4 <sensex.in> decided on August 17, 2008 - **ANNEX 9**).

Respondent's domain name <danone.in> is identical to Complainant's DANONE mark since they incorporate Complainant's mark in their entirety. There is no alteration existing which distinguishes Respondent's domain name from this mark as it is exactly the same as Complainant's mark (INDRP Dispute decision n°L-1/6/R1 <internet.in> decided on July 05, 2006; INDRP Dispute decision n°L-1/7/R1 <isp.in> decided on October 04, 2006 - **ANNEX 10**).



Furthermore, if a trademark is incorporated in its entirety in the domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark (INDRP Dispute Decision n°L-2/5/R1 <*bacarrat.in*> decided on October 06, 2006 and referring to WIPO Case n°D2001-0505 *Britannia Building Society v. Britannia Fraud Prevention*; , INDRP Dispute decision n°L-2/5/R4 <*Bristol.in*> decided on April 15, 2008; see also WIPO Case n°2006-1594 *Boehringer Ingelheim Pharma GmbH & Co.KG v. Philana Dhimkana - ANNEX 11*).

Given the strong distinctiveness of Complainant's mark and its extensive use in commerce, it is likely that Respondent may have targeted Complainant's mark in choosing the disputed domain name.

By registering the domain name in this manner, Respondent has therefore created a likelihood of confusion with Complainant's mark. It is likely that the public and Internet users may be misled or confused thinking that the disputed domain name, which is identical to Complainant's mark, is in some way associated with Complainant.

For all the above-cited reasons, it is established that Complainant has trademark rights in the name that is reproduced in the domain name in dispute, and therefore the condition of Paragraph 4(i) of the .IN Policy is fulfilled.

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

(Policy, paras. 4 (ii) and 7; Rules, para. 3(b)(vi)(2))

Respondent is not affiliated with Complainant in any way, nor has Respondent been authorized by Complainant to register and use Complainant's DANONE trademark or to seek registration of any domain name incorporating said mark.

Further, Respondent has no prior rights or legitimate interests in the disputed domain name. The mark DANONE is well-known and is widely used by Complainant. Complainant's rights in the DANONE mark predate Respondent's registrations of the domain name by a considerable length of time (**ANNEXES 1, 5, 6, 7 and 8**). Additionally, it is unlikely that the term "DANONE" has a special meaning in hindi or in any other language.

Besides, the use of another's trademark in domain name does not confer rights or legitimate interests in favour of the owner of the domain name (INDRP Dispute decision n°L-2/5/R3 <*itcportal.in*> decided on November 30, 2007, INDRP Dispute decision n°L-2/5/R4 <*bristol.in*> decided on April 15, 2008; See also WIPO Case n°D2000-1374 *America Online Inc., v. Xianfeng Fu* - **ANNEX 12**).

According to paragraph 7 of the Policy, the following circumstances, if proved, demonstrate a registrant's right or legitimate interest in the disputed domain name for the purposes of paragraph 4(ii) of the Policy:



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

To satisfy the requirements of the Policy paragraph 7(i), Respondent's use of the disputed domain name must be in connection with a bona fide offering of goods or services. Further, since the date of registrations, Respondent has neither used nor made any demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with bona fide offering of goods or services.

Policy paragraph 7(ii) is not applicable. Respondent is not currently known, nor has been known by the name DANONE. Besides, since the domain name in dispute is so identical to the famous trademark of the Complainant, Respondent cannot reasonably pretend it was intending to develop a legitimate activity.

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Neither is Policy paragraph 7(iii) applicable. Respondent is not using the domain name at all.

Besides, Respondent in this case has not filed any response to Complainant's cease-and-desist letter despite its reminders to show its interest in protecting its own right and interest in the domain name, which means Respondent does not have any legitimate interest in it (**ANNEX 4**).

Last, but not least, is the fact that Respondent expressly manifested his will to sell the domain name to Complainant (**Annex 18**). It proves that Respondent registered the domain name for one reason: selling it to any potential buyer. Such a conduct demonstrates everything but a legitimate interest in the domain name.

For the above-cited reasons, it is undoubtedly established that Respondent has no rights or legitimate interests with respect to the disputed domain name under Paragraph 4(ii) of the Policy.

**C. The domain name has been registered or is being used in bad faith.**

(Policy, paras. 4 (iii) and 6 ; Rules, para. 3(b)(vi)(3))

With regards to bad faith registration, it is obvious that Respondent knew or must have known Complainant's trademark DANONE at the time it registered the disputed domain name. DANONE is a well-known trademark throughout the world and Respondent cannot have ignored Complainant's international reputation at the time of registration of the domain name.



Indeed the wellknownness of the DANONE trademark has been recognized in many WIPO cases (WIPO Case n° D2007-1451 *Compagnie Gervais Danone v. Bethesda Properties LLC*; WIPO Case n°D2007-1918 *Compagnie Gervais Danone v. yunengdonglishangmao youxiangongsi* - **ANNEX 13**).

Furthermore, WIPO Panels have held the mark DANONE has been used extensively through extensive worldwide trading activities (WIPO Case n° D2007-1630 *Compagnie Gervais Danone v. Greatplex Media* - **ANNEX 13**).

In the WIPO case n°D2007-1918 concerning the domain name <danonefood.com>, the Panel held that the mark DANONE has undisputed fame worldwide (WIPO Case n°D2007-1918 *Compagnie Gervais Danone v. yunengdonglishangmao youxiangongsi*- **ANNEX 13**).

Complainant is a well-known worldwide company and DANONE is not only a well-known trademark but also a well-known trade name. The term "DANONE" is also used in the corporate name COMPAGNIE GERVAIS DANONE. A simple search via Google or any other search engine using the keyword "DANONE" demonstrates that all first results relate to Complainant's products or news (**ANNEX 14**).

The domain name in dispute was adopted by Respondent despite being aware of Complainant's well known trademark and trade name and the goodwill attached to it. Such conduct of Respondent clearly reflects the dishonesty and shows the mala fide intention of Respondent. Indeed, it has been held that the registration of a domain name containing a well-known



mark is strong evidence of bad faith (INDRP Dispute decision n°L-1/3/R4 <genpact.co.in> decided on March 24, 2008; INDRP Dispute decision n°L-2/5/R1 <bacarrat.in> decided on October 06, 2006; INDRP Dispute decision n°L-2/6/R3 <nba.in> decided on November 05, 2007 - ANNEX 15).

Besides, the Policy (paragraph 3) clearly states that it is the responsibility of Respondent to determine before registration that the domain name he is going to register does not infringe or violate third party rights. Since Complainant's mark DANONE is a well-known trademark and is registered in so many countries, it is unlikely that Respondent did not know about Complainant's rights in the mark or the domain name. Respondent was under an obligation to conduct a trademark search, which would have clearly revealed the trademark registrations in favour of Complainant. Breach of this provision of the Policy therefore infringes the legal rights of Complainant.

Moreover, by registering the domain name, Respondent has prevented Complainant from activating its website under the .IN country code corresponding to India in which Complainant has trademark rights. Complainant wishes to use the domain name <danone.in> on the basis of its various prior rights. Such use would therefore be perfectly legitimate.

The Policy, under Paragraph 6 (ii), states that if 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,



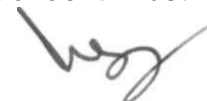
such registration can be considered as bad faith registration and use of the domain name.

Given the wellknownness of the DANONE trademark and the lack of Respondent's legitimate rights or interests in this mark, it is clear to infer that the domain name was registered for such bad faith purposes.

Additionally, there has been no active use of the domain name. Absence of use and passive holding of domain name have been held as evidence of bad faith use (INDRP Dispute decision n°L-1/3/R4 <genpact.co.in> decided on March 24, 2008; INDRP Dispute decision n°L-1/2/R4 <genpact.in> decided on January 28, 2008; INDRP Dispute decision n°L-2/5/R4 <bristol.in> decided on April 15, 2008; INDRP Dispute decision n°L-2/5/R3 <itcportal.in> decided on November 30, 2007 ; WIPO Case n°D2000-0003 *Telstra Corporation Limited v. Nuclear Marshmallows* - ANNEX 16).

Besides, the fact that the well-known trademark DANONE is included in its entirety in the domain name in dispute allows for the assumption that Respondent had bad intentions when registering the disputed domain name. It is therefore highly unlikely that its registration was a mere coincidence.

Consequently, taking into account Respondent's demand for the price that Complainant was ready to pay for the name, it is obvious that he registered the well-known mark as domain name to capitalize on Complainant's long history, its reputation and its goodwill. Respondent must be aware of the



commercial value of the trademark and registered the domain name for deriving revenue from them.

Respondent may have the following bad faith motives in registering the domain name:

- Respondent could be able to hold itself out as Complainant and cause damage to some third party by entering into transactions or contracts with them under the garb of being associated with Complainant. This can be extremely dangerous and prejudicial to public interest.
- Respondent could transfer or sell the domain name to a competitor of Complainant who could damage to the goodwill or reputation of Complainant by inserting material prejudicial to Complainant. This could lead to tarnishment of Complainant's image if valuable property like the domains name falls into the hands of a competitor of Complainant.

Policy, under Paragraph 6 (i), states that if there are circumstances which indicate that the Registrant has registered or acquired the domain name for the purpose of selling renting or otherwise transferring the domain name to Complainant or to a competitor, such registration can be considered as bad faith registration and use of the domain name. Given the well-known of the

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DANONE trademark and the lack of Respondent's legitimate rights or interests in the mark it is reasonable to infer that the domain name was registered for such bad faith purposes.

Furthermore, Policy, under Paragraph 6 (iii), states that if by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with Complainant's names or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location, such use can be considered as bad faith use of the domain name.

Under the given circumstances, although there is presently no active website linked to the domain name, the mere fact of that the domain name are replicas of the well known trademark and trade names of Complainant would give rise to likelihood of confusion in the minds of Internet users and the public.

Indeed, Complainant already owns and controls the domain name such as <danone.com>, <danone.fr>, <danone.us>, <danone.tv>, <danone.net> and <danone.eu> (**ANNEX 8**).

A domain name is more than a mere Internet address. It is an identifier. It often identifies the Internet site to those who reach it and sends a message that the site is owned by, sponsored by, affiliated with, or endorsed >y the

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person with the names, or owning the trademark, reflected in the domain name INDRP Dispute decision n°L-1/2/R1 <monster.in> decided on May 20, 2006 - ANNEX 17).

Respondent's registration of such domain name is likely to cause immense confusion and deception and lead the general public and the members of the trade community into believing said domain name enjoys endorsement and/or originates from Complainant.

Consequently, in view of the above, it is established that the Respondent both registered and used the domain name <danone.in> in bad faith in accordance with Paragraph 6 of the Policy."

7. The Respondents along its affidavit have filed a copy of the correspondence of the year 2007 which is Ex.3 from the perusal of the same this Tribunal finds that the respondents overseas client is shown to be one Mr. Mark Thomas Clarion Inc. # 47623 Studio City, C.A. 11111 having the email mark@yahoo.us.
8. The second correspondence with their client is an email dated 15.6.07 wherein the email id of the client of the Respondent is given as given as markdhms4@aol.com. Nevertheless in his correspondence dated 15<sup>th</sup> of June the Respondents through Mr. Narinder Bansal wanted details of zip,



phone, email as well. Apparently the same was not provided but nevertheless the Respondents chose to get the domain name Registered. This Tribunal notes with concern is that the so called client has vide his email dated 20<sup>th</sup> April, 2007 addressed to the Respondents written as under-

"the domain r registered for Danone , a French food product company which has very high brand value here. I have checked the domains r available. I want to build a fan club website."

From the above, this Tribunal notes the contents of this email and reads the same with the assertion of the complainant as given on page 5/6 of their complaint in which they claim to be a global leader in dairy products and No.2 in bottled water which establishes that Complainants are actually leaders in the field they claim to be. This Tribunal peruses the Annex. 18 of documents filed along with the complaint. Further this correspondence has not been disputed by the Respondents and also the correspondence dated 4<sup>th</sup> December, 2008 marked as Annex 18 of the complaint is from one Sukhchain Singh who is corresponding on behalf of the respondent. It reads as under:

"Its just as simple that what your company will pay for the domains as you have to buy it."

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The second correspondence is dated 3<sup>rd</sup> December is again on the same issue. The above establishes beyond doubt that the respondents wanted money for the transfer of website.

Later on vide its correspondence dated 10<sup>th</sup> November, 2008 the respondents i.e. Mr. Narinder Bansal have stated

"we have registered domain to develop a website for Danone Fan Club. Now that Danone itself wants this domain, we will be eager to develop their website. Being in the development from last 10 years we have developed many websites. A strong profile of the group like this will enrich our customer list and side by side compensate us."

This shows that the respondent wanted to do indirectly what they could not do directly i.e., sale of the domain name as they wanted to armtwist the complainants to enter into an agreement for development of website. From the above the entire story that Respondents have an overseas client is thrown to winds. Further this correspondence has not been disputed by the Respondents

9. The story of the overseas client further weakens because if there were any clients then any body holding a mandate on behalf of its client has to revert back to his client before even talking of transfer or development of a website. None of the correspondence faintly suggest this. It is also very

A handwritten signature in black ink, appearing to be 'Narinder Bansal', written over a horizontal line.



difficult for this Tribunal to digest that a fan club is being developed without the knowledge of the patrons.

10. This Tribunal also notes that later on the respondent wanted to transfer the domain to Danone and for the purpose were seeking to correspond directly with Danone which was not provided to them and later on this matter was referred to arbitration by NIXI.

**Findings:**

That in view of the above this Tribunal is coming to the following findings:

- 1) That the Respondents did not take due care to find out the details even though it asked for the same from its client Mr. Mark Thomas nevertheless went ahead and registered the domain name "danone.in".
  
- 2) That in case Respondents were registering the domain for the Danone Fan Club for their clients the correspondence does not suggest that Mr. Mark Thomas was the authorized representative of Danone . The story of Fan Club also does not inspire confidence. This Tribunal feels that in the present day barring film personalities, pop singers and celebrities no company has any fan club and even if it has it cannot be done without the consent of a company. The very fact is that the correspondence says that it is a French company of a very high repute then Mr. Narinder Bansal



should have in all fairness asked for an authorization before registering the domain. The defense of the respondent further gets weakened by an email dated 4<sup>th</sup> December, 2008 wherein Sukhchain Singh of the Respondent is clearly talking of money and later on the respondent Mr. Narender Bansal vide his email dated 10<sup>th</sup> November, 2008 is seen using this registration as a means to arm twist the complainant into giving them the mandate to develop a website i.e., doing indirectly what they could not do directly i.e., claim a reward / premium or by whatever name it can be called that is a valuable consideration for getting the domain name transferred in favour of Danone.

- 3) However, the conduct of the complainants counsels is also not above board by stone walling the demand for giving the details of authorized person of Danone to whom Mr. Narinder Bansal i.e., the Respondent wanted to confirm as to whether Dreyfus & Associates were actually having the mandate . This Tribunal feels that Narinder Bansal realized the gravity of the situation and thus vide his emails given in Annex 18 asked the attorney of the Danone to give the details of the person of Danone to whom they could seek confirmation to which surprisingly the attorneys vide their email dated 28<sup>th</sup> of January, 2009 stated as under:

"you won't be provided with our clients email or any contact information."

A handwritten signature in black ink, appearing to be 'Narinder Bansal', with a long horizontal line extending to the right from the end of the signature.

4) That this practice is unheard of. Every attorney in any of his correspondence is obligated to provide full details of his client so even though Mr. Narinder Bansal of the Respondent initially wanted to make profit by sale of the domain registration , he was fully within his rights to demand the details as he had already given the Authorization Code. The sky would not have fallen had his request been adhered to by attorneys and in case after that receipt of the said information the respondent would not have transferred the domain name things would have been viewed differently. This Tribunal too was faced with such a situation when it found that the Complaint has been signed by the attorneys without having filed any POA from the authorized person.

5) Be it that as it may this Tribunal now has the POA from Danone in favour of Dreyfus & Associates and the confirmation by way of an affidavit from Danone affirmed by Jerome Buscail, which confirms that this entire proceedings have been initiated on behalf of Danone by their attorneys and the doubts which Mr. Narinder Bansal had in mind as to the authenticity of the present attorneys are put to rest. The respondent have in their affidavit stated that in para 8 confirmed

8. That the deponent has never denied for domain transfer. The domain in question is transferred to company Danone after verifying all the facts.

A handwritten signature in black ink, appearing to be 'MS', is written over the end of the text in paragraph 8.

In view of the above and in view of the assertion that even the respondent do not have any objection and the POA / affidavit signed by authorized representative of Danone this Tribunal directs that the domain name "danone.in" be given to company "Compagnie Gervais Danone" without further delay.

The Complainants have claimed from the Respondents a sum of Rs. 170000,00 towards its attorney fees, procedural costs and damages, but no details of the same have been provided , hence this Tribunal is unable to accede to the said claim of the Complainants.

In the end this Tribunal thanks the parties for the cooperation extended by them and also sincerely thanks Ms. Nathalie Dreyfus, Learned Counsel for the Complainant for the extra efforts put in by her in providing assistance to this Tribunal.

Signed on this 27<sup>th</sup> day of June 2009 at New Delhi.



V. Shrivastav  
ARBITRATOR