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BEFORE THE SOLE ARBITRATOR UNDER THE
IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

COMPAGNIE GERVAIS DANONE
17, Boulevard Haussmann
75009 Paris
FRANCE

(COMPLAINANT)

-v-

JACK SUN
DomainJet, Inc
Shuyangxian
Suqian Jiangsu
223611
CHINA

(RESPONDENT)

The Parties

The Complainant in this proceeding is:

COMPAGNIE GERVAIS DANONE, a French Company incorporated under French law as a "societe anonyme", which has its head office at 17 Boulevard Haussmann 75009 Paris, FRANCE.

Handwritten signature

The Respondent in this proceeding is:

JACK SUN, registered office at DomainJet, Inc., Shuyangxian, Suqian, Jiangsu 223611, China. The information given is according to Whois Database.

THE DOMAIN NAME, REGISTRAR AND REGISTRANT

The disputed domain name is <**danonino.co.in**>. The registrar is:

Directi Internet Solutions Pvt. Ltd dba PublicDomainRegistry.com

Next to Andheri Subway,

Old NagarDas Road,

Andheri (East)

Mumbai, Maharashtra 400069

India.

PROCEDURAL HISTORY

That I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name DANONINO.CO.IN.

That .In Registry has supplied the copy of the Complaint and Annexures to me.

That on 31st May 2011, I sent an email to the parties informing them about my appointment as an Arbitrator. In the same mail I requested the Complainant to serve the copy of the complaint to Respondent and in case the copy has already being served then please provide the Arbitrator with the service records. In the same mail Respondent was requested to file the reply to the Complaint within 15 days from the receipt of the email or the copy of the complaint whichever is latter.

Thereafter, by email dated 1st June, 2011, the Complainant informed the Arbitrator that the copy of the complaint has already being served upon the Arbitration Centre and according to the INDRP Rules it is the duty of the Arbitration Centre to provide Respondent with the complaint and annexures.

Thereafter on 1st June, 2011 itself, the Respondent wrote the email to the Complainant and the Arbitrator expressing his desire to solve the matter peacefully.



In reference of the above mentioned mail of Respondent dated 1st June, 2011, the Arbitrator wrote the mail dated 2nd June, 2011 to both the parties that if they want to reconcile the matter, then a joint request is to be made to the Arbitrator for adjourning the arbitration proceeding, failing which the arbitration proceeding will continue. In the same mail Arbitrator again requested the Respondent to confirm whether he has received the copy of the complaint and in case if he has received the copy of the complaint then to file a reply within 15 days.

No reply was received by Arbitrator in respect of above mentioned mail from both the parties.

On 18th June, 2011, I sent an email to the parties informing them that the 15 days time granted to respondent has elapsed. But in the interest of justice and fairness, further extension of 7 day's was granted to Respondent to file the reply. Again no response was received from the Respondent and as such he has been proceeded ex-parte and the Arbitration proceeding have been conducted in his absence.

That I have perused the record and Annexures / document.

FACTUAL BACKGROUND:

The following information is derived from the complaint and supporting evidence submitted by the complainant.

Complainant, COMPAGNIE GERVAIS DANONE, is a subsidiary of the French company DANONE.

Complainant is a reputed, recognized Company with a good reputation worldwide. The Company qualifies itself as a leading brand of fresh Dairy products, bottled water, baby food and medical nutrition. DANONE nearly employs 100,000 people in five continents and is present in 120 countries.

Complainant main brand DANONE originate around 1919 in Barcelona, Spain when it was launched for yoghurts. In 1967, DANONE merged with the company GERVAIS and formed GERVAIS DANONE developing its activities in several sectors. In 1973, GERVAIS DANONE merged with BSN to form BSN-GERVAIS DANONE, France largest food and beverage group with consolidated sales in 1973 of approximately 14 billion euros, consisting of 52% food and beverages sales.



Complainant manufactures and sells various products like ACTIMEL and DANONINO.

DANONINO is a dietary supplement for children. The complainant defines it as a vitamin enriched yogurt with essential nutriments. It is sold in more than 35 countries, including Asian Countries.

Complainant's product DANONINO is registered in India under various trademarks.

- DANONINO n° 1051849 dated of October 12, 2001 and covering goods in class 29;
- DANONINO n° 1497624 dated of October 18, 2006 and covering goods in classes 29, 30 and 32.

COMPAGNIE GERVAIS DANONE is also the owner of numerous DANONINO international trademarks.

Complainant noticed that the disputed domain name has been registered by respondent on August 10, 2010 as well as the domain name actimel.co.in which is also under dispute. A Whois database revealed that the domain names were registered by Respondent.

The complainant also noticed that both domain names were offered for sale at sedo.com.

Complainant has sent a letter of 'cease and desist' by email and through registered mail dated October 28, 2010 in order to settle matters amicably. However, the Respondent did not answer any of the letters or emails.

Therefore the present procedure was started to get back the domain names.

The respondent is Jack Sun and according to Whois database, has its registered office at Shuyangxian, Suqian, Jiangsu, China.

PARTIES CONTENTIONS

a. Complainant

The complainant argues the following:

1. The domain name registered by respondent is identical to the trademark of complainant.



2. Respondent has no rights or legitimate interests in respect of the domain name.
3. The domain name has been registered or is being used in bad faith.

b. Respondent

The Respondent did not reply to any of the contentions made by the Complainant despite being given ample time and warnings by the Arbitrator.

DISCUSSIONS AND FINDINGS

It has earlier been indicated that the Respondent has failed to reply to any of the mails sent to him by the Complainant as well as the Arbitrator, nor has he rebutted the contentions made by the Complainant or the evidence produced against him.

Rule 8 (b) of the INDRP Rules of Procedure provides that "In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case".

However, in the present case, seeing the lack of response from the Respondent's end, he has been proceeded ex parte and the Arbitration proceeding have been conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that "An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be applicable"

Therefore in the present circumstances the decision of the Arbitrator is based upon the contentions made by the Complainant, the evidence produced by him and inference drawn from the failure of the Respondent to reply.

The burden that the Complainant must meet under paragraph 4 of the INDRP policy is to 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;
and



(iii) The Registrant's domain name has been registered or is being used in bad faith.

A. The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

The Complainant has alleged that the Respondent's domain name is confusingly similar to its trademark.

The Complainant sets out with the argument that the predominant part of the disputed domain name is "danonino", the registered trademark of the Complainant. The complainant contends that the presence of the suffix <co.in> is not to be taken into consideration. He has relied on the judgment in the case: INDRP Dispute Decision n° L-2/1/R1 <*pepsico.in*> decided on April 27, 2008; and INDRP Dispute Decision n° L-2/9/R4 <*sensex.in*> decided on August 17, 2008.

Secondly the Complainant has argued that there is no alteration existing which distinguishes Respondent's domain name from the trademark and it is exactly the same. He has given the judgment in INDRP Dispute decision n° L-1/6/R1 <*internet.in*> decided on July 05, 2006 and INDRP Dispute decision n° L-1/7/R1 <*isp.in*> decided on October 04, 2006.

The third argument that the Complainant puts forth is that when a trademark is incorporated in its entirety in the domain name, it is sufficient to establish that the said domain name is identical or confusingly similar to the Complainant's registered mark. He has cited the following cases in support of his argument.

- o INDRP Dispute Decision n° L-2/5/R1 <*bacarrat.in*> decided on October 06, 2006.
- o WIPO case n° D2001-0505: *Britannia Building society v Britannia Fraud Prevention*.
- o INDRP Dispute Decision n° L-2/5/R4 <*Bristol.in*> decided on April 15, 2008.
- o WIPO Case n2006-1594 *Boehringer Ingelheim Pharma GmbH & C.KG v. Philana Dhimkana*

Arbitrator agrees with the contention of the Complainant that by registering the domain 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, which is identical to Complainant's mark, is in some way associated with Complainant.



Moreover there is a very clear similarity between the disputed domain name and Complainant's trademark and the fact that the trademark has been used in its entirety in the disputed domain name proves the same.

The Respondent has not rebutted any of the above the contentions and as such they are deemed to be admitted by him.

Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

B. The Registrant has no rights or legitimate interests in the respect of the domain name

According to paragraphs 4(ii) and 7 of the INDRP policy:

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name:

- (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 bonafide offering of goods or services;*

The Arbitrator is of the opinion that the Respondent has not used the domain name for the bona fide offering of goods and services.

It has been contended by the Complainant that the Respondent has used the domain name in connection with a parking website. He has relied on the judgment in INDRP Dispute Decision n° INDRP/ 167 <lazard.in> decided on November 30, 2010.

- (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*

Complainant has contended that the Respondent does not appear to be known under the name used in the disputed domain name. He is not currently known, nor has been known by the name DANONINO.



- (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 Complainant has contended that since the disputed Domain name is so identical to the famous trademark of the Complainant that the Respondent cannot reasonably pretend it was intending to develop a legitimate activity. Further using the domain in connection with parking website is not fair use of domain name.

The Respondent has not rebutted any of the above contentions made against him.

Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(h)

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

Under paragraph 6 of INDRP policy and for the purposes of Paragraph 4(iii) of the INDRP policy, the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a 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 bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*

The Complainant has contended that in the present case the domain name was offered for sale at sedo.com. It demonstrate that Respondent was aware of the disputed domain name's value and that he had planned to make the profit via offer for sale at sedo. Moreover, there are various links on the parking website that directs towards the website operate by the companies that are more or less competitors of Complainant.

The Complainant has relied upon the following case. INDRP Dispute decision n° L-2/5/R1 <bacarrat.in> decided on October 06, 2006

- (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 the Registrant has engaged in a pattern of such conduct; or

The Complainant has contended that by registering disputed domain name, Respondent has prevented Complainant from activating its website under one of the .in extension corresponding to India in which Complainant has trademark rights. Moreover the Respondent is also not using the disputed domain name and has merely parked it on the website sedo.com.

On the basis of the facts and evidence produced, Arbitrator is also of the view that 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.

(iii) 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 the Complainant's name 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.

The Complainant has contended that a simple search via Google or any other search engine using the keyword "DANONINO" demonstrate that all first results to Complainant products or news and this would have convinced any good faith registrant that registration of the disputed domain should be avoided.

Arbitrator is of the view that keeping in view that Complainant's trademark is a well known mark and is very popular, the Respondent has knowingly registered the disputed domain name and has intentionally attempted to attract Internet users to the its website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark .

Any of the above submission of the Complainant made under the heading "*domain name has been registered or is being used in bad faith*" has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the domain name has been registered or is being in the bad faith.



DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint. In the facts and circumstances of the case it can be presumed that only purpose for the registration of the disputed domain name was to capitalized on the fame and reputation of Complainant and to make monetary benefit.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <danonino.co.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 27th day of July, 2011.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 27th July, 2011