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15.2.2011

D.SARAVANAN

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P.S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L. NO. P4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104. (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
IN REGISTRY
{C/o. NATIONAL INTERNET EXCHANGE OF INDIA}

Disputed Domain Name: www.elililly.in

Eli Lilly and Company
Lilly Corporate Center
Indianapolis 46285
United State of America
Rep. by its Attorneys
M/s.Lall and Sethi Advocates
rmalik@indiaip.com

..

Complainant

Vs.

Mr.Andrew Yan
No.800, Dongchuan Road
Minhang
Shanghai
China 200240
admin@domainbroker.tw

..

Respondent





தமிழ்நாடு தமில்நாடு TAMILNADU

7736
15.2.2011.

D.SARAVANAN

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S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L. No. 24 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104. (TAMIL NADU)

-2-

1. The Parties:

The complainant is the Eli Lilly and Company, having their office at "Lilly Corporate Center", Indianapolis 46285, United State of America, Rep. by its Attorneys M/s.Lall and Sethi Advocates.

The respondent is Mr. Andrew Yan, having his office at No.800, Dongchuan Road, Minhang Shanghai, China 200240.

2. The Domain Name and Registrar:

The disputed domain name:

www.elililly.in

The domain name registered with .IN REGISTRY



3. Procedural History:

- January 18, 2011 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- January 22,2011 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorized representative and .IN REGISTRY.
- February 01,2011 : Due date for filing Response by Respondent.
- February 10,2011 : Arbitrator sent an e-mail to Respondent notifying his default, a copy of which marked to Complainant's authorised representative and the .IN REGISTRY.
- : The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The complainant is the Eli Lilly and Company, having their office at "Lilly Corporate Center", Indianapolis 46285, United State of America, Rep. by its Attorneys M/s.Lall and Sethi Advocates.

4.2 Complainant's Activities:

The Complainant is a corporation organized and existing under the laws of the State of Indiana, USA, which is an internationally renowned pharmaceutical company founded in May, 1876 and ever since the complainant has been a manufacturer of pharmaceutical products of the highest possible quality that would be dispensed at the suggestion of physicians.

4.3 Complainant's Trading Name:

i) The Complainant is the owner of the trade mark and service mark ELI LILLY AND COMPANY and LILLY, and other trade marks and service marks in which the LILLY mark appears as a component thereof in which the complainant has the exclusive rights to the use of the said trade marks *inter-alia* in respect of the goods/services for which the said



trade marks are registered. The trade mark ELI LILLY AND COMPANY in US has been registered vide No.0113361 on 17th October, 1916 for the goods as mentioned in the registration certificate filed under **Annexure D** which registration is valid and subsisting. The complainant's trade mark, trade name and domain name were used and applied for registration long before the respondent's registration of the disputed domain name and the print out from the website of .IN REGISTRY is filed under **Annexure C**. The complainant further states that the said trade mark LILLY has been registered in more than 100 countries around the world and the proof of few registrations has been filed under **Annexure E**. As far as India is concerned both the trade marks LILLY, ELILILLY AND COMPANY had been registered vide Registration Nos.101487, 186684 and 293 on 3rd October, 1944, 29th August, 1965 and 1st June, 1942 respectively for the Medicinal Products which has been filed under **Annexure F**.

(ii) The complainant further states that their use of well known and prior trade mark/trade name has been extensive, exclusive and continuous all across the world. The Complainant's trade marks are featured through out their website. As a result of Complainant's marketing and promotion of its goods and/or services under its trade mark/trade name has gained worldwide recognition and goodwill which has become very well known and such trade mark/trade name has firmly been associated with the complainant prior to the respondent's registration of the disputed domain name.

(iii) The complainant further states that they maintain websites at the domain LILLY.COM, a copy of the home page of the said website is filed under **Annexure G** and the said websites were used and applied for registration long before the respondent's registration of the disputed domain name. The Complainant's trade mark are featured through out the website, and the complainant clearly claims ownership of the trademark thereon, and the page containing "Terms and Conditions" is filed under **Annexure H**. On 9th April, 1907, the Complainant adopted the mark LILLY for the goods/services of its manufacture and sale which has been used as a part of the Corporate trade name/domain name of the Complainant for decades and is used on all products manufactured by the Complainant, and further the domain name LIILLY.COM is being used since 10th May, 1991.



(iv) The Complainant further states that the trade mark LILLY has been featured in a number of English Dailies in India which publications are filed under **Annexure I**. The trade mark LILLY has been extensively advertised and promoted on the internet *inter alia* through the Complainants websites www.lilly.com and besides various other regional websites for other countries of the world which websites contain extensive information about the complainant and the products marketed and sold under the trade mark LILLY and such information is accessible by any person from anywhere in the world including from India. The print out of the said websites are filed under **Annexure J**. In the light of the above, the complainant states that it is evident that the complainant has strong rights in its trade marks, trade and domain name www.lilly.com, and is entitled to get protection from 3rd parties act of cyber piracy, including that of the respondent.

4.4 Respondent's Identity and activities:

The Respondent is the registrant of the Domain Name **<elililly.in>** which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as Mr. Andrew Yan, having office at No.800, Dongchuan Road, Minhang Shanghai, China 200240. Neither the Respondent represented himself nor represented by any one.

5. Parties contentions:

A. Complainant:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has rights:

The complainant states that the respondent registered the disputed domain name on 11th January, 2010 as marked under **Annexure-B**, however, such disputed domain name is identical to the Complainant's trade marks, trade name and domain name as the dominant and distinctive feature of the disputed domain name is the incorporation of the Complainant's trade marks and trade name, as it is. At the time of registration of the disputed domain name, the complainant had already been using its marks as trade marks, part of the trade name and domain name and had firmly established rights in such marks. The respondent cannot claim or show any rights to the disputed domain name that are superior to Complainant's rights in its trade marks, as evidenced by Complainant's prior and well known use of the mark and registration thereof nor can respondent demonstrate



that it was unaware of Complainant's mark at the time of the registration of the disputed domain name. Since, the Complainant's mark is well known and the respondent has no rights in the said mark, the only reason could have been wanted to register a domain name that so prominently features the Complainant's marks was with the intention to trade upon the fame of the Complainant's mark by selling the disputed domain name for substantial commercial gain, in violation of Section 4(b) of the policy. The complainant has also relied upon the precedent reported in 1999 PTC (19) 210 Delhi in the case of Yahoo! Inc. versus Akash Arora and another. The complainant further states that the internet users are likely to believe that the disputed domain name is related to, associated with, or authorized by the complainant and the complainant further apprehends considering their already uses site such as www.elililly.com, www.lilly.com, the internet users would be confused into thinking that the respondent enjoys authorization of the complainant to do business in India or is in fact their Indian website considering that the country code top level domain name in the disputed domain name is '.IN', and it is precisely because of this association with the Complainant's mark that respondent saw the value in the disputed domain name and registered it. Hence, according to the complainant they have satisfied the first ground of the policy, that the disputed domain name is identical or confusingly similar to the Complainant's mark.

(b) Respondent has no rights or legitimate interests in the domain name:

The respondent registered the disputed domain name after complainant had established rights over its marks through extensive use and registration which are so well known and recognized and hence there can be no legitimate use by the respondent. Further, the complainant states that there exists no relationship between complainant and respondent that would give rise to give any license, permission or authorization by which the respondent could own or use the disputed domain name, which is identical or confusingly similar to Complainant's mark. Further, the respondent is not commonly known by the disputed domain name and is not making legitimate non commercial or fair use of the disputed domain name. The website at the disputed domain name prominently proclaims at the very top of the page the Complainant's trade marks ELI LILLY AND COMPANY and LILLY and hence the respondent's only purpose in registering the disputed domain name was to offer to sell the disputed domain name for commercial gain.



According to the complainant, they have satisfied the second ground of the policy that the respondent has no rights or legitimate interest in the disputed domain name.

(c) Respondent has registered and is using the domain name in bad faith:

(i) The complainant states that it is apparent that both at the time of registration and continuing to the present, the respondent has sought to profit from an unauthorized association with the Complainant's mark and it is clear upon viewing the content of the website and the disputed domain name that the respondent registered the disputed domain name for the purpose of selling it; this offer for sale is indisputable evidence that respondent registered and is using the disputed domain name in bad faith. According to the complainant, the bad faith use of the disputed domain name is quite clear in this case, given the content on the respondent's website and is intend to sell the disputed domain name to the highest bidder. Given the fame of the Complainant's marks as a trade mark, trade name and domain name, it is not possible to conceive of a use by respondent of the disputed domain name that would not constitute an infringement of Complainant's rights in its trade mark, and mere registration by respondent of the disputed domain name is thus further evidence of respondent's bad faith.

(ii) The complainant further states that the activities of the respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's mark to improperly benefit respondent financially, in violation of applicable trade mark and unfair competition laws and more over the activities of the respondent demonstrate bad faith registration and use of the disputed domain name in violation of policy under paragraph 6 and the facts as provided make it clear that the respondent was and is taking advantage of the goodwill and fame of Complainant's well known trade marks for its own substantial commercial profit and gain.

(iii) The complainant further states that the respondent registered and has used the domain name in bad faith and when internet users log on to the disputed domain name elililly.in, clicking anywhere on the site leads them to a totally different page which does not reflect and nowhere closely relates to the Complainant's marks or the site which clearly evidences the fact that respondent is using the disputed domain name in bad faith with the



intention of diverting traffic by attracting internet users for commercial gain to its website by creating a likely hood of confusion with the Complainant's well known mark as to the source, sponsorship, affiliation or endorsement or its websites and the services on them. In this respect, the complainant relies upon two cases decided by WIPO in the case of Bannet Colmen and Co. Ltd., -vs- Steven S.Lalwani (Case No.D2000 – 0014) and Bannet Colmen and Co. Ltd., -vs- Long Distance Telephone Company (Case No.D2000-0015) wherein the complainant being the publisher of daily newspaper "The Economic Times' and "The Times of India' held domain names www.economictimes.com and www.timesofindia.com for publication of their respective newspapers, however, the respondent in that case had registered their sites www.theeconomictimes.com and www.thetimesofindia.com and the complainant therein contended that this was use of identical marks in which it had prior rights, and hence the complainant challenged the disputed domain names was in bad faith. It was in these circumstances, the WIPO administrative panel held that the disputed domain names were specifically selected in order to take advantage of the Complainant's very considerable reputation in the two titles of its publication by misleading internet users into believing that the respondent's websites came from or were associated with the complainant and consequently the WIPO administrative panel has ordered to transfer the disputed domain names to the complainant therein. The said decisions were filed under **Annexure L**. By stating so, the complainant prays that the disputed domain name be either cancelled or immediately be transferred to the complainant.

B. Respondent:

The Respondent did not submit any response.

6. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? And Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response, and that non-submission of the Response by the Respondent had also been notified to the Respondent on 10th February, 2011.



Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered Trade / Service Marks "ELILILLY AND COMPANY and LILLY". The Respondent's domain name, <elililly.in>, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <elililly.in> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's **Rights or Legitimate Interests:**

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in this proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain



name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests. Considering the above, and based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, 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 the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Complainant asserts that the Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.



iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose and or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. **Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <elililly.in> be transferred to the Complainant.

Dated at Chennai (India) on this 16th day of February, 2011.


(D.SARAVANAN)
Sole Arbitrator