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**BEFORE THE SOLE ARBITRATOR UNDER THE  
.IN DISPUTE RESOLUTION POLICY**

**IN THE MATTER OF:**

Chocoladefabriken Lindt & Sprüngli AG  
Seestrasse 204, 8802,  
Kilchberg, Switzerland

(Complainant)

Versus

Wangyuan  
Pfister Hotel,  
Milwaukee,  
WI 53214,  
USA

(Respondent)

**The Parties:**

The complainant in this proceeding is Chocoladefabriken Lindt & Sprüngli AG, a company incorporated in Switzerland, having its address Seestrasse 204, 8802, Kilchberg, Switzerland.

The complainant is represented through their authorized representative:

Mr. Naval K Kastia of  
Lall and Sethi Advocates,  
D-17, South Extension – II,  
New Delhi – 110049  
(F): +91 11-4289-9999  
(E): [nkkastia@indiaip.com](mailto:nkkastia@indiaip.com)

The respondent in this proceeding is Wangyuan, Pfister Hotel, Milwaukee, WI 53214, USA.

**THE DOMAIN NAME AND REGISTRAR:**

The domain name in dispute is [www.lindt.co.in](http://www.lindt.co.in). According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name [www.lindt.co.in](http://www.lindt.co.in), with whom the disputed domain name [www.lindt.co.in](http://www.lindt.co.in) is registered is Transecute Solutions Pvt. Ltd.

**PROCEDURAL HISTORY:**

I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint by the complainant, regarding the dispute over the domain name [www.lindt.co.in](http://www.lindt.co.in).

.IN Registry has supplied the copy of the Complaint and Annexures to the Arbitrator.

That in accordance with the Rules, on 14/03/2012, the Arbitrator sent an email to the parties informing them about my appointment as an Arbitrator.

That on 14/03/2012 Arbitrator via email informed the Complainant and NIXI that the set of complaint provided to the Tribunal is not correct and gave a time of 7 days to the Complainant as well as NIXI to rectify the error and send the correct set of



complaint to the Tribunal within next 7 days, so as to decide the matter at the earliest. The complaint sent was relating to domain name www.lindt.co.in while the annexures attached were related to www.lindt.in, needing rectification.

On 17/03/2012, the Arbitrator received an email from the Counsel of the Complainant stating that they had sent the correct annexures to the NIXI office and the Arbitrator.

On 24/03/2012, the Arbitrator received an email from the Counsel of the Complainant asking about development in the present matter.

On 07/04/2012, the Arbitrator by email of the same date informed the Complainant and NIXI that the Arbitrator till date has not received any service record of the service of the Complaint upon the Respondent by the Complainant. It was also brought to their notice that the email address of the Respondent mentioned in the Complaint was presumed to be incorrect because email sent on the same is not delivered to the respondent and bounces back in return. NIXI and the Complainant were directed to look into their records and inform tribunal correct email id of the Respondent within 3 days.

On 07/04/2012 only, the Arbitrator received a mailer-daemon that the delivery to shahuang894@gmail.com failed permanently.

On 09/04/2012, the Arbitrator received an email from the Counsel of the Complainant stating that as per the records available on .IN Registry respondents email address is ymgroup@msn.com.

On 30/04/2012, the Arbitrator via email, on the new email address directed the respondent to respond within next 24 hours verifying the accuracy of the email id. The Complainant was also directed to send the postal receipts as proof of service of complaint and documents.

On 30/04/2012 only, the Arbitrator received another mailer-daemon that the delivery to shahuang894@gmail.com failed permanently.

On 02/05/2012, the Arbitrator received email from the counsel of the Complainant stating that as per the INDRP Rules of Procedure, complainant is required to submit the complaint to .IN Registry which was done by the Complainant. The .IN Registry is thereafter required to send the same to the Respondent.



On 05/05/2012, the Arbitrator via email informed the parties that as the Tribunal were not in receipt of proof of service and as such in the interest of justice complainant was asked to serve a copy of the complaint and documents to the respondent. Complainant was directed to serve a copy of the complaint along with documents through email as well as by post and to send to the Tribunal proof of the service. NIXI was also directed to send the proof of service of complaint along with documents on the Respondent.

On 07/052012, the Arbitrator received an email from the counsel of the complainant stating that the complaint along with annexures has been forwarded to the Respondent and proof of service of the same by post and email were also enclosed.

Even thereafter 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.

The Tribunal has perused the record and Annexures / documents.

**Factual Background:**

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

The Complainant in this proceeding is Chocoladefabriken Lindt & Sprüngli AG, a company predominantly engaged in manufacturing and merchandising premium chocolates and confectionary products. The Global net-trade sales of the Complainant in the year 2010, under the brand LINDT was 2, 27 Billion.

As per the complainant, the complainant adopted the mark LINDT in the year 1845 for premium chocolates and has been exclusively and extensively using the same. The complainant has further stated that company is the owner of the trademark and service mark LINDT, and other trademarks and service marks in which the LINDT mark appears as a component thereof and also has the exclusive rights to use the aforesaid trademark in respect of the goods for which the said trade mark is registered. The complainant's trademark LINDT is also its trading name and it promotes goods online, using the Internet and worldwide web through the domain name [www.lindt.com](http://www.lindt.com) as well as through various other country level domains. Additionally, the Complainant has the trademark LINDT registered and/or pending registration in more than 100 countries around the world which had definitely



helped the company in gaining international repute. The complainant has further submitted that its trademark LINDT is registered under the Trademarks Act, 1999 in India in September 1994 for goods under International Class 30 and the products have been a huge success across India.

It is the case of the complainant that use of the well-known trademark has been extensive, exclusive and continuous all around the world. As a result, the complainant's marketing and promotion of its goods under its trademark LINDT, the mark has gained worldwide recognition and goodwill and has become very well-known. Moreover, the complainant's trade mark has firmly been associated with the complainant.

The complainant has further stated that it has spent huge sums of money towards advertisement and promotion of its brand, LINDT globally and has done so even on the internet, *inter alia*, through its website [www.lindt.com](http://www.lindt.com) , accessible anywhere in the world.

Respondent in this proceeding is an individual name Wangyuan who has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

**Parties Contentions:**

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

A handwritten signature or set of initials, possibly 'DHC', written in black ink. It consists of a large, rounded 'D' followed by a vertical line and a horizontal stroke that curves upwards and to the right.

**Discussions and Findings:**

As previously indicated; the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by 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”*.

As mentioned above enough chances have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been proceeded against, *exparte* 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”*

In these circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent’s failure to reply.

A perusal of the submissions and evidences placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark “LINDT”.

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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.

**The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights** - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))

The complainant's trademark "LINDT" was adopted in the year 1845 and the complainant is the registered user of the same in about 100 countries around the world. It is also the registered proprietor of the trade mark LINDT in India under the International Class 30, dated September 1994.

The respondent registered the disputed domain name on 07/06/2011, according to the available information. The disputed domain name is identical to the complainant's trademarks and domain name and a very distinctive feature of the disputed domain name is the incorporation of the complainant's trademarks, as it is. At the time of registration of the disputed domain name [www.lindt.co.in](http://www.lindt.co.in), the complainant had already been using the mark LINDT as its trademark and domain name with firmly established rights in the same. Also, at the time of registration, the complainant's trademark had already acquired the status of a well-known mark. The respondent can neither show any rights superior to that of the complainant in the trademark LINDT nor can the respondent state that it was unaware of the complainant's mark while registering the disputed domain name. The only logic of getting an identical mark registered in such a case is in the reason that the respondent got the mark LINDT registered 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. Internet users are highly likely to believe that the disputed domain name is related to, associated with or authorized by the complainant.

It can thus be proved that the registration of the disputed domain name in this case, is nothing but a blatant imitation with a malafide intention of earning upon the name and fame of the complainant.

**The Registrant has no rights or legitimate interests in the respect of the domain name** - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)



- 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;*

The complainant averred at the outset that the Complainant's marks are so well known and it has gained rights purely based upon prior use and registration of the mark, that there can be no legitimate use by the respondent. Therefore, the use of the disputed domain name without any permission from the complainant is an act done in bad faith, in itself.

Further, there exists no relationship between the Complainant and the Respondent so as to give rise to any license, permission or authorization by which the respondent could own or use the disputed domain name which is identical to that of the complainant. It is also known that the respondent is not commonly known by the disputed domain name and is not making any legitimate use of the same. It is thus clear that the only purpose behind registration of the Disputed Domain Name is to use it detrimental to the interest of the complainant or to offer it to sell the same for commercial gain.

The complainants thus proved that the registration and use of the disputed domain name by the respondent was done in bad faith as per paragraph 6(i) of the policy, in the sense that its registration and thereafter to use it amount to an attempt to intentionally attract, for commercial gain, internet users to their websites by creating a likelihood of confusion with the complainant's marks as to the source, sponsorship, affiliation or endorsement of those websites and the services offered thereon.

**The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))**

The bad faith of the respondent is apparent from the fact that an email was sent by the respondent to the complainant asking to contact them for the domain name in question and when replied for immediate transfer of the same, the respondent asked for a sum of USD 1590 as compensation for transfer of the disputed domain name. This fact is not disputed by the respondent as he has failed to file his response. It is thus, very clear that both at the time of registration as well as usage, the respondent had sought to profit from an unauthorized registration and usage of the





complainant's mark. He got the name registered having full knowledge of the Trademark's repute and only to extort money and make unlawful gains.

Given the fame of the complainant's trademark and domain name, it is not possible to conceive of a use of the same by the respondent that would not constitute an infringement of the complainant's rights in the trademark. Thus, mere registration of such a well-known trademark would be an evidence of the respondent's bad faith.

The facts make it clear that the respondent was taking advantage of the goodwill and fame of the complainant's well-known trademark for its own substantial commercial profit and gain and the usage of the disputed domain name is in bad faith as per defined under paragraph 6 (iii) of the policy.

### **Decision**

The complainant has relied upon numerous cases for proving the infringement of its trademark rights in the trademark LINDT and related domain names by the registration and usage of the disputed domain name by the respondent. In one of the earliest cases, *Yahoo! Inc. v. Akash Arora & Anr.*, it was decided that "the defendant's domain name could be perceived as being another one of the plaintiff's because of the deceptive similarity between the two." In relation to proving the respondent's bad faith while registration and subsequent usage of the disputed domain name, the judgment in *Veuve Clicquot Ponsardin v. The Polygenix Group Co.* was relied upon which held that, "mere registration by respondent of the disputed domain name is evidence of the respondent's bad faith." The decision of *Guerlian S.A. v. PeiKang and Veuve Clicquot Ponsardin v. The Polygenix Group Co.* was also referred to for proving the respondent's bad faith, wherein it was held that "a domain name so obviously connected with the complainant's product suggests opportunistic bad faith." The decisions in *Caravan Club v. Mrgsale, NAF and CBS Broadcasting Inc. v. Worldwide Webs, Inc.* have also been referred where it was held that "registration of well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith within the meaning of paragraph 6(i) of the policy".

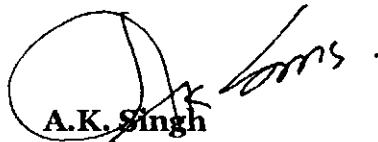
In view of the above facts and circumstances, it is clear that complainant has succeeded in his complaint. In these circumstances it can be presumed that only reason for the registration of the disputed domain name by the Respondent was to



capitalize on the fame and reputation of Complainant and to make monetary benefits.

Therefore the Respondent registration and use of the disputed domain name is done in bad faith and NIXI is hereby directed to transfer the domain name of the Respondent i.e. WWW.LINDT.CO.IN to 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 5<sup>th</sup> day of July 2012.

It consumed a little more time in passing the present award as the Tribunal wanted to arrive at the right decision and see that the parties are in possession of documents pertaining to the matter and as such directed complainant to produce certain information and documents which consumed some time.



A.K. Singh

**Sole Arbitrator**

**Date: 05.07.2012**