



दिल्ली DELHI

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR

N 843804

IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Sensient Technologies Corporation
777 E, Wisconsin Avenue
Suite 1100, Milwaukee
WI53202
USA

COMPLAINANT

Versus

Amar Bose
5, Cambridge Center, Cambridge,
Massachusetts MA 02142
Email: domains@india.com

RESPONDENT

THE PARTIES:

The complainant is Sensient Technologies Corporation, 777 E, Wisconsin Avenue, Suite 1100, Milwaukee, WI 53202, USA.

The respondent is Amar Bose, 5, Cambridge Center, Cambridge, and Massachusetts MA 02142, E-mail: domains@india.com

THE COMPLAINANT HAS FILED THE COMPLAINT UNDER IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

The Complainant, Sensient Technologies Corporation, having its office at 777E. Wisconsin Avenue Suite 1100, Milwaukee WI 53292 USA, has

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invoked .IN Domain name Dispute Resolution Policy for the transfer of the domain name SENSIENT.CO.IN currently registered in the name of Amar Bose (respondent) of 5 Cambridge Centre, Cambridge, Massachusetts MA 02142.

2. The complaint has been filed by Ms. Rachna Bakuru of Ranjan Narula Associates, Intellectual property Attorney, at Vatika Towers 10th Floor, Block B, Sector 54, Gurgaon-122002: under authorization from the Complainant vide power of attorney dated 15th November, 2010. Email: rbakuru@indiaiprights.com . A copy of the aforesaid power of Attorney has also been filed and marked as Exhibit A.
3. The complainant has instituted the present complaint in order to protect the Complainant's rights in the trade mark and domain name SENSIENT which has been unauthorisedly copied by the Respondent and has registered an identical domain name (www.sensient.co.in) with the .Co.IN registry. A copy of WHOIS report has been enclosed by the complainant as Exhibit- B for contact details of the respondent and the aforesaid domain name registration.

THE COMPLAINANT HAS GIVEN THE DETAILS ABOUT IT AS UNDER:

4. The Complainant is a global company with operations in more than 30 countries is the world's leading supplier of flavors, fragrances and colors used to make a diverse variety of foods and beverages, pharmaceuticals, cosmetics, home and personal care products , specialty printing, and imaging products computer imaging and industrial colors. The Complainant employs advanced technologies around the world to develop specialty food and beverage systems, cosmetic and pharmaceutical ingredient systems, inkjet and specialty inks, display imaging chemicals and other specialty chemicals. The Complainant's employs 3600 employees worldwide and its customer include major international manufacturers representing some of the world's best- known brands.
5. The complainant was founded in 1882 as Meadow Springs Distilling Company. In the late 1800s, Complainant changed its name to National Distilling Company. Subsequently, National Distilling Company changed its name to Red Star yeast and products Company. Red Star yeast products Company changed its name to Universal Foods Corporation in 1962. In 2000 Universal Foods Corporation changed its name to Sensient Technologies Corporation (Complainant).
6. The complainant has offices around the world including in USA, Canada, United Kingdom, Germany, Italy, France, Switzerland, Belgium, Korea, China, Australia, New Zealand, Thailand to name a few.
7. In India Sensient Private Limited is Complainant's subsidiary having its registered office at 322 Solitaire Corporate Park Andheri Kurla Road Andheri East Mumbai. It was incorporated on October 12, 2001.
8. The complainant also owns the websites www.sensient.com , www.sensient-tech.in , www.sensient-tech.com which are accessible from

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worldwide and is available for use by users globally, including those in India. The Complainant has alleged that the domain name www.sensient.com was created on 27th September 1998 and is valid until 26th September 2020, domain name www.sensient-tech.in was created on 18th March 2008 and is valid until 18th March 2011 and the domain name www.sensient-tech.com was created on 19th July 2000 and is valid until 19th July 2020. The complainant has filed the copy of the WHOIS web shots as **Exhibit-C**. The complainant has filed the third party summary of SENSIENT history which refers to the complainant and none else from Wikipedia as **Exhibit-D**. The Complainant has contended that it is widely known that Wikipedia is an encyclopedia edited by the masses. Therefore this information reflects the view point of the general public and not necessary people related to the complainant.

INTELLECTUAL PROPERTY RIGHTS IN THE MARK SENSIENT:

9. The Complainant has submitted that in India, the complainant has obtained registration of the trademark "SENSIENT" in numerous classes as detailed below:

Trade Mark	Registration No.	Registration Date	Class	Validity
SENSIENT	1278268	12 TM April 2004		12 th APRIL 2014
SENSIENT	1278269	12 th April 2004	2	12 TM April 2014
SENSIENT	1278266	12 TM April 2004	5	12 TM April 2014
SENSIENT	1278270	12 TM April 2004	5	12 th April 2014
SENSIENT	1278271	12 TM April 2004	29	12 th April 2014
SENSIENT	1278272	12 th April 2004	30	12 th April 2014

The Complainant has attached copies of registration certificates as Exhibit -E .

10. The Complainant has further submitted that pending applications/registrations of the SENSIENT in a number of countries around the world including United States of America Australia, Argentina, Canada, china, European Community, Malaysia, Turkey, Thailand, Switzerland, Sri Lanka, South Africa to name a few. The Complainant has annexed copies of few world wide registration certificates in the name of the Complainant as Exhibit- F. The Complainant has annexed the list of countries where the Complainant has pending applications/registrations for the mark SENSIENT as Exhibit G.

COMPLAINANT'S SALES FIGURES WORLDWIDE:

11. The Complainant Company has generated revenue of US\$ 1201 million for the year 2009. The Complainant Company has contended that the sales in U.S.A accounted for 59% of the total sales. The Complainant Company has filed summary of the Complainant's revenue and financial figures for the period 2004 to 2009 as Exhibit H. Further, the Complainant Company has contended that the Complainant has recorded revenue of US\$ 773 and generated income of US\$124, 5 FROM its flavour and fragrances Group and Group for the year

2009

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CONTENTIONS AND SUBMISSIONS OF THE COMPLAINANT:

12. The Complainant has submitted that the overwhelming success of SENSIENT products has resulted in Complainant gaining extensive goodwill and reputation in the said mark/name world wide and in India. The members of the trade and public exclusively associate the mark/ name SENSIENT with the business of the Complainant and none other.
13. The Complainant has submitted that the as mentioned in the preceding paragraphs, the Complainant owns the intellectual property in the trade mark and domain name "SENSIENT" including its trade mark registrations and domain names registrations. The complainant is the registrant and user of several domain name containing the SENSIENT mark e. g.
 - i. www.sensient.com
 - ii. www.sensient-tech.in
 - iii. www.sensient-tech.com
 - iv. www.sensientfoodcolors.com
 - v. www.sensientflavors.com
 - vi. www.sensientdehvdrtedflavrs.com
 - vii. www.sensient-flavors.com
 - viii. www.sensientfraarances.com

The Complainant has submitted that the overwhelming success of its mark/ name SENSIENT has resulted in the Complainant gaining extensive goodwill and reputation in the mark world- wide including in India. The Complainant has further submitted that it is Common for every business and household in India to use the Internet for emails, browsing web - sites, entertainment etc. A compilation of printouts from various independent web-sites has been filed by the complainant as EXHIBIT-I evincing popularity of the Complainant's Mark / name SENSIENT in India.

14. The Complainant has submitted that the Respondent has registered the identical domain name www.sensient.co in with the .Co IN registry. The Complainant has submitted that aforesaid domain name incorporates the complainant's well known and prior registered mark SENSIENT.
15. The Complainant has submitted that on account of its extensive use and popularity the domain name/ trademark SENSIENT across the world, the SENSIENT mark/ name is well recognized by different fragments of society. Therefore, the Respondent can have no plausible reason for adoption of a domain name phonetically, visually and conceptually identical to the complainant's Well- known and highly distinctive trademark and domain name SENSIENT. The Complainant has alleged that the Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant's trademark / domain name SENSIENT.
16. The Complainant has submitted that it will suffer incalculable harm and injury to its goodwill, reputation and business in general if the respondent is allowed to maintain its registration of domain name SENSIENT.CO.IN. The loss and damage will not only be to the Complainant's reputation but also result in

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confusion and deception among the trade and public who would subscribe to the Respondent's service assuming it to be sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant. The trade and public may also assume that there exists connection between the Complainant and the Respondent which is likely to further harm the reputation enjoyed by the Complainant.

17. The Complainant has further submitted that it is a settled proposition of law that where there is copying, dishonesty ought to be presumed. The Complainant has alleged that in the present case, copying by the Respondent is evident from its adoption of an identical domain name. Furthermore, Respondent's intention is clearly to take a free ride on the goodwill and the unique 1 sales appeal that the Complainant's goods under the mark / domain SENSIENT has achieved over a period of time.
18. The Complainant has further submitted that the Respondent has registered the domain name so as to offer it to a third party for sale. The mark/ name SENSIENT has been coined by the Complainant and has no dictionary meaning. Thus, the mark/ name SENSIENT exclusively refers to the Complainant and none else. Further, given the worldwide publicity of the SENSIENT mark and domain and considering the highly distinctive nature of the SENSIENT mark and name in respect of the complainant's aforesaid business activities, the adoption and registration of an identical domain name and mark cannot be a coincidence. The Complainant has alleged that the registration of the domain is in bad faith intended to derive monetary and commercial gain. The Complainant has also alleged that in the circumstances, the present case is clearly that of cyber- squatting and Further, use of an identical domain name by the Respondent is likely to mislead/ divert consumers and also tarnish the reputation of the trademark of service mark of the Complainant.
19. The complainant has filed the printout from the Respondent's website as Exhibit -J showing their dishonest conduct aimed at taking advantage of the complainant's reputation. The Complainant has submitted that **on** a mere look at the Respondent's website, it is clear that the respondent is not carrying out any activities from the aforesaid site. The www.sensient.co.in domain name currently displays "sponsored listing" but does not have any substantive content, It is submitted by the complainant that the respondent has Registered the domain name www.sensient.co.in for the purpose of reselling and not for carrying out any business. The complainant has humbly submitted that the respondent should not be allowed to continue with the aforesaid illegal activities and its registration in respect of domain name www.sensient.co.in and the said domain name registration should be transferred to the Complainant.
20. The complainant has submitted that the Respondent has no rights or legitimate interest in the domain name SENSIENT for the following reasons:
 - a) The domain name was registered by the Respondent on January 8, 2011 and at this time; the Complainant has prior trade mark/**domain** name

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vvvvvv.sensient.com Registration and considerable reputation in the SENSIENT Mark and / domain name in India and abroad. The complainant is the registered proprietor of the mark SENSIENT in numerous classes in India Since 2004. The mark/name SENSIENT was used by the Complainant as early as January 23 2001. In India the Complainant's subsidiary Sensient India private limited was incorporated in the year 2001. Therefore, the Respondent was aware of the Complainant's trade mark rights in the SENSIENT mark/ name and its adoption of an identical domain www.sensient.co.in is in bad faith.

b) The Respondent is not and has never been known by the SENSIENT name or by any similar name. Respondent does not have any active business operations in the name of SENSIENT,

c) The Respondent domain name website does not have any active content and has been merely blocked/ Registered with an intention to benefit from the sale of a famous domain name. The web- site contains' sponsored listings' only and therefore there is no legitimate business interest of the Respondent in blocking/ registering the said domain name. The sole purpose of registering the domain name www.sensient.co.in by the Respondent is to derive illegal profits by offering the domain name for sale.

d) The Respondent is not even based in India but United States as per the contact details available online and therefore, there is no legitimate business interest in registering the domain name with the .CO IN Registry.

21. The complainant has further submitted that the domain name was Registered and being used by the Respondent in bad faith due to following:

i) At the time of registration of the domain name by the Respondent i.e., on January 8, 2011, the mark and domain name "SENSIENT" was well-known and registered in India and elsewhere across the world. Therefore, the popularity and registration of "SENSIENT" mark and domain name was a constructive notice to the Respondent on complainant's rights in the "SENSIENT" mark and name thus, the adoption of an identical mark/ by the domain name Respondent is in bad faith.

ii) The complainant's mark and the domain name "SENSIENT" is a coined word and highly distinctive in nature: particularly in relation to the goods that it represents. Therefore, there cannot be any plausible reason for adoption of an identical mark/ domain name by the Respondent but bad faith. The Respondent cannot be co-incidence.

iii) Furthermore as mentioned in the preceding paragraphs, there cannot be any plausible reason for an identical mark/ domain name www.sensient.co.in by the Respondent but bad faith

iv) The Respondent is not carrying out any business activities through the / domain name www.sensient.co.in and as mentioned in the previous paragraph has merely blocked/ Registered the said domain name for

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the purpose of reselling for a considerable amount. The Respondent's has offered to sell the domain name www.sensient.co.in through www.sedo.com that deals in domain name sale/ purchase and auction. The printout from SEDO offering the/ domain name www.sensient.co.in for sale has been filed by the complainant as Exhibit-K. Thus, it is obvious that the registration of the domain name "SENSIENT.CO.IN" by the Respondent is in bad faith.

22. The complainant has further submitted that circumstance outlined above clearly indicate that the Registrant has Registered and adopted the aforesaid domain names primarily for the purpose of reselling or transferring to the complainant' or its competitor for a valuable consideration with a view to make illegal profits.
23. The complainant has further submitted that in light of the submissions made in the preceding paragraphs, the Respondent should be restrained from its illegal activities and the domain name registration in www.sensient.co.in is transferred to the complainant.

ARBITRATION PROCEEDINGS:

24. On 18-03-2011, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I issued notice to the respondent and called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence.
- 24-. A copy of complaint has already been sent to the respondent by the .In Registry. Upon receipt of the complaint, the Arbitrator sent a notice dated 18-03-2011 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within Seven days from receipt. But the respondent did not come forward and did not submit his defence / counter to the complaint.
25. Thereafter, the Arbitrator again sent a reminder notice dated 27-03-2011 by giving another opportunity to the respondent to send his defence / counter to the complaint within further three(3) days with further notice that in default of non-filing or sending of the defence / counter to the complaint, award would be passed ex-parte on merits of the complaint. The respondent again did not file any defence / counter or document in support of his defence to the complaint.
26. Despite of failure on part of respondent to file any defence / counter or document in support of his defence to the complaint, Arbitrator again sent a reminder/notice dated 02-04-2011 to the respondent directing the respondent file any defence / counter or document in support of his defence to the complaint within two(2) days with further notice that this was last and final opportunity failing which the complaint would be decided ex-parte on merits of the complaint and no further opportunity shall be granted.
27. The respondent has not filed or submitted any reply / defence / counter to complaint to the Arbitrator in spite of repeated notices/reminders. The respondent has not bothered to send any reply / defence / counter to

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complaint to the Arbitrator though sufficient time and opportunity has been granted to him.

Therefore, the present case is being decided on complainant's contentions and merits of the complaint and as per law of the land.

28. OPINION AND FINDINGS ON MERITS:

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision M/s Satyam Infoway Ltd. Vs. M/s Siffynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

Thus taking into consideration the decisions relied by complainant and mentioned in the aforementioned paragraphs and further the decision passed by the Apex court in M/s Satyam Infoway Ltd. Vs. M/s Siffynet Solution (P) Ltd. JT. 2004 (5) SC 541, the conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Hence the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. The complainant has contended that the Registrant has Registered and adopted the aforesaid domain names primarily for the purpose of reselling or **transferring** to the **complainant** or its competitor for a valuable consideration with a view to make illegal profits.

The respondent has not submitted any reply / defence / document/evidence to the complaint of the complainant in spite of repeated notices from the arbitrator. The respondent, despite sufficient opportunities, has failed to file any response/reply/counter in the arbitral proceedings to establish any circumstance that could assist it in demonstrating any right or legitimate interest in the disputed domain name.

The complainant has been able to make out a prima facie case of lack of rights of and legitimate interests. The complainant has also filed documents in support of its claim which certainly has evidentiary value. The respondent has failed to rebut the presumption of absence of rights of and legitimate interests.

The complaint filed sufficient evidence and documents in support of the complaint. The respondent on the other hand failed to rebut the submission of the complainant in the present complainant. Hence the conclusion is that the domain name "www.sensient.co.in" is identical and confusingly similar to the trademark of complainant "SENSIENT" and the complainant has established **that** he has right in the trademark "SENSIENT".

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B) Whether the respondent's domain name has been registered or is being used in bad faith.

Taking in to consideration material placed on record and having perused the submission and documentary evidence placed on record it is clear that the complainant has proved that it has statutory rights in the mark "SENSIENT".

Thus it is clear that respondent has registered the disputed domain name and in spite of repeated notices, he has not come forward to file any reply / counter and has not provided any evidence in its support.

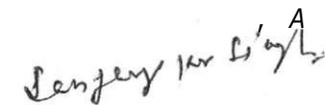
Thus the conclusion is that the respondent has got registered his domain name "www.sensient.co.in" in bad faith.

RELIEF

In view of the above mentioned facts and all the foregoing reasons, I hold that the domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith as such he is not entitled to retain the domain name. The complainant is entitled to transfer of domain name "www.sensient.co.in" as the complainant has established his bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name "www.sensient.co.in" be transferred to the complainant by registry.

No order as to costs.

Delhi
Date: 28-04-2011.


(Sanjay Kumar Singh)
Arbitrator