

महाराष्ट्र MAHARASHTRA

2018

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प्रधान गुद्रांक कार्यालय, मुंबई  
प.म.वि.क्र. ८००००२०  
17 JUL 2018  
साक्षम अधिकारी

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR  
.IN REGISTRY  
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

श्री. पं. प्र. विचारे

Complaint no. 1023/2018

Eureka Forbes Limited

...Complainant

v/s

RO Care India & others

...Respondents

In the matter of disputed domain name <AQUAGUARD-RO.CO.IN>.

### 1 The Parties

The Complainant is Eureka Forbes Limited, 7, Chakraberia Road, Kolkata, West Bengal - 700025, represented by Akash Wigh and Shrihar Tripathi, Advocates.

*Dipak Parmar*

The Respondents are (1) RO Care India, Gurgaon, Haryana – 122001; (2) 3D Logic Private Limited, Unit no. 234, Tower B-2, Spaze I-Tech Park Sector 49, Gurgaon, Haryana – 122002; (3) Astha Sharam, Unit no. 234, Tower B-2, Spaze I-Tech Park Sector 49, Gurgaon, Haryana – 122002; and (4) Shri Bhagwan Sharmar, Unit no. 234, Tower B-2, Spaze I-Tech Park Sector 49, Gurgaon, Haryana – 122002 (hereinafter collectively referred to as the “Respondents”).

## 2 Procedural History

- 2.1 A Complaint dated August 3, 2018 has been filed with the National Internet Exchange of India (hereinafter referred to as the “Exchange”). The Complainant has made the registrar verification in connection with the domain name at issue. The disputed domain name is registered with GoDaddy.com LLC. WHOIS report of the disputed domain name does not provide any details of the Registrant. However, the disputed domain name is redirected to <www.aqua-ro-amc-plan.com> and website hosted on the said domain name provide the contact details of Respondent no. 1. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the “INDRP”) and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On August 24, 2018, the Arbitrator had directed the Respondents to file their reply to the Complaint on or before September 7, 2018. On September 8, 2018, the Arbitrator had sent the final reminder to the Respondents with direction to file reply on or before September 14, 2018. The Respondents have not filed any reply to the Complaint. Therefore, the matter has to proceed *ex-parte*.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondents and the Exchange.

## 3 Factual Background

Given the absence of a reply, the Arbitrator has found the following facts are undisputed:

- 3.1 The Complainant is India’s leading health and hygiene brand. It is multi-product, multi-channel organization with a gross group turnover of INR 29,612 million for the accounting year 2017-18. Being part of the highly reputed famous Shapoorji Pallonji Group, the Complainant enjoys enviable goodwill, reputation and customer loyalty in respect to its products and services, particularly in respect of its flagship brand Aquaguard and Eureka Forbes.

- 3.2 The Complainant's product portfolio encompasses immensely popular water purification, vacuum cleaning, air purification and home security solutions. It has a base of over 20 millions customers, a reach of over 1,500 cities and towns in India and a global footprint across 53 countries.
- 3.3 Aquaguard is flagship water purifier brand of the Complainant and has been conferred with numerous Indian and International awards for its superior technology, which inter alia, includes the Readers Digest's Trusted Brand, 2012; Bengal's Best, 2011; Business Superbrand 2011; Supperbrand, 2009; UNESCO Water Digest Award, The Forst & Sullivan Environment Excellence Awards, 2009.
- 3.4 The Complainant is the registered proprietor of Aquaguard and other trademark containing Aquaguard.
- 3.5 The disputed domain name <AQUAGUARD-RO.CO.IN> was registered on August 22, 2016.

#### **4 Parties' Contentions**

##### **4.1 Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to its trademark Aquaguard; the Respondents have no rights or legitimate interests in the disputed domain name; and the disputed domain name has been registered or is being used in bad faith.

##### **4.2 Respondents**

The Respondents did not file reply to the Complaint.

#### **5. Discussion and Findings**

5.1 In view of the default and the absence of any reply to the Complaint by Respondents, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or servicemark in which complainant has rights;
- (ii) the Respondents have no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered or is being used in bad faith.

##### **5.3 Identical or Confusingly Similar**

The Complainant's trademark Aquaguard is a registered trademark in India. The Complainant has provided evidence of its registered trademarks in India, based on which, it is found that the



Complainant has established its rights in the trademark Aquaguard. It is well accepted that submitting proof of trademark registration is considered *prima facie* evidence of enforceable rights in a mark.<sup>1</sup> The disputed domain name <AQUAGUARD-RO.CO.IN> incorporates the Complainant's trademark Aquaguard in its entirety and mere addition of the generic word "-RO" and the generic top-level domain "co.in". It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The "co.in" suffixes should not be taken into account while comparing the Complainant's trademark and the disputed domain name. Similarly, the addition of merely generic word related to product "-RO" would be insufficient to avoid a finding of confusing similarity<sup>2</sup>. Therefore, the Arbitrator finds that the disputed domain name <AQUAGUARD-RO.CO.IN> is confusingly similar to the Complainant's trademark Aquaguard.

#### 5.4. Rights or Legitimate Interests

The Respondents are not commonly known by the disputed domain name nor conducted legitimate business under such name. The Complainant asserts that the Complainant has not authorized or licensed the Respondents to use the trademark Aquaguard. The use of a domain name that is identical or confusingly similar to a trademark that applies to products or services provided by a Respondents is not a bona fide use if the domain name serves as a "bait" to attract customer to Respondents' website, rather than merely as descriptor of the Respondents' products or services.<sup>3</sup> The disputed domain name is primarily descriptive of Complainant's product as it incorporates the Complainant's trademark Aquaguard and the addition of generic word related to product. The Respondents' use of the disputed domain name is merely intended to divert customers to Respondents' website, which dishonestly projects the Respondents as authorized reseller and service center of the Complainant. Hence, it cannot be considered a bona fide offering of goods and services. The Complainant has made out a *prima facie* case that the Respondents have no right or legitimate interest in the disputed domain name, and as such the burden of proof shifts to the Respondents<sup>4</sup>. The Respondents chosen not to challenge the Complainant's allegations.<sup>5</sup> There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondents have no rights or legitimate interests in the disputed domain name <AQUAGUARD-RO.CO.IN>.

1 In the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER WIPO Case No. D2010-0858 it was held that trademark registration constitutes *prima facie* evidence of the validity of trademark rights. See Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case no. D2001-0654.

2 See 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (WIPO Overview 2.0). Also see Dell v. George Dell and Dell Net Solutions, Case no. D2004-0512

3 See Adobe Systems Incorporated v. Domain OZ WIP case no. D2000-057 <adobeacrobat.com> and <acrobatreader.com>

4 See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762

5 In the matter of Pavillion Agency, Inc., Cliff Greenhouse and Keith Greenhouse v. Greenhouse Agency Ltd., and Glenn Greenhouse, WIPO Case No. D2000-1221, it was held that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the Domain Names.

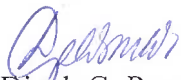


## 5.5 Registered and Used in Bad Faith

At the time of registration of the disputed domain name, the Complainant's trademark Aquaguard was famous trademark in India and the Respondents were aware of the same. In fact, the disputed domain name is redirected to <www.aqua-ro-amc-plan.com>. On the said website, the Respondents are providing Aquaguard RO water purifiers and AMC plans. The Respondents have in fact knowingly incorporated the Complainant's trademark to attract Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's trademark with the intent of commercial gain.<sup>6</sup> These facts support the inference that the Respondents deliberately registered and using the disputed domain name using the Complainant's trademark with the intention to exploit it. Accordingly, the Arbitrator finds on balance that the disputed domain name has been registered and is being used in bad faith.

## 6. Decision

In light of the foregoing reasons, the Arbitrator orders that the disputed domain name <AQUAGUARD-RO.CO.IN> be transferred to the Complainant.

  
Dipak G. Parmar  
Sole Arbitrator

Date: September 25, 2018

<sup>6</sup> See Weny's LLC v. Apex Limited, INDRP Case no. 737. In this case the domain name <wendys.co.in> was found to be registered with the intention of trading on the goodwill and reputation associated with Wendy's trademark and was held to be registered and use of domain name in bad faith.