



दिल्ली DELHI

G 893952

## ARBITRATION AWARD

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy  
INDRP Rules of Procedure**

**IN THE MATTER OF:**

COMPAGNIE GERVAIS DANONE  
17 Boulevard Haussmann  
75009 Paris  
FRANCE

.....COMPLAINANT

VERSUS

NARINDER BANSAL  
Digitech Software Solutions  
SCO-839, IInd Floor, NAC, MM  
Chandigarh 160 101  
INDIA

.....RESPONDENT

1 **The Parties:**

The Complainant is:-

COMPAGNIE GERVAIS DANONE  
17 Boulevard Haussmann  
75009 Paris  
FRANCE  
*e-mail:- [contact@dreyfus.fr](mailto:contact@dreyfus.fr)*

*Represented through:-*

DREYFUS & ASSOCIES  
78 Avenue Raymond Poincare  
75116 Paris  
FRANCE  
*e-mail:- [domains&digitechsoft.com](mailto:domains&digitechsoft.com)*

The Respondent is:-

NARINDER BANSAL  
Digitech Software Solutions  
SCO-839, IInd Floor, NAC, MM  
Chandigarh 160 101  
INDIA

2. **The Domain Name and Registrar**

The disputed domain name **DANONE.CO.IN** is registered with **DIRECT INFORMATION PVT.LTD. DBA PUBLICDOMAINREGISTRY.COM**

Address:	DIRECT INFORMATION PVT. LTD. 330, Link-Way Estate, New Link Road, Malad(West) Mumbai Maharashtra 400064 India
E-mails:	tldadmin@directi.com <a href="mailto:domain.manager@publicdomainregistry.com">domain.manager@publicdomainregistry.com</a>

3. **Procedural History**

The Complaint was filed with the .In Registry, National Exchange of India (NIXI), against Mr. Narinder Bansal, Digitech Software Solutions,



SCO-839, IInd Floor, NAC, MM Chandigarh-160 101 INDIA. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on April 13, 2009. The parties were notified about the appointment of Arbitrator on April 16, 2009.

3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on April 16, 2009. In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

3.3 The Respondent was granted ten(10) days time to file its response to the Complaint by the notice dated April 16, 2009. The Respondent submitted its response on April 21, 2009 and agreed to the transfer of the domain name **DANONE.CO.IN.** to the Complainant.

3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not

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considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

- 3.5 The present award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the rules.

4. **FACTUAL BACKGROUND**


- 4.1 The Complainant in these administrative proceeding is COMPAGNIE GERVAIS DANONE 17 Boulevard Haussmann 75009 Paris FRANCE represented through DREYFUS & ASSOCIES, 78 Avenue Raymond Poincare, 75116 Paris, FRANCE.

The Complainant requests arbitration proceedings in accordance with the Arbitration and Conciliation Act, 1996, .In Dispute Resolution Policy and rules framed there under and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be fit and applicable to the proceedings.

- 4.2 The Complainant, COMPANIE GERVAIS DANONE, is a subsidiary of the French company GROUPE DANONE.

COMPAGNIE GERVAIS DANONE is a company incorporated under the French Law.

Complainant's main brand DANONE originated around 1919 in Barcelona, Spain when it was launched for yogurts. At that time, DANONE was the result of the collaboration between Isaac CARASSO and Elie METCHIKOF, the director of the Pasteur Institute.

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DANONE quickly internationalized and started to commercialize its products in France. Around 1932, DANONE opened its factory for fresh dairy products at Levallois-Perret, France.

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's largest food and beverage group with consolidated sales in 1973 of approximately 104 billion euros, consisting of 52% food and beverage sales.

Today Complainant, COMPANIE GERVAIS DANONE (hereinafter "DANONE"), is a worldwide leading company in fresh dairy products, bottled water, baby food and medical nutrition. DANONE employs nearly 90,000 people in all five continents.

DANONE is the global leader in dairy products and number two in bottled water.

DANONE represents almost 20% of the international market in fresh dairy products and is present in 40 countries. In 2007, DANONE reinforced its positioning as a global leader in the consumer goods industry, with a growing emphasis on healthy nutrition.

Complainant's trademark DANONE has been used on labeling, packaging and promotional literature for its products and has been prominently displayed in supermarkets and grocery stores in various regions around the world.

The Complainant is the owner of DANONE trademarks in India and other parts of the world.

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The list of trademarks concerning the trademark DANONE has been annexed by the Complaint as **Annexure 5 to 7** to the Complaint.

The Complainant has also provided the list of domain names as **Annexure 8** to the Complaint.

4.3 The Respondent in the present dispute is Mr. Narinder Bansal, Digitech Software Solutions SCO-839, IInd Floor, NAC, MM Chandigarh 160 101 INDIA.

4.4 The Respondent submits its response to the Complaint vide its e-mail dated April 21, 2009 submitting that the domain was registered by the respondent for one of his client in U.S.A, who never turned up after registering it. He further submits that *"On renewal of Danone he couldn't be contacted, I even mailed him which he not replied and not even paid for the domain registration & renewal fee. When he not replied and not even paid for the domain registration & renewal fee. When the law firm contacted me I have told them that I am ready to transfer the domains. I asked them to show me authorization letter from Group Danone for the same which they did but it does not show that it was for domain danone.co.in. Infact the emails of Danone on which they have sent CC mail does not exists. When I try to confirm about the identity from that email it bounced back. I have already given them the identity from that email it bounced back. I have already given them the authorization code for the same but they never satisfied"*.

*We have never denied for domains transfer. What we have asked them to show us authorization from Group Danone as no email ever CC to danone. Infact in this email Danone is nowhere involves.*



*"We are website development company providing domain registration service to our clients who comes to us for development work. Actually we have faced a situation earlier where somebody else get transferred a company's domain into his name by posing he is the representative of that company. We have given them authorization code. We have no personal interests in the domains. We have thousand domains registered with us, most of which are of good corporates in India & Abroad. The domains in consideration along with some others were registered by one of our customer as his development work was going with us but he eloped from last one year. Sir, you are surprised to know that till the domains danone not registered with us we don't even know it is a big brand. We just want these domains to go in right hands i.e. Group Danone.*

*Kindly transfer these domains into Group Danone. For any assistance in transfer we can do the needful".*

## **5 Discussions and Findings**

- 5.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy.
- 5.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional



circumstances, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 5.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 5.4 The onus of proof is on the Complainant. As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities.
- 5.5 The WHOIS record of the domain name **DANONE.CO.IN** is as follows:-

Administrative Contact	NARINDER BANSAL
Admin ID	DI 6446718
Admin name	NARINDER BANSAL
Admin Organization	DIGITECH SOFTWARE SOLUTIONS
Admin Street 1	SCO-839, IIND FLOOR, NAC, MM
Admin City	CHANDIGARH
Admin Postal Code	160101
Admin Country	IN
Admin Phone	+91.1724633954
Admin email	domains@ <a href="mailto:domains@digitechsoft.com">digi techsoft.com</a>





5.6 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant

5.7 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

- (i) the domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the domain names; and
- (iii) the domain names have been registered and are being used in bad faith.

5.8 The Panel determines that the Respondent has consented to transfer in the disputed domain name to the Complainant. Furthermore, the Panel finds no evidence to suggest that this consent is not genuine. As a result, the Panel finds no dispute to be resolved in this case. Thus, without consideration of the parties' contentions pursuant to paragraph 4(a) of the Policy, the Panel directs an immediate transfer of the disputed domain name to the Complainant. For supporting UDRP cases, see *The Cartoon Network LP, LLLP v. Mike Morgan*, WIPO Case No. D2005-1132; and *Disney Enterprises, Inc. v. Elmer Morales*, NAF Case No. FA475191 ("...under such circumstances, where Respondent has agreed to comply with Complainant's request, the Panel felt it to be expedient and judicial to forego the traditional UDRP analysis and order the transfer of the domain names.").

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6. **Decision**

For the foregoing reasons, in accordance with .IN Dispute Resolution Policy (INDRP). The Panel directs the Respondent to transfer the domain name **DANONE.CO.IN** to the Complainant

14/5/09



**AMARJIT SINGH**  
Sole Arbitrator