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

IN THE MATTER OF

VINGCARD ELSAFE AS,

Sophus Lies vei,

1523 Moss,

NORWAY.

...The Complainant

Versus

Juwel Poon,

Domains Masters,

50-D, New Delhi,

DELHI-110021.

••-The Respondent

The Parties

The Complainant in the present proceeding is VINGCARD ELSAFE AS, a Corporation of Norway having its registered address at Sophus Lies vei, 1523 Moss, Norway. The

Complainant in these proceedings is represented through its authorised representative, Remfry & Sagar, Remfry House at the Millennium Plaza, Sector-27, Gurgaon.

The Respondent in this proceeding is Jewel Poon having its registered address at Domains Masters, 50-D, New Delhi (according to Whois database).

The Domain Name and Registrant

The Domain Name in dispute is "elsafe.in". The Registrant is JewelPoon (New Delhi).

Procedural History

I was appointed as Arbitrator by .IN Registry, to adjudicate upon the Complaint of the Complainant, regarding the dispute over the domain name <elsafe.in>.

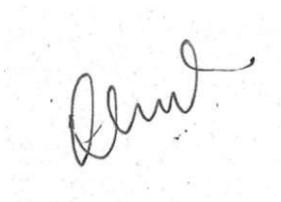
In Registry has supplied the copy of the Complaint and Annexures to me.

,On 29.03.2011, I had sent an email to the parties informing them about my appointment as an Arbitrator. In the same mail I requested the Complainant to supply the copy of the Complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record. Further I also requested the Respondent to file the reply of the Complaint within 15 days of the receipt of the Complaint or the above mentioned mail whichever is latter.

On 01.04.2011, I received an email from the Counsels of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. Counsel of the Complainant on the request of the Arbitrator once again forwarded the copy of Complaint to the Respondent through email dated 01.04.2011.

The Respondent failed to file his reply to the Complaint by 15.04.2011.

Thereafter in the interest of justice and fairness, on 19.04.2011, a reminder was sent to the Respondent to submit his say, if any, on the Complaint by allowing extension of further seven days.

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The Respondent failed to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award and as such the exparte proceedings were conducted.

That I have perused the record and Annexures / document.

Factual Background:

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

VINGCARD ELSAFE AS is a brand of the company ASSA ABLOY AB founded in 1864.

The Complainant is a registered proprietor of various trademarks with the term "ELSAFE" in various countries, a list of which is provided by the Complainant.

The complainant has acquired worldwide public recognition and goodwill in connection with security and hospitality systems.

Complainant has products installed in more than 35,000- properties worldwide, securing in excess of 6 million hotel rooms. Accordingly it claims that it has established itself as leading, reputed and established manufacturer of a range of guestroom locks and electronic locking system all over the world.

The Complainant has also claimed that the websites of Vingcard Elsafe are very popular amongst the users and its website www.elsafe.com allows discerning members of trade and public worldwide to contact and conduct business which records significant number of hits every month.

The trademark 'ELSAFE' was registered on September 29, 1999.

The Complainant owns the intellectual property of all the, worldwide trademark applications and registrations and domain name registrations of the brand name "ELSAFE".

The Respondent's domain name <elsafe.in> was registered on 24.07.2010 by Jewel Poon (New Delhi) which is identical to the said mark "ELSAFE".

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The Respondent has created his website which featured links to third party offering many items and is offering his domain for sale for EURO 3000.

Parties Contentions:

Complainant

The Complainant contends as follows:

- The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
- The Respondent has no rights and legitimate interest in respect of the domain name.
- The Respondent has registered and is using his domain name in bad faith.
- The Respondent has also demanded an unreasonable price (EURO 3000) for transferring the domain name to Complainant.

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.

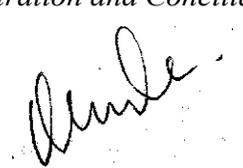
Discussions and Findings:

As earlier pointed out; the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions 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 fair opportunity has been given to the Respondent to file the reply but no response has been received from his side. Therefore, the Arbitration proceedings have been conducted exparte.

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*

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Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable "

In the present circumstances, the decision of the Arbitrator is based upon the Complainant contentions and evidence and conclusion drawn from the Respondent's failure to reply.

Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that he has common law rights in the mark "elsafe.in".

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.

Basis of Findings:

1. The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant contends in the Complaint that the domain name of the Respondent i.e. <elsafe.in> is identical and confusingly similar to VINGCARD ELSAFE AS, its trademark "ELSAFE" and its associated domain names. It is further stated by the Complainant that VINGCARD ELSAFE. As is the registered proprietor of the "ELSAFE" trademark in numerous countries in the world and has gained significant reputation and its mark can be termed as a well known brand.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

In the case of *Monster.com (India) Pvt. Ltd. v. Domain Leasing Company, INDRP/002 (May 20.2006).*

In this case it was found that Registrant's domain name 'MONSTER' was identical/deceptively similar to the Complainant's well known trademark 'MONSTER'.



In the present case Registrant's domain name 'ELSAFE' is identical/deceptively similar to the Complainant's well known trademark 'ELSAFE'. Thus Arbitrator finds that the Complainant has satisfied the first element required by policy.

Arbitrator has come to the conclusion from the above facts and annexures that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

2. The Registrant has no rights or legitimate interests in the respect of the domain name:

According to the paragraph 7 of the .FN 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";*

Complainant contends that Registrant is not offering any goods or services under the domain name 'elsafe.in' and the website had listed out weblinks of third party websites as well as entities which has now been suspended.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. •

Arbitrator has relied upon the following award:

Accorv. Tans Wei, INDRP/127 (February 24, 2010)

In this case it was found out that Respondent has not offered any plausible reason or justification for registering or using the domain name. Also the Respondent's domain name resolved to a parked page which contained sponsored links to the third, party hotels which provide services that are directly competing with the Complainant's and therefore such use cannot be termed as a bona fide offering of goods and services.

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In the present case the website of Respondent featured links to third party offering items and the same domain name was put up for sale on the website as well. The Arbitrator finds that such use cannot be termed as 'bona fide offering of goods or services'.

Arbitrator has come to the conclusion from the above facts and annexures that no bonafide goods or services are being offered by the respondent under the domain name 'elsafe.in'.

- ii) *"the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or "*

The Complainant has contended that the Respondent has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it.

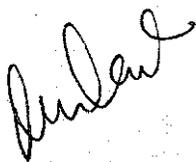
The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

In the case of *Morgan Stanley v. Keep Guessing, INDRP/024 (June 27, 2007)*, it has been held that Respondent has failed to show that he has a right or legitimate interest in the domain name, as he is neither known by the domain name, nor is it his personal name.

In the present case respondent could not justify any interest in the domain name 'elsafe.in'. Thus the Arbitrator finds that respondent has no legitimate interest in the disputed domain name.

In the case of *Accor v. Tang Wei, INDRP/127 (February 24, 2010)*, it was found that Respondent's name is Tang Wei and there was no evidence to suggest that the Respondent at any point of time has been commonly known by the name 'ACCOR'. 'ACCOR' was the name and mark of Complainant.

In the present case registrant's name is Juwel Poon and the Registrant was not well known by the domain name 'ELSAFE' and on other hand due to extensive and continuous use of trademark 'ELSAFE', the same has become well known with Vingcard Elsafe. The Arbitrator finds that Registrant is not commonly known by the domain name 'ELSAFE'.



Arbitrator has come to the conclusion from the above facts and annexures that respondent was not commonly known by the domain name.

- iii) *"the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleading!)' divert consumers or to tarnish the trademark or service mark at issue. "*

The Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name. According to Complainant, disputed domain name has been only adopted by the Respondent for commercial gain from goodwill and reputation of the Complainant.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

In the case of Accor v. Tang Wei, JNDRP/127 (February 24, 2010), it was found that Respondent's domain name resolved to a parked page and was not making a non-commercial or fair use of the domain name.

In the present case Respondent has parked the domain name to offer it to sell and to use it in an unfair manner for commercial gain from Complainant's goodwill and reputation. The Arbitrator finds that the Registrant is not making a legitimate or fair use of domain name and has malafide intention for commercial gain from the same.

Arbitrator has come to the conclusion from the above facts and annexures that the Respondent is not making legitimate or fair use of the domain name and hence concludes that he has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(H).

3. The Registrant domain name has been registered or is being used in bad faith:

According to the paragraph 6 of the .IN Dispute Resolution Policy, for the purpose of paragraph 4-(iii), the following circumstances shall be evidence of registration of domain name in bad faith

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- (i) *"circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who hears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable, consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name";*

The Complainant has alleged that the Respondent has registered the domain name only with the intention and purpose of sale.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

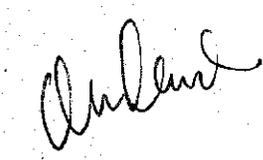
In the case of *Adidas-Saloman AG V. Vincent Stipo, WIPO Case No.D2001-0372*, it was found that, registering a domain name for the primary purpose of offering to sale, rent, or otherwise transfer the domain name for an amount in excess of the registration cost is evidence that a domain name was registered in a bad faith.,

In the present case Registrant has parked the impugned domain name for selling it quoting a consideration of EURO 3000. Arbitrator finds that primary purpose of registering the domain name was to sell it for an amount in excess of the registration cost and was registered in bad faith.

As mentioned earlier, the Respondent has failed to demonstrate any rights or legitimate interests in the Domain Name. Moreover the Respondent has demanded excessive monetary compensation from the Complainant for transfer of the Domain Name. In this regard Respondent's first demand was for EURO 3000, therefore, Respondent demanded EURO 1500 and subsequently EURO 1000 from the Complainant.

From the aforesaid circumstances, the Arbitrator has come to the conclusion that the Respondent has registered the Domain name primarily for selling the Domain Name to the Complainant, who is the actual owner of the mark elsafe.

- (ii) *"The Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding*

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domain name, provided that the Registrant has engaged in a pattern of such conduct."

The Complainant has contended that the registration of domain name 'elsafe.in' by the Registrant has resulted in the Complainant being prevented from reflecting the trademark 'ELSAFE' in a corresponding domain name with the .IN registry.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

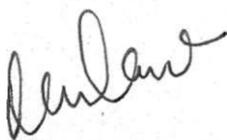
In the case of *Luxottica Holding Corp. V. Lokesh Morade, INDRP/139 (April 28, 2010)* it was held that the Respondent has no previous connection with the disputed domain name and has held it in order to prevent the Complainant who is the owner of the said trademark from using the said trademark in the domain name. Also the domain name is deceptively similar to the trademark of the Complainant's mark "SUNGLASS HUT" as the source, sponsorship, affiliation or endorsement of the Respondent's website.

In the present case there is no previous connection of Respondent with the disputed domain and it is deceptively similar to the trademark of the Complainant's mark 'ELSAFE'.

Arbitrator has come to the conclusion from the above facts and annexures that the Respondent has registered the domain name in order to prevent the complainant from reflecting the trademark 'ELSAFE' in a corresponding domain name with .IN registry.

(iii) *"by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line connection, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or a product or service on the Registrant's website or location. "*

The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to attract users to its website by creating likelihood of confusion with Complainant's ELSAFE mark. The Complainant has further stated that Respondent has no connection with the disputed domain name; the whole purpose of registering the domain

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name is to create confusion and deception among the consumers, who would assume a connection or association between the Complainant and Respondents website.

The above Submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

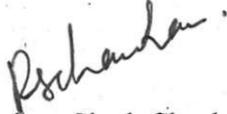
Arbitrator finds from the above facts and annexures that the Respondent has created the website to create confusion with the name and mark of Complainant's company and to confuse the mind of internet users.

From the circumstances of the case and from the evidences put before, Arbitrator has come to the conclusion that the domain name 'ELSAFE' has been registered by the Registrant in bad faith and is deceptively similar to the trademark of the Complainant.

Decision

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint. In the facts and circumstances of the case it can be presumed that only purpose for the registration of the disputed domain name was to capitalized on the fame and reputation of Complainant and to make monetary benefit.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. elsafe.in to the 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 18th day of May, 2011.


Rajeev Singh Chauhan
Sole Arbitrator
Date: 18th May, 2011