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BEFORE THE SOLE ARBITRATOR UNDER THE
.In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF

Eurizon Capital SGR S.p.A
Plazetta Giordano Dell'Amore 3,
20121, Milan
Italy

(Complainant)

v.

Juwel Poon
Domains Masters
50-D
New Delhi- 110021

(Respondent)

The Parties

The Complainant in this proceeding is Eurizon Capital SGR S.p.A having its office at Plazetta Giordano Dell' Amore 3, 20121, Milan, Italy.

The Respondent in this proceeding is Jewel Poon of Domains Masters, having his office at 50-D, New Delhi- 110021.

The Domain Name & Registrant

The disputed domain name is www.eurizoncapital.in. The Registrant is Jewel Poon of Domain Masters.

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.eurizoncapital.in.

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

On 07.04.2012, I sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 07.04.2012, itself I sent an email to Complainant requesting it 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.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 07.04.2012 with the instructions to file his say latest by 22.04.2012.

On 09.04.2012, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. According to this mail copy of the complaint was duly sent to the email address of the Respondent.

On 30.04.2012, in the interest of justice the Counsels/Representative of the Complainant or the Complainant itself was directed to serve the copy of the complaint to the Respondent via post also and supply the proof for the same.



On 01.05.2012, the counsel of the Complainant informed the Arbitrator, that it is the duty of the NIXI to serve the copy of the Complaint to the Respondent via post. Still the Complainant has tried to serve the copy of the Complaint to the Respondent through post but the address of the Respondent was incomplete due to which the same could not be done.

Thereafter in the interest of justice and fairness, on 05.05.2012, the Arbitrator sent an email to both the parties and NIXI informing them that the Arbitrator is aware about the INDRP Rules & Policies. The Respondent was again directed to file his final reply to the Complaint of the Complainant latest by 12.05.2012.

The Respondent failed / neglected 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 proceedings were conducted.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and annexures / document.

Factual Background

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

Eurizon Capital SGR S.p.A is the owner of several registrations for the trademarks EURIZON CAPITAL and other EURIZON comprising marks worldwide and is the owner of a number of domain names which support the complainant's several dedicated and official websites for its consumers and other visitors from different countries and jurisdictions.

Complainant submits that the overwhelming success of the Complainant's mark as being synonymous with premium financial products and services has resulted in complainant gaining extensive goodwill and reputation in the said mark/name worldwide and in India. On account of its extensive use and popularity the domain name/trademark EURIZON CAPITAL across the world, the mark/name EURIZON CAPITAL is well recognized.



Complainant is the subsidiary and the asset management arm of the leading Italian banking group Intesa Sanpaolo S.p.A which is one of the main protagonists in the European Financial arena. Intesa Sanpaolo has a strong presence in Central and Eastern Europe and its international network which specializes in supporting corporate customers is present in 29 countries, including in the United States, Russia, China and India.

On March 29 2012, an application was filed at the National Internet Exchange of India (NIXI) by Eurizon Capital SGR S.P.A under the INDRP domain name, thus requesting the submission of the INDRP domain name complaint to arbitration in accordance with the Dispute Resolution Policy and the Rules framed thereunder.

The Complainant is the owner of the domain name EURIZONCAPITAL.IN. This domain name resolves to the web site locate at the www.eurizoncapital.com.

Respondent in this proceeding is an individual named Juwel Poon of Domain Masters located in Delhi who have registered the identical domain name www.eurizoncapital.in with the .in Registry.

Parties Contentions

(a) Complainant

The Complainant contends as follows:

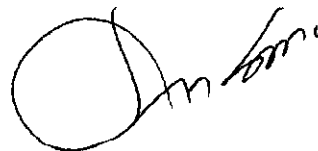
1. The Respondent's domain name is identical or confusingly. Similar to a name, trademark or service mark in which the Complainant has the rights.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name in bad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

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 Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex parte and the hence 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 thereunder 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.

Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark “ EURIZON CAPITAL”.

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.

The Complainant has stated in his complaint that domain name of respondent www.eurizoncapital.in is confusingly similar and identical to his name/mark EURIZON CAPITAL. The Respondent has applied for domain name that is identical with complainant’s name and mark EURIZON CAPITAL.



It is further stated that the complainant is the registered proprietor of the "EURIZON CAPITAL" trademark in numerous countries in the world including INDIA and has gained significant reputation and its mark can be termed as a well known brand. The complainant is also the registrant and proprietor of various Domain name registration at International and domestic level.

The complainant has established its prior adoption of the mark /name EURIZON CAPITAL. The complainant has filed sufficient evidence to show that it has trademark rights in the marks EURIZON CAPITAL/ EURIZON FINANCIAL GROUP and other EURIZON comprising marks.

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

Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

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

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

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by the letters 'ms' and a flourish.

The domain name www.eurizoncapital.in was registered by the Respondent on October 03, 2011. At this time, the Complainant had already made use of the mark EURIZON CAPITAL as a trademark and corporate name in several parts of the world. The complainant had also registered the domain name www.eurizoncapital.com on September 08, 2006 and enjoyed considerable reputation in respect of the EURIZON CAPITAL mark and domain name. Further, the complainant's corporate name comprises the word EURIZON CAPITAL. Therefore it is obvious that the Respondent was aware of the Complainant's trademark rights in the EURIZON CAPITAL mark/name.

The Respondent is not and has never been known by the EURIZON CAPITAL name or by any similar name. The Respondent did not have any active business in the name of EURIZON CAPITAL. The registration of the disputed domain by the Respondent is thus a typical example of "cyber squatting". The fact that the Respondent's website carries nothing but sponsored links of other companies providing financial services further proves that the Respondent is just a cyber squatter.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii)

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

The Complainant alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website of the Complainant and also to deceive the consumers into believing that there is a connection or association between the Complainant and Respondents website.

The Tribunal has relied upon the award of Luxottica Holding Corp. V. Lokesh Morade, INDRP/139 (April 28, 2010) and Expedia Inc v. European Travel Network Case No. D2000-0137 WIPO Arbitration and Mediation Centre to prove the above mentioned contentions.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish



that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint.

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. <www.eurizoncapital.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 15th day of May 2012.



A.K. Singh

Sole Arbitrator

Date: 15th May, 2012