



उत्तर प्रदेश UTTAR PRADESH

AA 572373

Bodhisatva Acharya

LL.M.

ARBITRATOR

(Appointed by IN Registry-National Internet Exchange of India)

Case No. of 2009

ARBITRATION AWARD: DISPUTED DOMAIN NAME-

www.evian.in

In the matter of:
Societe Anonyme Des Eaux
Minerals D'Evian (SAEME)
22, Avenue des Sources
74500 Evian
France

Through its Authorized Representative
Nathalie Dreyfus
Dreyfus & Associates
78 Avenue Raymond Poincare
75116 Paris
France

Email- Contact@dreyfus.fr

Complainant.

Versus

Rajesh Aggarwal
Impo-ex Technical Services
#56; Sector-15
Panchkula, Haryana-134112

BC

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is **Societe Anonyme des Eaux Minerales d'Evian (SAEME)**, through its authorized representative **Nathalie Dreyfus Dreyfus & Associates, 78 Avenue Raymond Poincare-75116 Paris, France** and the Email- is Contact@dreyfus.fr

The respondent in this arbitration proceeding is **Rajesh Aggarwal, Impo-ex Technical Services, # 56; Sector-15, Panchkula, Haryana-134112, India** and the Email is - mail@impo-ex.com

2. The Domain Name, Registrar & Registrant :

The disputed domain name is **evian.in** and the registrar is Direct Informations Pvt. Ltd. dba and the registrant is Rajesh Aggarwal with an ID -DI-6560240.

3. Procedural History:

The complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name **evian.in** following the clause 4 of the policy of **.IN Registry** and **.IN Registry** appointed **Mr. Bodhisatva Acharya (The Arbitrator)** as sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on April 15th 2009. The complaint was produced before the Arbitrator on April 16th 2009 and the Arbitrator issued a notice, to the Respondent regarding the arbitration proceeding with a 14 days deadline to submit his reply and the Arbitrator received a hand written reply of the Respondent on April 27th 2009 sent by DTDC Courier Services but that hard copy was not sent to NIXI as well as to the complainant then the Arbitrator sent a e-mail to the respondent demanding the reply through e-mail. The respondent sent his reply via e-mail and the same was forwarded to the NIXI and the complainant by the Arbitrator again the complainant sent a WIPO Award's copy after that nothing has been filed and produced by either side before the Arbitrator till now on June 5th 2009. Hence the Award is being pronounced on 8th day of June 2009.

4. Factual Background:

- (a) The complainant, SOCIETE ANONYME DES EAUX MINERALES D'EVIAN (SAEME) is a French Company which has been incorporated under the French Laws. SAEME is doing its business under the Trade mark of EVIAN and it is registered with SAEME. Under the trade mark EVIAN, the French Company SAEME is selling mineral water since year 1901 and it is now in the business of beauty and health products like Evian Sprays, Evian Affinity and Moisturizers. After having registered its trade mark, Evian, in India, SAEME had started its business of mineral water bottle from 1999 and SAEME had got properly the renewal of its trademark in India time to time as shown by its various trade mark certificates.

- (b) The respondent registered its domain evian. in on 19.07.2007 through the Registrar District Information Pvt. Ltd. dba when the complainant noticed about the registration of the respondent domain name - evian.in then the complainant sent an e-mail to the respondent on October 17th 2008 regarding the dispute domain name evian.in and evian.co.in but the respondent neither replied nor he indicated that he had not received the postal letters as well as the e-mails and lastly the complainant filed this complaint to NIXI on January 29th 2009 for Arbitration proceedings.

5. Parties Contentions:

(a) Complainant contends that

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

(b) Respondent contends that

- (i) it has not registered and used the domain name in bad faith,
- (ii) he has a different business in comparison of complainant.

6. Discussion & Findings:

Under the paragraph 4 of the policy (INDRP) it is stated that:-

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (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.

After having gone through the records, documents, produced by the Complainant as well as Respondent, the Arbitrator's findings are as follows:-

(a) The complainant is the owner of the trade mark Evian and carrying his business in more than 145 countries world wide regarding mineral water, beauty and health products under the trade mark evian and the complainant satisfy the Arbitrator by producing various trade mark certificates issued by



the Government of India as well as the various Government of different countries and the complainant has proved that the disputed domain name is confusingly similar and identical to the complainant's Trade Mark.

(b) As per the records submitted by the complainant before the Arbitrator, it is clear that respondent has neither being affiliated nor authorized by the complainant to use his trade mark Evian in any manner and complainant proves that the respondent has no right in disputed domain name and the Arbitrator is agree with the complainant's record produced by him.

(c) All the records, statements produced by the complainant show that the complainant's trade mark 'Evian' is a well known and has a good reputation worldwide in the field of mineral waters, beauty and health products on the other hand the respondent has not produced any authenticated proof in his favour, he has filed and produced just a simple hand written reply without any documental support which shows that the respondent registered the disputed domain name evian.in maliciously and it also shows that the registration of disputed domain name is in bad intention and it may be used in bad faith.

(d) Now it is the concluding view of the Arbitrator that the complainant has rights with the trade mark Evian and disputed domain name evian.in has been registered or is being used with bad faith.

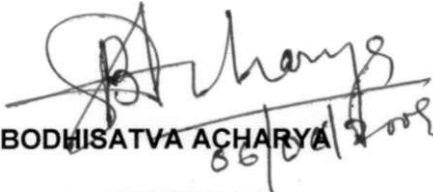
Therefore by the discussion and findings as mentioned above it is the view of the Arbitrator the Complainant established all the points of paragraph 4 of the policy in his favour.

7. Decision:

Hence the Arbitrator decides, 'The disputed domain name **evian.in** is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent's domain name has been registered in bad faith'

The Arbitrator further decides and orders that the domain name **evian.in** shall be transferred to the Complainant with immediate effect.

Complaint, hence, is allowed with no costs.


BODHISATVA ACHARYA
SOLE ARBITRATOR

NIXI

DATED: June 8th, 2009,

PLACE: NEW DELHI,

INDIA.