



दिल्ली DELHI

M 403425

**ARBITRATION PROCEEDINGS OF DOMAIN NAME
"gotmilk.in"**

CALIFORNIA MILK PROCESSOR BOARD ...COMPLAINANT

AND

LOKESH MORADA ...RESPONDENTS

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice

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to the parties on 24 Sept.2010, However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier.

2. That the complainants informed the Tribunal that NIXI has already sent a copy of the complaint by FEDEX Courier and emailed the Tracking records which shows incomplete address. Accordingly this Tribunal on 6th Oct.2010 notified to the Respondent to send their Statement of Defense by 25th Oct.2010 and by the same communication directed the Complainants to send the hard copy of the said notice by Courier to the Respondents. Compliance of the order was done by the Complainants vide their letter dated 18.10.2010 and the tracking details showed that service was attempted as it read consignee premises closed. This Tribunal waited till 25th Oct.2010 for the Respondent's Statement of Defense to the Complaint but to no avail.

3. This Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have tried level best to serve the Respondents on the address provided but to no avail. Besides , copy(s) of the order (s) passed by this Tribunal have also been emailed to the Respondent hence it cannot be said that the Respondents are unaware of the proceedings. It is apparent that the Respondents are avoiding to take service.

4. This Tribunal notes that the Respondents chose not to send any communication or file any Statement of Defense to the Complaint and maintained silence on the same, hence in view of such peculiar facts and circumstances and in view of INDRP which makes it incumbent upon this Tribunal to decide the controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

1. The complainants are California Milk Processor Board (hereinafter referred to as the 'Complainant'), which they claim to be a

California State instrumentality organized and existing under the laws of the State of California, having its office at Suite 202, 101 South El Camino Real, San Clemente, California 92672, USA. It is also claimed that the said organization is a marketing board funded by California dairy processors, and administered by the California Department of Food and Agriculture. It is claimed that the organization was created in 1993 to counter the falling sales of milk as Americans switched to soft drinks, health drinks, and other beverages. As per the complaint the organization aims to promote the sale and consumption of milk in America and generally to promote good health.

2. The present complaint has been instituted seeking protection of the Complainant's rights in the trade mark and domain name GOTMILK which has been allegedly copied without authorization by the Respondent and registered as a domain name www.gotmilk.in (Domain Name) with the .IN registry. For this the Complainants rely on **Exhibit B**.

3, As per the complainants the 'got milk?' mark was first adopted and used by the Complainant in 1993 as part of its campaign to promote the consumption and sale of cow's milk to the American population. The mark was originally conceived and created by the advertising agency Goodby Silverstein & Partners for the Complainant in 1993 as part of a television advertisement campaign for promoting milk consumption. Upon release, the television advertisement and the complainant's mark, 'got milk?' instantly became a huge hit with the public and the advertisement won tremendous accolades worldwide. The complainants claim that the said mark has been voted as one of the top ten television advertisements of all time by a USATODAY.COM poll.

The Complainant's assert that their mark 'got milk?'s campaigns and advertisements have been released by them over the past years have been bestowed with many awards and prizes which include the Silver Prize at the Cannes Awards in 1994, Gold Effie in 1995, Addy Award in 1997, 1999, 2000 & 2001. In 2005. It is also stated that one Taglineguru.com named 'got milk?' the most

culturally influential tagline since the advent of broadcasting television.

It is further asserted by the complainants that since its inception, the mark has been used continuously as part of advertising campaigns in both print and visual media for more than seventeen years and as per them the campaigns have been well received by public and tremendous goodwill and reputation have attached to the Complainant's trade mark 'got milk?'

4. By placing their reliance on Exhibit C the complainants have stated that the mark 'got milk?' is also a registered/pending registration in many jurisdictions around the world which include countries such as the United States, United Kingdom, European Union (Benelux), Canada etc.
5. The Complainant's claim that in addition to using its trade mark 'got milk?' as a part of advertising campaigns to promote the consumption of milk, they are also engaged in merchandising the

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same in the form of clothing apparel, kitchenware, umbrellas, stationary items, bumper stickers etc. and that "got milk?" mark is an asset of immense value to them as they have invested and continue to spend huge amounts of money towards brand building in the USA and worldwide.

6. Apart from the above, the Complainant claim to be the proprietor of the domain name / website www.gotmilk.com and has been using it since 1999 and which is accessible from the worldwide web and can be accessed globally, including in India. The Complainant submits that the fame and popularity of the 'got milk?' mark / name is firmly established world-over. For the above statement the Complainants rely on copy of the WHOIS report attached as **Exhibit D.**

7. To buttress their claim the Complainant's state that their mark 'got milk?' is extensively promoted and advertised through both visual and print media the world over and that they have intensely

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marketed and publicized its mark "got milk?" on television, internet, billboards, bus stops, decals on grocery store floors, etc. Additionally it is claimed that the mark is also extensively promoted through the 'milk moustache' campaign and which has been endorsed by various celebrities including, Beyonce Knowles, David Beckham, Britney Spears, Serena Williams, Andre Agassi, Jackie Chan, Muhammad Ali etc. For this reliance is placed **onExhibit E.**

8. The complainants are aggrieved by the alleged Registration if the Domain name by the Respondent as it infringes upon the domain name of the Complainant. It is also alleged by placing reliance of Exhibit F that complainants also sent a notice to the Respondent. However, the Respondent failed to respond to the Complainant's notice, or take any steps to transfer the domain to the Complainant. The Complainant allege that they made numerous efforts to contact the Respondent and elicit a response, however, the Respondent did not respond.

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9. It is stated that the complainants fear that the Respondent will use the conflicting domain and derive undue pecuniary benefit from its mark/ name 'got milk?' as the Respondents Domain Name is "nearly identical or confusingly similar" to a complainant's mark when it "fully incorporate[s] said mark." It is also alleged that the Respondents have no justifiable reason for adoption of an identical mark. It is alleged the users seeing the Domain Name are likely to believe that the Domain Name is that of the Complainant and are likely to visit the web site hoping to find information about the Complainant's company and products.

10. The complainants also allege that the Respondent has not been authorized by the Complainant to register or use the Domain Name nor it has authorized or licensed the Respondent to use any of its trademarks in any way. The attention of this Tribunal has also been drawn to the fact that the Respondent is not known by the name or nick name of the Domain Name or any name containing the Complainant's 'got milk?' mark. The respondent's WHOIS information makes no reference to the 'got milk?' mark. It is also

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alleged that the same was registered by the Respondents in bad faith. Further on the date of registration of the Domain Name by the respondent, the Complainant's mark 'got milk?' was well-known all across the world, including in India. Further, the Complainant's domain name www.gotmilk.com was registered and active. The Respondent thus, had constructive knowledge/ notice of the Complainant's rights. The Respondent's registration and renewal of the Domain Name, despite their notice amounts to evidence of bad faith registration.

11. The Complainant apprehends that the Respondent will disrupt its business and derive undue pecuniary benefit from its goodwill and reputation in the 'got milk?' mark by diverting internet traffic to its website.

12. It is further alleged that the Domain Name of the Respondent is capable of falsely conveying to Internet users that the products/ services offered by the Respondent originate with the Complainant. Moreover, the unwary Internet users can be easily misled into

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thinking that the website is directly or indirectly sponsored by/ owned by/ associated with the Complainant.

13. Further, the Complainant is exposed to the risk that the Respondent can at any time sell or transfer the Domain Name to a third party.

ORDER

This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give its Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.

In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name "**gotmilk.in**" hence this Tribunal directs the Registry to transfer the domain name "**gotmilk.in**" to the

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complainants. The Complainants too are free to approach the Registry and get the same transferred in their name.

The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records

Signed this 3rd day of November 2010

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V. SHRIVASTAV
ARBITRATOR

NEW DELHI
03/11/2010