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M 842623

BEFORE THE INTEREST EXCHANGE OF INDIA
ARBITRATION AWARD

ARBITRATOR: S SRIDHARAN

Dated: 16th December 2010

Bayel Consumer Care Ag --- Complainant

-Vs-

Toon

--- Respondent

Indharans

- 2.1 On 25th October 2010, NIXI asked me about my availability and consent to take up the Complaint for arbitration. I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 30th October 2010, I received hardcopy of the Complaint along with Annexures. I was away from my place of residence to attend an urgent court work and I could not issue notices to the parties immediately.
- 2.3 On 7th November 2010, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 8th November 2010, I received a soft copy of the Complaint from the Complainant.
- 2.5 On 8th November 2010, I received a mail from one LEE asking me whether the two sides could reach a compromise. Since I could not gather any information from the mail about the sender, I asked him to introduce himself and tell me his interest in the matter. I have not received any mail further from him.
- 2.6 The Respondent has not entered appearance. He has not filed any reply to the Complaint of the Complainant.

Sudhakarans

2.7 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

3.1 The Complainant established in 1994 is one of the constituent companies of the Bayer Group, a global enterprise with core competencies in the fields of health care, nutrition and high-tech materials. The Bayer group has around the world about 350 companies and about 106,000 employees worldwide.

3.2 The Complainant is now a division of Bayer HealthCare and operates in more than 100 countries with a portfolio of more than 170 consumer health care products including some of the world's best-known and most trusted over-the-counter medications and nutritional supplements

3.3 Some of the world's leading over-the-counter brands are part of the Complainant's global portfolio, including Aleve®, Canesten®, Bepanthen®, Bepanthol®, Supradyn®, One A Day® and Rennie®.

3.4 RENNIE® is a brand with a long-standing tradition reaching back more than 70 years. The product was first created during the 1930's to help people get rid of their heartburn and indigestion symptoms. It was later acquired by Hoffmann-La Roche in 1992 and became part of the Complainant's product portfolio in 2005.

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- 3.5 RENNIE® is marketed in over 40 countries, including Great Britain, where the Respondent is located, with sales of 51 million Euro from October 2008 to September 2009 in Western Europe and sales of 17.5 million Euro from October 2008 to September 2009 in Central Eastern Europe
- 3.6 The Complainant has obtained trademark registrations for RENNIE® in numerous countries, including the UK, where the Respondent is located. The Complainant has attached printouts of the following trademark registrations at Annex 9.

Trademark	Registration No.	Date of Application	Country	Classes
RENNIE	Community registration No. 000345165	September 18, 1996	EM	5
RENNIE	German registration No. 688583	May 2, 1955	DE	5
RENNIE	International Registration No. 605158	June 29, 1993	DZ, KZ, SD, TJ; UZ, AL, AM, AT, AZ, BA, BG, BX, BY, CN, CU, CZ, DE, EG, ES, FR, HR, HU, IT, KG, KP, LI, LV, MA, MC, MD, ME, MK, MN, PL, PT, RO, RS, RU, SI, SK, SM, UA, VN	5
RENNIE	UK Trademark Registration No. 815585	January 12, 1961	GB	5

- 3.7 The complainant has filed details of registrations in other countries including India in Annex 10. In India the mark RENNIE is registered under Application No.727346.
- 3.8 The disputed domain name <rennie.in> has been registered on March 26, 2010, and is used in connection with a multi-lingual parking website, which *inter alia* includes links to the Complainant's direct competitors, i.e.

Indranams

IBEROGAST® on the German website and RIOPAN® on the English website.

3.9 The disputed domain name <rennie.in> is for sale for the price of GBP 3.500. A printout from the website offering the domain name for sale is provided at Annex 8.

3.10 The Complainant has come forward with this complaint seeking transfer of the disputed domain name <rennie.in> from the Respondent and costs and damages to the tune of Rs.3,60,000.

B Respondent

3.11 The Respondent has not filed any reply to the Complainant's Complaint in this arbitration. As stated in the beginning, one LEE asked me by email whether the two sides could reach a compromise. Since I could not gather any information from the mail about the sender, I asked him to introduce himself and tell me his interest in the matter. I have not received any mail further from him.

4. Parties Contentions

A Complainant

4.1 The disputed domain name <rennie.in> is identical to the Complainant's RENNIE-Marks.

4.2 The disputed domain name is comprised of the Complainant's RENNIE-Marks and the top-level-domain ".in".



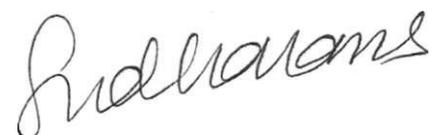
It is well established that the specific top level of a domain name such as ".in", ".co.in" or ".org.in" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

4.4 The Respondent is in the business of holding domain names and selling them, whereas the Complainant is an established business entity doing business under the RENNIE-Marks for decades.

4.5 The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the RENNIE-Marks. The word "RENNIE" is highly distinctive and obviously connected with the Complainant's products and is not a word a trader would legitimately choose unless seeking to create an impression of an association with the Complainant.

4.6 There is no evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name <rennie.in> or a name corresponding to the domain name in connection with a bona fide offering of goods or services. The Respondent is using the disputed domain name <rennie.in> in connection with a website providing links to websites of the Complainant's direct competitors. Such use is not bona fide and does not confer rights or legitimate interest under paragraph 7(i) of the Policy.

4.7 The Respondent - to the best of the Complainant's knowledge - has not been commonly known by the disputed domain name <rennie.in>, as required under paragraph 7(ii) of the Policy.

A handwritten signature in cursive script, appearing to read "Indira", is located in the bottom right corner of the page.

- 4.8 The Respondent's use of the disputed domain name <rennie.in> in connection with a parking website is also not a legitimate non-commercial or fair use of the domain name under paragraph 7(iii) of the Policy but supports the finding that the Respondent has registered the disputed domain name <rennie.in> with the intent for commercial gain and to divert internet users to its website.
- 4.9 The fact, that the Respondent has just parked the disputed domain name <rennie.in> for sale indicates that Respondent has no rights or legitimate interests in respect of disputed domain name <rennie.in>.
- 4.10 The Respondent does not conduct any legitimate commercial or non-commercial business activity. The Complainant's highly distinctive RENNIE-Marks have a strong reputation and are widely known, including in Great Britain, where the Respondent is located. It is therefore inconceivable that the Respondent registered the disputed domain name <rennie.in> unaware of the Complainant's rights in its RENNIE-Marks and reasonable to infer that the Respondent has registered the disputed domain name <rennie.in> with full knowledge of the RENNIE-Marks and therefore in bad faith as required under paragraph 4(iii) of the Policy.
- 4.11 By using the disputed domain name <rennie.in> in connection with a parking website offering links to the Complainant's direct competitors, the Respondent deliberately tries to attract internet users to its website as required under paragraph 6(iii) of the Policy. Such use of a disputed domain name suggests bad faith registration and use under the Policy.

4.12 The Respondent also offered the disputed domain name <rennie.in> for sale for the amount of GBP 3.500. This amount in any way exceeds the out-of-pocket costs which the Respondent might have had directly related to the disputed domain name <rennie.in>. Therefore, it is obvious that the Respondent registered the domain name primarily to sell it to the Complainant as required under paragraph 6(i) of the Policy.

4.13 Where a domain name is found to have been registered with the intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration. The registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

4.14 The Respondent ought to have been aware when it registered the disputed domain name <rennie.in> that such registration would impede the use of the disputed domain name <rennie.in> by the legitimate owner of the trademark, which is found to be bad faith.

B. Respondent

4.15 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5. Discussion and Findings

5.1 Since the Respondent has chosen not to respond to this Complaint within the original and extended time granted to him, I am proceeding to

determine this Complaint on merits based on the materials available on record.

5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

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

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark RENNIE and has been using the mark RENNIE since 1930. The Complainant has registrations for the mark RENNIE all over the world including India. The Complainant's trade mark was registered in India in 1996. The disputed domain name **<rennie.in>** was registered by the Respondent only on 26th March 2010. The Complainant is the prior adopter of the mark RENNIE. The above

facts have established that the Complainant has both common law and statutory rights in respect of its trade mark RENNIE.

5.5 The Complainant's RENNIE marks are well known throughout the world including India. It is clearly seen that the disputed domain name **<rennie.in>** wholly incorporates RENNIE, the prior registered trade mark of the Complainant.

5.6 I, therefore, find that:

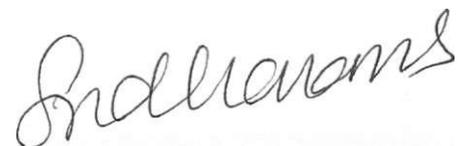
- (a) The Complaint has both common law and statutory rights in respect of its trade mark RENNIE.
- (b) The disputed domain name **<rennie.in>** is identical to the Complainant's prior registered trade mark RENNIE.

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.7 It is already seen that:

- (a) The Complainant is the prior adopter and user of the mark RENNIE. The Complainant's mark RENNIE is well known in many countries across the globe including India.
- (b) The Complainant's trade mark was adopted in the year 1930. It was registered in India in 1996. The disputed domain name **<rennie.in>** was registered by the Respondent only on 26th March 2010.

5.8 I visited the web site of the Respondent under the disputed domain name **<rennie.in>**. The disputed domain name **<rennie.in>** was offered for sale



with the display: *The domain rennie.in may be for sale by its owner!*. A click on the display led to another window and the visitor was asked to enter his bid amount with the seller's listing price of £ 3000. In addition to this, the disputed domain name <rennie.in> provided links to lots of web sites offering insurance and other services. It is obvious without any reasonable doubt that the Respondent registered the disputed domain name <rennie.in> only for the purpose of selling it and never intended to use the disputed domain name <rennie.in> in connection with a bona fide offering of goods or services.

5.9 I agree with the Complainant that the Respondent does not conduct any legitimate commercial or non-commercial business activity. The Complainant's highly distinctive RENNIE-Marks have a strong reputation and are widely known, including in Great Britain, where the Respondent is located. The word "RENNIE" is highly distinctive and obviously connected with the Complainant's products and is not a word a trader would legitimately choose unless seeking to create an impression of an association with the Complainant.

5.10 In the absence of response from the Respondent, I accept the argument of the Complainant that the Respondent has not been commonly known by the disputed domain name <rennie.in>. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the RENNIE-Marks.

5.11 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name <rennie.in>.

Respondent's domain name has been registered or is being used in bad faith.

5.12 The Complainant's well known trade mark RENNIE was adopted in 1930. It was registered in India in 1996. The Respondent got registered the disputed domain name <rennie.in> on 26th March 2010. Complainant's rights in the RENNIE trademark pre-dates Respondent's registration of the disputed domain name 26th March 2010 by approximately 70 years. The Respondent could not have ignored, rather actually influenced by, the well-known trade mark RENNIE of the Complainant at the time he acquired the disputed domain name <rennie.in>.

5.13 As seen above, Respondent registered the disputed domain name <rennie.in> only for the purpose of selling it and never intended to use the disputed domain name <rennie.in> in connection with a bona fide offering of goods or services. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <rennie.in> is nothing but an unjust exploitation of the well known reputation of the Complainant's prior registered trade mark RENNIE.

5.14 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's trademark RENNIE.



- 5.15 It is obviously clear that the Respondent is currently using the disputed domain name <rennie.in> primarily for inviting bids from potential purchasers. Respondent's bad faith registration is evidently clear from his offer to sell the disputed domain <rennie.in> to the Complainant or any other potential bidders.
- 5.16 Respondent has acted in bad faith because the Respondent has intentionally attempted to attract internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.
- 5.17 Thus it is clearly established that Respondent registered the disputed the disputed domain name <rennie.in> in bad faith.
- 5.18 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent registered the disputed domain name <rennie.in> only with an intention to gain substantial monetary benefit from the Complainant or any other potential purchasers. He never intended to put the disputed domain name <rennie.in> into any other fair/useful purpose. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.



6. Decision

6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

6.2 It is hereby ordered that the disputed domain name <rennie.in> be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs.3,60,000/- (Rupees three lakhs sixty thousand only) towards costs of the proceedings.



S.Sridharan
Arbitrator