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N 437520

ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure

IN THE MATTER OF:

Sensient Technologies Corporation
777 E, Wisconsin Avenue
Suite 1100, Milwaukee
WI 53202
USA

First Complainant

Sensient India Private Limited,
322, Solitaire Corporate Park,
Andheri Kurla Road,
Andheri East,
Mumbai

....Second Complainant

VERSUS

Mr. Duan Zuochun
XiangzhouquJidaBailianlu 188Hao
Zhongtonggongyedsha2Lou
Guangdong - 519000
China

Respondent

THE PARTIES:

The Complainant in this administrative proceeding is Sensient Technologies Corporation, a company incorporated under the laws of U.S.A., having its address at 777 E, Wisconsin Avenue, Suite 1100, Milwaukee WI 53202, U.S.A. Represented through Ms. Rachna Bakhru, Advocate of Ranjan Narula Associates, Intellectual Property Attorneys, at Vatika Towers 10th Floor, Block B, Sector-54, Gurgaon - 122 002

The Respondent is Mr. Duan Zuochun XiangzhouJidaBailianlul 88Hao Zhongtonggoiigyedsha2Lou Guangdong - 519000 China.

2 THE DOMAIN NAME AND REGISTRAR

The disputed domain name <SENSIENT.IN> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Transecute Solutions Pvt. Ltd.

3 PROCEDURAL HISTORY

The Complaint was filed with the .In Registry. National Internet Exchange of India (NIXI), against Mr. Duan Zuochun XiangzhouJidaBailianiu188Hao Zhongtonggongyedsha2Lou Guangdong - 519000 China. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **5th January, 2011**. The parties were notified about the appointment of an Arbitrator on **5th January, 2011**.

3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI



to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on 5th **January, 2011**. In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

- 3.3 The Respondent failed and/or neglected and/or omitted to file formal response to the Complaint within 10 days as was granted to him by the notice dated **January 5, 2011**. However, by his e-mail dated January 5, 2011, the Respondent submitted; "You arbitration to arbitration, and I do not care".
- 3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

FACTUAL BACKGROUND

- 4.1 The Complainant in these administrative proceedings is Sensient Technologies Corporation, 777 E, Wisconsin Avenue, Suite 1100, Milwaukee WI 53202, USA
- 4.2 The Complainant is a global company with operations in more than 30 countries and is the world's leading supplier of flavors, fragrances and colors used to make a diverse variety of foods and beverages, pharmaceuticals, cosmetics, home and personal care products, specialty printing and imaging products computer imaging and industrial colors. The complainant employs advanced technologies around the world to develop specialty food and beverages Systems, cosmetic and pharmaceutical ingredient systems, inkjet and specialty inks, display imaging chemicals and other specialty chemicals. The Complainant employs 3600 employees worldwide and its customers include major international manufacturers representing some of the world's best known brands.



- 4.3 The First Complainant was founded in 1882 as Meadow Springs Distilling Company. In the late 1800s, Complainant changed its name to National Distilling Company. Subsequently, National Distilling Company changed its name to Red Star Yeast and Products Company. Red Star Yeast and Products Company changed its name to Universal Foods Corporation in 1962. In 2000 Universal Foods Corporation changed its name to Sensient Technologies Corporation.
- 4.4 The Complainant submits that he is in the said business for more than 200 years and operates on an international scale with offices around the world including in U.S.A., Canada, United Kingdom, Germany, Italy, France, Switzerland, Belgium, Korea, China, Australia, New Zealand, Thailand etc.
- 4.5 The Complainant submits that in India, Sensient India Private Limited is the Complainant's subsidiary having its registered office at 322 Solitaire Corporate Park Andheri Kurla Road Andheri East, Mumbai. It was incorporated on October 12, 2001.
- 4.6 The Complainant also submits that he owns the website www.sensient.com and www.sensient-tech.com, which are accessible from worldwide and is available for use by users globally, including those in India. The domain name www.sensient.com was created on 27th September 1998 and is valid until 26th September 2020 and the domain www.sensient-tech.com was created on 19th July 2000 and is valid until 19th July, 2020.
- 4.7 The Complainant further submits that in India, the Complainant has obtained registration of the trade mark "SENSIENT" in numerous classes as detailed below :

Trade Mark	Registration No.	Registration Date	Class	Validity
SENSIENT	1278268	12 th April 2004	1	12 th April 2014
SENSIENT	1278269	12 th April 2004	2	12 th April 2014
SENSIENT	1278266	12 th April 2004	5	12 th April 2014
SENSIENT	1278270	12 th April 2004	5	12 th April 2014
SENSIENT	1278267	12 th April 2004	29	12 th April

SENSIENT	1278271	12 th April 2004	29	2014 12 th April 2014
SENSIENT	1278272	12 th April 2004	30	12 th April 2014

4.8 The Respondent has registered the disputed domain name <sensient.in> on 8th October, 2010 through the sponsoring Registrar, Transecte Solutions Pvt. Ltd.

4.9 The respondent has not submitted formal reply to the contentions raised by the Complainant in the Complaint. However, by his e-mail dated January 5, 2011, the respondent wrote to the Panel "You arbitration to arbitration, and I do not care"

5 PARTIES CONTENTIONS

5A COMPLAINANT

5A(1) The First Complainant was founded in 1882 as Meadow Springs Distilling Company. In the late 1800s, Complainant changed its name to National Distilling Company. Subsequently, National Distilling Company changed its name to Red Star Yeast and Products Company. Red Star Yeast and Products Company changed its name to Universal Foods Corporation in 1962. In 2000 Universal Foods Corporation changed its name to Sensient Technologies Corporation (Complainant).

5A(2) In India, the Second Complainant has obtained registrations of the trade mark "SENSIENT" and is the registered proprietor of the trademarks in numerous classes as detailed below:

Trade Mark	Registration No.	Registration Date	Class	Validity
SENSIENT	1278268	12 th April 2004	1	12 th April 2014
SENSIENT	1278269	12 th April 2004	2	12 th April 2014
SENSIENT	1278266	12 th April 2004	5	12 th April 2014
SENSIENT	1278270	12 th April 2004	5	12 th April 2014
SENSIENT	1278267	12 th April 2004	29	12 th April 2014
SENSIENT	1278271	12 th April 2004	29	12 th April 2014
SENSIENT	1278272	12 th April 2004	30	12 th April 2014

The aforesaid trademarks are valid and subsisting on the records of the Trade Marks Registry.

- 5A(3) The Complainant has pending applications/registrations of the mark SENSIENT in a number of countries around the world including United States of America, Australia, Argentina, Canada, China, European Community, Malaysia, Turkey, Thailand, Switzerland, Sri Lanka, South Africa.
- 5A(4) The Complainant Company has generated revenue of US\$ 1201 million for the year 2009. The sales in U.S.A. accounted for 59% of the total sales. Further, the Complainant has recorded revenue of US\$ 773 and generated income of US\$124.5 from its Flavour and Fragrances Group and recorded revenue of US\$ 375 and generated income of US\$ 58 from its Colour Group for the year 2009.
- 5A(5) The Complainant submits that the overwhelming success of SENSIENT products has resulted in Complainant(s) gaining extensive goodwill and reputation in the said mark/name worldwide and in India. The members of the trade and public exclusively associate the mark/name SENSIENT with the business of the Complainant and none other.
- 5A(6) The Complainant owns the Intellectual property in the trade mark and domain name "SENSIENT" including its trade mark registrations and domain names registrations. The Complainant is the registrant and user of several domain names containing the SENSIENT mark e.g.
- i. www.sensient.com
 - ii. www.sensient-tech.in
 - iii. www.sensient-tech.com
 - iv. www.sensientfoodcolors.com
 - v. www.sensientflavours.com
 - vi. www.serisientdehydratedflavors.com
 - vii. www.sensieni-flavours.com
 - viii. www.sensientfraerances.com
- 5A(7) The Complainant submits that the overwhelming success of mark/name SENSIENT has resulted in the Complainant gaining

extensive goodwill and reputation in the mark world-wide including in India. The Complainant submits that it is common for every business and household in India to use the Internet for emails, browsing web-sites, entertainment etc. In India, where there is a huge user base with a large youth population that uses Internet. for communication and entertainment, the Complainant's mark/name SENSIENT is well-known and is popular amongst them.

5A(8) The Complainant also owns the websites www.sensient.com and www.sensient-tech.com, which are accessible from worldwide and is available for use by users globally, including those in India.

B. **RESPONDENT**

5B (1) The Respondent has been given opportunity to file his response to the Complaint by the panel by its notice dated January 5, 2011.

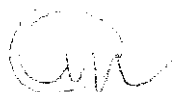
5B(2) The Respondent has, however, failed and/or neglected and/or omitted to file, any response to the Complaint filed by the Complainant.

5B(3) The Panel, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis' of the material on record and in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder.

6. **DISCUSSIONS AND FINDINGS**

6.1 The Complainant(s), while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including



hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 In accordance with the principles laid down under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as It think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.

The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant(s) on merit. However, in view of the fact that preliminary onus is on the Complainant(s) to satisfy the existence of all conditions under the policy to obtain the reliefs claimed, the panel feels it appropriate to deal with the averments made by the Complainant(s) in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.

The Complainant(s) has filed evidence by way of **Annexures-'A'** to **'K'** with the Complaint.

The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain unrebutted and unchallenged.



- 6.5 The onus of proof is on the Complainants). As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <SENSIENT.IN> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant(s) along with the Complaint.
- 6.6 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.7 The decision of Hon'ble Supreme Court of India in the matter of Jahuri Sah Vs. Dwarika Prasad - AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).
- 6.8 The Panel therefore accepts the case set up and the evidence filed by the Complainant(s) and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.9 Paragraph 10 of the Policy provides that the remedies available to the Complainant(s) pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant(s).
- 6.10 Paragraph 4 of the Policy lists three elements that the Complainant(s) must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant(s) or cancelled:

A. **IDENTICAL OR CONFUSINGLY SIMILAR**

- 6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.



6A.2 The Complainant is the registered proprietor of the following marks in India:

Trade Mark	Registration No.	Registration Date	Class	Validity
SENSIENT	1278268	12 th April 2004	1	12 th April 2014
SENSIENT	1278269	12 th April 2004	2	12 th April 2014
SENSIENT	1278266	12 th April 2004	5	12 th April 2014
SENSIENT	1278270	12 th April 2004	5	12 th April 2014
SENSIENT	1278267	12 th April 2004	29	12 th April 2014
SENSIENT	1278271	12 th April 2004	29	12 th April 2014
SENSIENT	1278272	12 th April 2004	30	12 th April 2014

Apart from the above, the Complainant has pending applications/registrations of the mark SENSIENT in a number of countries around the world including United States of America, Australia, Argentina, Canada, China, European Community, Malaysia, Turkey, Thailand, Switzerland, Sri Lanka, South Africa.

6A.3 The Complainant submits that the Respondent has registered the identical domain name www.sensient.in with the .IN Registry. It is submitted that the aforesaid domain name incorporates the Complainant's well-known and prior registered mark SENSIENT.

6A.4 The Complainant further submits that on account of extensive use and popularity of the domain name/'trademark SENSIENT across the world, the SENSIENT mark/name is well recognized by different fragments of society. Therefore, the respondent can have no plausible reason for adoption of a domain name phonetically, visually and conceptually identical to the Complainant's well-known and highly distinctive trade mark and domain name SENSIENT. The Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant's trade mark/domain name SENSIENT.

6A.5 The Complainant further submits that it will suffer incalculable harm and injury to its goodwill, reputation and business in general if the Respondent is allowed to maintain its registration of domain name SENSIENT.IN. The loss and damage will not only be to the Complainant's reputation but also result in confusion and deception among the trade and public who would subscribe to the Respondent's service assuming it to be sourced, sponsored, affiliated, approved,

authorized or endorsed by the Complainant. The trade and public may also assume that there exists connection between the Complainant and the respondent which is likely to further harm the reputation enjoyed by the Complainant.

- 6A.6 The Complainant submits that it is a settled proposition of law that where there is copying, dishonesty ought to be presumed. In the present case, copying by the respondent is evident from its adoption of an identical domain name. Furthermore, respondent's intention is clearly to take a free ride on the goodwill and the unique sales appeal that the Complainant's goods under the mark/domain SENSIENT has achieved over a period of time.
- 6A.7 The Complainant submits that the intention of the Respondent is primarily to register the domain name so as to offer it to a third party for sale. The mark/name SENSIENT has been coined by the Complainant and has no dictionary meaning. Thus, the mark/name SENSIENT exclusively refers to the Complainant and none else. Further, given the worldwide publicity of the SENSIENT mark and domain and considering the highly distinctive nature of the SENSIENT mark and name in respect of the Complainant's aforesaid business activities, the adoption and registration of an identical domain name and mark cannot be a coincidence. Therefore, the registration of the domain is in bad faith intended to derive monetary and commercial gain. In the circumstances, the present case is clearly that of cyber-squatting. Further, use of an identical domain name by the Respondent is likely to mislead/divert consumers and also tarnish the reputation of the trademark or service mark of the Complainant.
- 6A.8 The Complainant submits that on a mere look at the Respondent's website, it is clear that the Respondent is not carrying out any activities from the aforesaid site. The www.sensient.in domain name currently displays "sponsored listings", but does not have any substantive content. The Complainant further submits that the Respondent has registered the domain name www.sensient.in for the purpose of reselling and not for carrying out any business.
- 6A.9 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also find and hold that the disputed Domain Name www.sensient.in is identical and/or deceptively



similar to the earlier registered trade marks and Domain names of the Complainant. The whole of Complainant's trade mark /domain name has been incorporated in the disputed domain name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name www.sensient.in is identical and/or confusingly similar to the trademark SENSIENT of the Complainant.

B. RIGHTS OR LEGITIMATE INTERESTS

6B.1 The Respondent has no rights or legitimate interests in respect of the domain name.

6B.2 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

6B.3 The Complainant submits that the domain name was registered by the respondent on October 8, 2010. At this time, the Complainant had prior trade mark/domain name www.sensient.com registration and considerable reputation In the SENSIENT mark and domain name in India and abroad. The Complainant is the registered proprietor of the mark SENSIENT in numerous classes in India since 2004. The mark/name SENSIENT was used by the Complainant as early as January 23, 2001. In India, the Complainant's subsidiary Sensient India Private Limited was incorporated in the year 2001. Therefore, the respondent was aware of the Complainant's trade mark rights in the SENSIENT mark/name and its adoption of an identical domain www.senstent.in is in bad faith.

6B.4 The Complainant submits that the respondent is not and has never been known by the SENSIENT name or by any similar name. The respondent does not have any active business operations in the name of SENSIENT.

6B.5 The Complainant submits that the respondents' domain name/web-site does not have an active content and has been merely blocked/registered with an intention to benefit from the sale of a famous domain name. The web-site contains 'sponsored listings*' only and therefore there is no



legitimate business interest of the respondent in blocking/registering the said domain name. The sole purpose of registering the domain name www,sensient.in by the respondent is to derive illegal profits by offering the domain name for sale.

6B.6 The Complainant submits that the respondent is not even based in India but China as per the contact details available online and therefore, there is no legitimate business interest in registering the domain names with the .IN Registry.

6B.7 The Respondent did not dispute any of the contentions raised by the Complainant in its Complaint. The case set up by the Complainant is deemed to be admitted as not disputed by the Respondent. The Panel also find, on the basis of the material available on record, that the respondent has no legitimate right or interest in the disputed domain name. The respondent has failed to show any justification for the adoption, use or registration of disputed domain name.

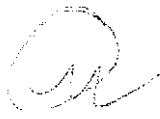
6B.8 The Panel, therefore holds that the circumstances listed above demonstrate rights or legitimate interests of the Complainant(s) in the domain name sensient.in and holds that Respondent has infringed the rights of the Complainant(s) by registering the Domain Name and has no legitimate right or interest therein.

C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

6C.3 The complainant submits that circumstances indicating that the Registrant has registered or the Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of our documented out-of-pocket, costs directly related to the domain name; or

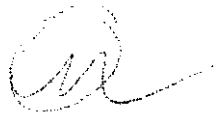


- 6C.4 The Complainant further submits that the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- 6C.5 The Complainant submits that by using the domain name, the Registrant has intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location".
- 6C.6 The Complainant further submits that the respondent is not carrying out any business activities through the domain name www.sensient.in and as mentioned in the previous paragraph has merely blocked/registered the said domain name for the purpose of reselling for a considerable amount. The respondent has offered to sell the domain name www.sensient.in through www.sedo.com that deals in domain name sale/purchase and auction.
- 6C.7 The Respondent does not dispute any of the contentions raised by the Complainant(s). The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name www.sensient.in was registered by the respondent in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.
- 6C.8 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7 **DECISION**

in view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

- A. Transfer of the domain name www.sensient.in to the Complainant(s).

A handwritten signature in black ink, appearing to be a stylized 'M' or similar character, located at the bottom right of the page.

B. Respondent pay the Complainant cost of Rs,25,000/- in above proceedings.



AMARJIT SINGH
Sole Arbitrator

Dated:3rd March, 2011