



दिल्ली DELHI

BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR
OF
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

C 537784

In the Matter of:-

SONY ERICSSON MOBILE COMMUNICATIONS AB
NYA Vattentornet
Lund 22188

Claimant

Sweden

(Complainant)

Farhang Farnood
62 Zahran Street
Amman 11183, 0962
Jordan
Email: mdi_adi@yahoo.com
(Respondent)

Defendant

1. The parties:

Complainant is **SONY ERICSSON MOBILE COMMUNICATIONS AB**
NYA Vattentornet Lund 22188 Sweden

Respondent is Farhang Farnood, 62, Zahran Street, Amman 11183,0962,
Jordan

2. The domain name at issue is <sonyericson.co.in> (the domain name)

The registrar is NIXI at Nehru Place 121, 123, Ansal Tower, 38, Nehru Place, New
Delhi

3. Brief Background

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of the NIXI on dated 05.10.2006 and the respondent did not submit his reply at all.

Ms. Deepa Gupta has been appointed as Sole Arbitrator in this matter

It is alleged in the complaint that the complainant is using this trademark since October 2001. It is also revealed from the filed documents that the complainant is in the business of producing, distributing, marketing, mobile telephones & accessories under sonyericsson brand. This is also not out of context to mention that ample opportunity has been given to the respondent to represent their case before the tribunal.

Respondent has not submitted any answer in the matter.

4. Parties contentions:

Complainant alleges that the respondent has registered sonyericsson.in, which is visually conceptually and confusingly similar to his trademark and also phonetically identical and respondent is a well known speculator and has registered the domain name sonyericsson.in with the intention to sell it to others for profits & defrauding the public. As per Annexure 6 this is also alleged that the respondent has put up the domain name on parking, and is making money by luring customers to the website and many links on the website refer to complainants competitors (Annex 5)

Respondent is silent on complainants allegations and has not replied to the complainants any previous correspondence dated 10th & 25th May2006.(Annex 7)

The Complainant has also submitted the following :

That it is a joint venture between telefonaktiebolaget LM Ericsson of Sweden and the Sony Corporation of Japan. By virtue of this joint venture in October 2001, the complainant is entitled to use the combination of the trademarks SONY and ERICSSON.

The it has been producing, distributing and marketing mobile telephones and accessories under the SONY ERICSSON brand since October2001, Further information on the products and services it offers can be found at its website

[www.sonyericsson](http://www.sonyericsson.com) .com

That it owns the intellectual property of the joint venture including all of its worldwide trade mark applications and registrations and domain name registrations. The vast majority of these domain names incorporate the mark SONY ERICSSON. Example includes "sonyericsson".co.uk, sonyericsson.fr, sonyericsson.de, and the name "sonyericsson" in more than 100 other country code top level domains.



That it operates from location around the world including amongst others Jordan, where the Respondent is based Sweden, Japan. China,USA and the UK. The complainant employs approximately 5000 people around the world. The complainant has a customer base in excess of 6 million in Japan alone and is the largest mobile telecommunications provider in the region.

That its website at sonyericsson.com currently attracts more than 5 million unique visitors per month and generates millions of hits per day on average. The complainant also operates geographic specific websites in more than 60 country domains around the world. The complainant Indian specific website can be found at sonyericsson.co.in. The complainant's Indian website attracted approximately 440,000 visitors in 2004. Extracts of a report detailing visitor numbers can be found at (Annex 2)

That it has spent a considerable amount of money promoting its brand worldwide, both inside and outside of the mobile telecommunications field, on an average the complainant spends approximately £150 million on marketing and promoting its brand and has recently invested \$88 million to become the title sponsor of the Women's Tennis Association (WTA) Tour. The WTA Tour is regard as the premier tour for professional women's tennis and is the largest ever sponsor in the history of women sport. As part of the sponsorship, there is an annual tournament entitled the Sony Ericsson Championship, which shall be held in Madrid, Spain in November this year. There are also annual events held in India titled the Indian Open and the Bangalore Open.

As part of the its marketing campaign, it has arranged many events in both India and Jordan. Further details of these events and press releases specific to these regions can be found at (Annex 3)

5. Opinion:

I. Issue:

A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :

1. Manner in the domain name in question is identical or confusingly similar to a trademark or service mark in mark in which the complainant has rights.
2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint , this tribunal is of confirmed opinion that the complainant amply proved that he is using the domain name Sonyericsson.com for purpose and his work is related to Sonyericsson. On the basis of the records submitted by the complainant it's proved that the domain name Sonyericsson.co.in is related to the business of complainant.



The complainant has clearly established that complainant is a joint venture between telefonaktiebolaget LM Ericsson of Sweden and the Sony Corporation of Japan. It is also evident that he has been producing, distributing, marketing, mobile telephones and accessories under the Sonyericsson brand.

Complainant is also owner of name Sonyericsson in many countries & operates worldwide employing thousands & more people worldwide. The fact that complainants website attracts more than 5 million unique visitors per month generates millions of hits per day on average stands established (Annex 2)

The complainant has spent considerable amount of money is promoting its brand worldwide which is established.

The respondent has not come forward in the matter at all and neither submitted any statement or evidence in agreement of disagreement of the accusation made on him.

The respondent has further failed to prove his good rights over the domain name Sonyericsson.co.in. he has also not submitted any documents providing his right direct or indirect on the domain in question.

This tribunal holds that such abuse of the names should be checked in most efficient manner. The complainant has tried to prove his good faith and right on the domain name in dispute and as to why domain name in question should be considered as having been registered and being used in bad faith by the respondent.

Complainant has amply demonstrated that he is in the business of producing, distributing, marketing, mobile telephone & accessories worldwide.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is a proof of the fame of widespread recognition of the services provided by the complainant make this complaint a plausible case of action.

The fact that respondent did not participate in the proceeding also demonstrates that the motive of the respondent is not to use his interests in a constructive manner but something else and reflect that complaint has been filed in good faith with no ulterior motives.

II. Domain name hijacking

This is establish rule that if the tribunal finds that the complaint was brought in goodfaith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder , the tribunal shall declare that the compliant was brought in goodfaith and constitute true use of administrative proceedings.

As enumerated in para 4 the complainant asks for finding of bad faith, under this principle. In support of this prayer the respondent did not respond. Further, in support of this the complainant respondent submitted documents marked as annexure 1,2,3,4,5,6,7 which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. The failure on the part of respondent to appear before the tribunal is **also a fact, which this tribunal cannot ignore. Complainant's complaint is uncolorable and is filed with no ulterior motive.** Therefore, I am bound to conclude with the certainty that **Ujje's present complaint by the complainant is an**

effort by the complainant to save the disputed domain name from misuse and good faith intention harass the respondent or abuse process of law.

Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the respondent failed to prove all the necessary conditions. Further, this tribunal bound to conclude with certainty that the present complainant by the complaint is an effort by the complainant to save the domain name of complainant and is in good faith with no intention to harass the respondent or abuse process of law. This tribunal further directs the respondent to deposit Rs10,000 INR in the registry of NIXI as a cost of this proceedings and burdening the administration to fulfill his ulterior motives.

Given under my hand and seal on this **February 20,2007**



Deepa Gupta

Arbitrator