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(ON STAMP PAPER OF RS.100/-)

C.V. Francis, Advocate

Arbitrator appointed by the (.IN Registry)

National Internet Exchange of India

X-29 Hauz Khas

New Delhi 110016

Tel: 41756995, 26177424 Fax: 26177415

Cvfc@bol.net.in

ARBITRATION AWARD

Disputed Domain Name : www.sony-ericsson.in

In the matter of:

Sony Ericsson Mobile Communications AB

Nya Vattentornet

Lund 22188 SWEDEN

.....Complainant

Vs.

Salvatore Morelli

Italwebdesign

Via Patricciano, 3

Avella, 83021

Italy

.....Respondent

1. The Parties

The Complainant is Sony Ericsson Mobile Communications AB represented by their attorney, Bevan Brittan LLP London, U.K.

The Respondent is Salvator Morelli Chen Shenglu, China with the following contact details as provided in the Complaint:

Salvatore Morelli
Italwebdesign
Via Patricciano, 3
Avella, 83021
Italy

Email ordini@italwebdesign.com

2. Details of the disputed Domain Name

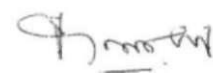
The disputed domain name, www.sony-ericsson.in has the following details:

The particulars of the said domain name are as follows :

- a) Name of Registrant : Salvatore Morelli
- b) Domain Id : D625153-AFIN
- c) Created on : 25-Feb-2005 11:35:18 UTC
- d) Expiration Date : 25-Feb-2007 1 1:35:18 UTC
- e) Sponsoring Registrar : Silicon House (R38-AFIN)
- f) Registrant Id : DM186014

3. About procedures adopted in the Complaint

This is a mandatory arbitration proceeding submitted for adjudication in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) for Domain Name Dispute Resolution, adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure (the Rules) was approved by NIXI on 28th June, 2005 in accordance with the



Indian Arbitration and Conciliation Act, 1996, and the bye-laws, rules and guidelines framed there under.

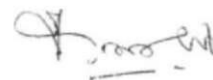
By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Rules.

According to the information provided by the National Internet Exchange of India (the ".IN Registry"), the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified, the Respondent of the Complaint, sent him a copy of the complaint, and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. I had submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI to ensure compliance with the Rules.

The arbitration proceedings commenced on December 4, 2006, when notice of proceeding was issued by me. The Respondent was advised to file his reply to the complaint within 10 days.

No reply was submitted by the Respondent thereafter. In these facts and circumstances, in-person hearing was unnecessary for deciding the



complaint, and consequently on the basis of the statements and documents submitted on record, the present Award is passed.

According to Paragraph 9 of the Rules, the language of the proceedings was in English.

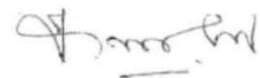
4. Parties' Contentions

(a) Complaint

The Complainant contends as follows:

The Complaint in these administrative proceedings is Sony Ericsson Mobile Communications AB, a joint venture between Telefonaktiebolaget LM Ericsson, incorporated in Sweden and the Sony Corporation of Japan. The Complainant's principal place of business is Sweden. By virtue of this joint venture made in October, 2001, the Complainant claims to be entitled to use the combination of the trade marks SONY and ERICSSON in respect of mobile telephones and accessories. Further information on the products and services it offers, can be found at its website www.sonyericsson.com.

The complainant 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. Examples include sonyericsson.it (where the Respondent is based) sonyericsson.co.uk, sonyericsson.fr, sonyericsson.de, and the name "sonyericsson" in more than 100 other country code top-level domains.

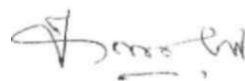


The Complainant operates from locations around the world including amongst others Sweden, Japan, China, the USA, the UK, India and Italy. The Complainant employs approximately 5,000 people around the world and has a customer base in excess of 6 million in Japan alone and is the largest mobile telecommunications provider in that region.

The Complainant's principal website address is www.sonyericsson.com. It currently attracts more than 5 million unique visitors per month and generates millions of hits per day on an average. The Complainant also operates geographic specific websites in more than 60 country domains around the world. The Complainant's Indian specific website can be found at sonyericsson.com/in, and its Italian specific website can be found at soneyericsson.it. The Complainant's Indian specific website attracted approximately 440,000 visitors in 2004.

The Complainant has spent a considerable amount of money promoting its brand worldwide, both inside and outside of the mobile telecommunications field. There are also annual events held in India entitled the Indian Open and the Bangalore Open and in China entitled the Chinese Open and the Guangzhou International Women's Open. The Complainant has generated a substantial reputation and goodwill in the name SONY ERICSSON and operates numerous retail outlets in India.

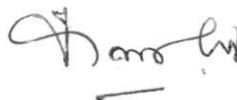
The Complainant has spent a considerable amount of money



promoting its brand worldwide, both inside and outside of the mobile telecommunications field. On an average, the Complainant spends approximately Euro 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 regarded as the premier tour for professional women's tennis and is the largest ever sponsor in the history of women's sport. As part of the sponsorship, there is an annual tournament entitled the Sony Ericsson Championships, which shall be held in Madrid, Spain in November this year. There are also annual events held in India entitled the Indian Open and the Bangalore Open and in Italy endorsed the Internazionali d'Italia, held in Rome and the Internazionali Femminili di Palermo.

The Complainant has also generated a substantial reputation and goodwill in the name SONY ERICSSON in Italy and in India. The Complainant operates numerous retail outlets in India and has sponsored or otherwise been associated with many local events including a mobile phone promotion in connection with the premiere of Star Wars Episode III in India and a television advertising campaign for the Complainant's recent sponsorship of the MTV Awards 2006. The Complainant has provided as annexure to the complaint the copies of examples of Complainant's recent marketing campaigns in both India and Italy.

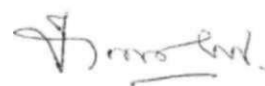
The Complainant contends that the two parts of the Complainant's

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name are protected individually by Telefonaktiebolaget LM Ericsson and the Sony Corporation of Japan. The SONY trade mark has been registered worldwide including but not limited to the EU Office for Harmonisation in the Internal market on 5th May, 1998 (No.472) for inter alia apparatus and instruments for data communication. The ERICSSON trade mark has been registered worldwide including but not limited to the EU office for Harmonisation in the Internal market on 23rd March, 1999 (No. 107003) and on 15th February, 2001 (No. 1459130) for inter alia apparatus and instruments for data communication. The Complainant is licensed to use and enforce the combined trade mark SONY ERICSSON.

The Complainant further contends that by reason of the extensive use, promotion, and advertising of the Sony Ericsson business by reference to the SONY ERICSSON mark, the Complainant is the proprietor of a substantial goodwill and reputation in the mark in the field of mobile telecommunications based services. The mark SONY ERICSSON is well known in India, Italy, Europe and internationally as denoting the services provided by the Complainant and none other.

The Complainant claims that it has previously succeeded in comparable proceedings relating to <sonyericsson.co.in> in NIXI case number 1774. <sonyeriksson.com>, sonyerisson.com>, <sonyericson.com> and <sonyerricsson.com> in WIPO case no. D2003-1128 and relating to <sony-ericsson.org> in WIPO Case No. D2005-0553.

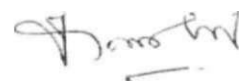


The Complainant submits that the Domain Name is identical to the Complainant's well-known and highly distinctive trade mark SONY ERICSSON, phonetically, visually and conceptually.

The registration of the Domain Name is likely to lead the public to believe that the Registrant and the website to which the Domain Name directs is sponsored by or affiliated to or associated with the Complainant, and will lead to confusion in the minds of the public.

The Complainant submits that the Respondent has no rights or legitimate interest in the Domain Name, for the following reasons:

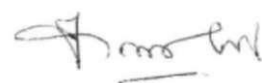
- (a) the Domain Name was registered by the Respondent on 16th February, 2005. At this time the Complainant had a very considerable reputation in the SONY ERICSSON name in India, China and elsewhere. The Complainant had common law trade mark rights in the name which it had been accruing since 2001;
- (b) the Domain Name initially resolved to a website relating to what appeared to be an Italian medical site. Copy of the website is attached with the complaint as Annexure. There has been no active website attached to the Domain name since a letter before action was sent to the Respondent.
- (c) the Complainant believes that the Respondent is not or has never been known by the name SONY ERICSSON or by any confusingly similar name; and
- (d) even if the Respondent had accrued rights in the mark SONY ERICSSON since the registration of the Domain Name (which is denied by the Complainant), any such rights would be significantly pre-dated by the Complainant's rights.



The Complainant submits that the Domain Name registered, has been used and continues to be used in bad faith. It relies upon the following:

- (a) at the time of the registration of the Domain Name by the Respondent, the mark SONY ERICSSON was well-known in India, China and worldwide. The Complainant has created substantial goodwill in the mark since the Complainant was formed in 2001;
- (b) the Complainant has not authorized, licensed or otherwise consented to the Respondent's use of the trade mark SONY ERICSSON.
- (c) The Respondent will have no doubt been aware that prior to its registration of the Domain name, that there was substantial reputation and goodwill associated with the mark SONY ERICSSON, which inures and continues to inure to the Complainant. The Complainant's marketing campaigns in India and Italy, highlight the brand recognition the Complainant enjoys both in India and Italy;
- (d) the registration of the Domain Name and its subsequent use by the respondent is for the purpose of defrauding the public. The Domain Name resolves to a website which does not offer the services of the Complainant.

The Complainant has further contended in the Complaint that the registration of the Domain Name and its subsequent use by the respondent is a deliberate attempt by the respondent to attract, for commercial gain, Internet users to another online location by creating a likelihood of confusion with the Complainant's SONY ERICSSON mark such as the public is likely to falsely believe that the site to which the Domain Name resolves is sponsored, endorsed or authorized by or in association with the



Complainant. The Complainant believes this has been done for fraudulent purposes.

(b) Respondent

As previously indicated, the Respondent has not filed any response to the Complaint and has not answered the Complainant's contentions in any manner.

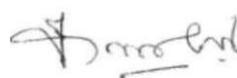
Discussion and Findings

The Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate, non-commercial or fair use of the domain name.

Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

(a) The Respondent's Default

The Rules paragraph 8(b) requires that the Arbitrator ensure that

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each party is given a fair opportunity to present its case. Paragraph 11(a) of the Rules reads as follows:

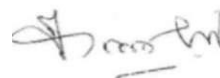
"11. Default

(a) In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."

The Respondent was given notice of this proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated, the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case, and the Arbitrator will proceed to a decision on the Complaint.

The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are



appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

(b) The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP which reads

"Types of Disputes

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

(Hi) the Registrant's domain name has been registered or is being used in bad faith.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

Paragraph 4 of the INDRP thus envisages 3 elements, which are being discussed hereunder in the light of the facts and circumstances of this case.

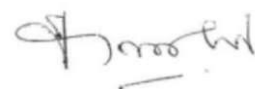


(i) **The domain name registered by the Respondent is identical to the Trademark of the Complainant.**

The complainant is a joint venture company incorporated with the name Sony Ericsson Mobile Communications AB as a key, leading and essential portion of its corporate name. The incorporation of the complainant company with Sony Ericsson forming an essential part thereof is well known and is a matter of record. It is also well known that the complainant is the registrant of Domain name www.sonyericsson.com

The two parts of the Complainant's name are protected individually by Telefonaktiebolaget LM Ericsson and the Sony Corporation of Japan. The SONY trade mark has been registered worldwide including but not limited to the EU Office for Harmonisation in the Internal market on 5th May, 1998 (No. 472) for inter alia apparatus and instruments for data communication. The ERICSSON trade mark has been registered worldwide including but not limited to the EU office for Harmonisation in the Internal market on 23rd March, 1999 (No. 107003) and on 15th February, 2001 (No. 1459130) for inter alia apparatus and instruments for data communication. The Complainant is licensed to use and enforce the combined trade mark SONY ERICSSON.

Based on the contentions of the Complainant and the evidences submitted by the Complainant I am of the opinion that the Complainant is



the rightful owner of the mark "SONYERICSSON". The INDRP paragraph 3 clearly states that it is the responsibility of the Respondent to find out before registration that the domain name. Since the "SONYERICSSON" is a famous and well-known mark and it is very unlikely that the Respondent does not know about the Complainant's rights in the disputed domain name.

The complainant has thus discharged its onus in establishing its proprietary right in the mark / name SONY ERICSSON on account of priority in adoption, use and registrations. The Complainant has also succeeded in establishing its right to the domain names consisting of the mark SONY ERICSSON on account of their prior use and registrations, including the disputed domain name WWW.SONY-ERICSSON.IN.

Paragraph 3 of the INDRP is reproduced below:

" The Registrant's Representations

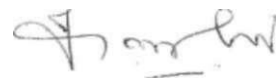
By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:

(a) the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;

(b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party';

(c) the Registrant is not registering the domain name for an unlawful purpose; and

(d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.



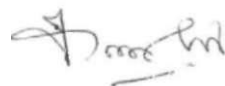
It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."

In the absence of any response from the Respondent and in the presence of the pleadings and documents filed by the Complainant, the Arbitrator finds that the disputed domain name is identical with or deceptively similar to the Complainant's trademark "SONYERICSSON". Accordingly, the Arbitrator finds that the Complainant: has satisfied the first element required by Paragraph 4 of the INDRP.

(ii) The Respondent's Rights and Legitimate Interests

The second element required by paragraph 4(ii) of the INDRP is that the Registrant has no legitimate right or interest in the disputed domain name.

The burden of proof on a complainant regarding the second element is necessarily light, because the nature of the Registrant's rights or interests, if any, in the domain name lies most directly within the Registrant's knowledge. And once the complainant makes a prima facie case showing that the Registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the Registrant to rebut the contention by providing evidence of its rights or interests in the domain name.



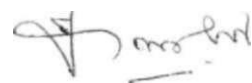
The Respondent in this case has not at all filed any response to show his interest in protecting his own right and interest in the domain name. The Complainant has categorically contended that the Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate, non-commercial or fair use of the domain name.

In the above facts and circumstances and because of the reasons explained above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(iii) Bad Faith Registration and Use

The Complainant has averred that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the Rules provides that the following circumstances are deemed to be evidence that a Registrant has registered and used a domain name in bad faith:

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(i) "Circumstances indicating that the registrant has registered or 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

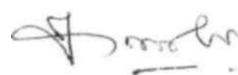
(ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or

(Hi) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainants mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

I am of the opinion that all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent / Registrant is a registration in bad faith.

Decision

The Respondent has failed in his responsibility to ensure before the registration of the impugned domain name by him that the Registrant's domain name registration infringes or violates someone else's rights as required by Para 3 of the INDRP. The Complainant has given sufficient evidence to prove his trademark rights on the impugned domain name.



Further the actions of the Respondent show that he merely blocked the disputed domain name, and deprived the rightful owner, i.e. the Complainant to register and use the domain name. The Respondent has not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent had registered the domain name only to make quick buck by selling the domain name to the rightful owner or his competitor.

As discussed above the registration of the Domain Name by the Respondent is also hit by all three elements of Para 4 of the INDRP and is a registration in bad faith as per paragraph 6 of the INDRP. Thus it is clear that the Respondent is using the disputed domain name in bad faith and 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.

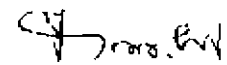
The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment: of the Complainant.

Considering the infringement of the Complainant's trademark by the Respondent,

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- (a) I order the Respondent to immediately stop using the mark "SONYERICSSON" in any manner whatsoever.
- (b) I also direct that the registration of the disputed domain name be **transferred** from the Respondent to the Complainant immediately. NIXI to monitor.
- (c) The Respondent shall pay to the Complainant the legal costs of Indian Rupees 30,000 and the lawyer's fees upto Indian Rupees 25,000 upon production of the evidence thereof, within 30 days of this decision, under supervision of NIXI.

20 January 2007.



C.V.Francis
Sole Arbitrator.