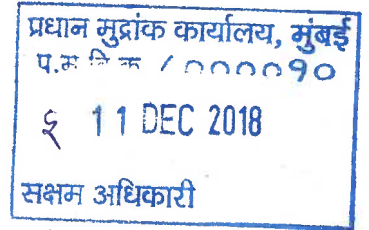


महाराष्ट्र MAHARASHTRA

2018

UE 084138



ARBITRATION AWARD

श्री. एस. एस. विसान

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

Fiskars Corporation

...Complainant

v/s

Lina / Doublefist Limited

...Respondent

In the matter of Disputed Domain Name "FISKARS.CO.IN".

1 The Parties

The Complainant is Fiskars Corporation, Hameentie 135 A, 00560 Helsinki, Finland, represented by CSC Digital Brand Services Group AB.

The Respondent is Lina / Doublefist Limited, Room 501, Building 4, Taoli Garden, Huaiyin District, Huai'an City, Jiangsu Province, China, Huai'an,

Wisconsin 223300, United States of America.

2 Procedural History

- 2.1 A Complaint dated December 27, 2018 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the "INDRP") and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On January 23, 2019, the Arbitrator had directed the Respondent to file his reply to the Complaint on or before February 6, 2019. On February 7, 2019, the Arbitrator had sent the final reminder to the Respondent with direction to file reply on or before February 13, 2019. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed *ex-parte*.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

Given the absence of a reply, the Arbitrator has found the following facts are undisputed:

- 3.1 The Complainant was founded in 1649 by Peter Thorwoste in Finland and is one of the oldest businesses in the western world today, well known for the manufacture of cast iron and forged products. The Complainant has build up a huge amount of goodwill in the FISKARS name with high quality gardening, cooking and crafting tools, supplier of multi-tools, fine bone china dinnerware and tea ware as well as quality ornamental crystals, all of which provide high premium lifestyle brand.
- 3.2 FISKARS products are available in more than 100 countries and company employs around 7,900 people in over 30 countries (2017). The group recorded net sale of 1,185.5 million euros in 2017. The Complainant maintains a strong presence through its primary website <Fiskarsgroup.com>. According to Alexa.com, the Complainant's <Fiskarsgroup.com> website received closed to



760K visitors during the period of 10 months from January to October, 2018.

3.3 The Complainant is the owner of the registered trademark "FISKARS" in India, the EU and the US.

3.4 The Complainant has been consistently using the trademark "FISKARS" since 1649 whereas the disputed domain name <FISKARS.CO.IN> was registered on February 23, 2017, which is significantly after the Complaint filed for registration of its trademark "FISKARS" in India, the EU and the USA.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical or confusingly similar to its trademark "FISKARS"; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered or is being used in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant's trademark "FISKARS" is a registered trademark in India, the EU and the US. The Complainant has provided evidence of its registered trademarks, based on which, it is found that the Complainant has established



its rights in the trademark. It is well accepted that submitting proof of trademark registration is considered *prima facie* evidence of enforceable rights in a mark.¹ The Disputed Domain Name <FISKARS.CO.IN> incorporates the Complainant's trademark "FISKARS" in its entirety, and merely adds the generic top-level domain, "co.in". A domain name that incorporates a trademark in its entirety is adequate to establish that the disputed name is identical to the mark.² It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The "co.in" suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Therefore, the Arbitrator finds that the Disputed Domain Name <FISKARS.CO.IN> is identical and confusingly similar to the Complainant's trademark "FISKARS".

5.4. Rights or Legitimate Interests

The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name. The Complainant asserts that it has not licensed, authorized, or permitted the Respondent to use the trademark "FISKARS". The Respondent's use of the Disputed Domain Name is merely intended to divert customers to Respondent's website, which provides multiple pay-per-click links. Hence, it cannot be considered a bona fide offering of goods and services nor a legitimate non-commercial or fair use. The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent³. The Respondent has chosen not to challenge the Complainant's allegations.⁴ There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <FISKARS.CO.IN>.

1 In the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER WIPO Case No. D2010-0858 it was held that trademark registration constitutes *prima facie* evidence of the validity of trademark rights. See Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case no. D2001-0654.

2 See Indian Hotel Company Limited v. Sanjay Jha, INDRP case 148 <gingerhotels.co.in>

3 See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762

4 In the matter of Pavillion Agency, Inc., Cliff Greenhouse and Keith Greenhouse v. Greenhouse Agency Ltd., and Glenn Greenhouse, WIPO Case No. D2000-1221, it was held that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the Domain Names.



5.5 Registered and Used in Bad Faith

At the time of registration of the Disputed Domain Name, the Complainant's trademark "FISKARS" was registered trademark internationally and the Respondent knew, or at least should have known, of the existence of the Complainant's trademark "FISKARS". The Respondent has incorporated the Complainant's trademark "FISKARS" in its entirety to attract Internet users to the Disputed Domain Name by creating a likelihood of confusion with the Complainant's trademark with an intent of trading on the goodwill and reputation associated with the Complainant's trademark "FISKARS" for illegal profits.⁵ This is evidenced by the presence of multiple pay-per-click links posted to Respondent's website. These facts supports the inference that the Respondent deliberately registered the Disputed Domain Name using the Complainant's trademark with the intention to exploit it. The Complainant, through a cease and desist letter, advised the Respondent that the unauthorized use of the trademark FISKARS within the Disputed Domain Name violated the Complainant's rights in the trademark FISKARS and requested voluntary transfer of the same. The Respondent replied to the cease and desist letter with a demand of 2,500 EUR for transfer of the Disputed Domain Name which is in excess of the expenses incurred by her. This proves beyond reasonable doubt her malafide intent behind registration of the Disputed Domain Name. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. Decision

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <FISKARS.CO.IN> be transferred to the Complainant.



Dipak G. Parmar
Sole Arbitrator

Date: February 26, 2019

⁵ See Weny's LLC v. Apex Limited, INDRP Case no. 737. In this case the domain name <wendys.co.in> was found to be registered with the intention of trading on the goodwill and reputation associated with Wendy's trademark and was held to be registered and use of domain name in bad faith.