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16/11/2018

DR. SUDHIR RAJA RAVINDRAN

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BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: 28th January, 2019

EUREKA FORBES LIMITED

No. 7, Chakraberia Road,
Kolkata, West Bengal – 700025

COMPLAINANT

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VERSUS

1. RO CARE INDIA & ORS.

Unit No. 234, Tower B-2
Spaze I-Tech Park Sector 49,
Gurgaon, Haryana – 122002

2. 3D LOGICS PRIVATE LIMITED

Unit No. 234, Tower B-2
Spaze I-Tech Park Sector 49,
Gurgaon, Haryana – 122002

3. ASTHA SHARMA

Unit No. 234, Tower B-2
Spaze I-Tech Park Sector 49,
Gurgaon, Haryana – 122002

4. SHRI BHAGWAN SHARMA

Unit No. 234, Tower B-2
Spaze I-Tech Park Sector 49,
Gurgaon, Haryana – 122002

RESPONDENT(s)/REGISTRANT(s)

DISPUTED DOMAIN NAME: "AQUAGUARD-RO-SERVICE-CENTRE.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is represented by Mr. Sandeep Sood, Unit No. 30, First Floor, Omaxe Square Building, Jasola District Centre, New Delhi – 110025.

2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is GoDaddy.com,LLC.

3. **The Dispute:** The domain name in dispute is "AQUAGUARD-RO-SERVICE-CENTRE.IN". According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is GoDaddy.com,LLC.

4. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	12/12/2018

2.	Date on which consent was given to act as an Arbitrator	12/12/2018
3.	Date of appointment of Arbitrator	21/12/2018
4.	Date on which the Hard copy of the complaint was received	26/12/2018
5.	Date on which notice was issued to the Respondent	26/12/2018
6.	Due date for filing of Counter Statement by the Respondent	02/01/2019

5. Procedural History

- 5.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 5.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.
- 5.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).
- 5.4. On December 26th, 2018, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before January 2nd, 2019.

6. Factual Background:

6.1. The Complainant is a company incorporated under the laws of India and is India's leading health and hygiene brand. It is a multi-product, multi-channel organization with a gross group turnover of INR 29,612 Million for the accounting year 2017-18. Being part of the highly reputed and famous Shapoorji Pallonji Group, the Complainant enjoys enviable goodwill, reputation and customer loyalty in respect to its products and services, particularly in respect to its flagship brand AQUAGUARD and EUREKA FORBES.

6.2. The Respondent registered the disputed name "AQUAGUARD-RO-SERVICE-CENTRE.IN" on July 8th, 2015.

7. Parties Contentions

7.1. Complainant's Submission:

7.1.1. The Complainant claims that the Complainant enjoys enviable goodwill, reputation and customer loyalty in respect to its products and services, particularly in respect to its flagship brand AQUAGUARD and EUREKA FORBES and its product portfolio encompasses immensely popular water purification, vacuum cleaning, air purification and home security solutions. It has a base of over 20 million customers, a reach of over 1,500 cities and towns in India and a global footprint across 53 countries.

7.1.2. The complainant claims that in addition to Asia's largest direct sales force, it has dealer and institutional channels, an inventive business partner network, a rural channel and is one of the most expansive service networks in India. Further the Complainant claims that in its 33 years of existence, the Complainant has been a pioneer and trendsetter in direct selling in India and today it is one of the largest direct selling companies in the world. Further the Complainant claims that AQUAGUARD is the flagship water purifier brand of the Complainant and has been conferred with numerous Indian and international awards for its superior technology. Among others the Complainant's brand



AQUAGUARD has been awarded the Reader Digest's Trusted Brand, 2012; Bengal's Best, 2011; Business Superbrand, 2011; Superbrand, 2009; UNESCO Water Digest Award, The Frost & Sullivan Environment Excellence Awards, 2009..

7.1.3.The Complainant claims sales, markets and promotes its wide range of products and related services through Direct Sales Network (employees of Eureka Forbes), a number of authorized partners & both physical and online resellers including through Amazon and Flipkart. In order to curb sale of unauthorized and spurious products, the Complainant runs awareness campaigns for public at large. It is humbly submitted that the Complainant has been making conscious and cautious efforts to curb the sales, marketing and promotion of illegal, unauthorized and often, defective products and services.

7.1.4.The Complainant claims that the Complainant tried to pursue the matter independently before approaching the Hon'ble Sole Arbitrator and as a result served legal notices to RO Care India.

7.1.5.The complainant claims that in India, the Complainant has applied and registered with the Indian Trademark Registry for its various trademark in Class 11 and Class 37 under trademark Application numbers 571900, 617434, 1118610, 1310214, 1310256, 1352532, 1470449, 1470450, 1523668, 2024359, 1310199, 1310217, 1310223, 1310229, 1310235, 1310241, 11310247, 1352461, 1352468, 1352521, 1468949, 1468955, 1470452, 1470453, 1561437, 1561443, 2306558, 2306568, 2350406, 2526725 and 2545361

7.1.6.The Complainant has registered various websites as attached in ANNEXURE-F of the Complaint.

7.1.7.Further the Complainant claims that Complainant noticed that the Respondent has been registered the domain name www.aquaguard-ro-service-centre.in , wherein the

Complainant's registered and well-known mark/brand has completely been copied and is identical to its registered mark "AQUAGUARD", also been using the popular label



and also been using original photograph, images and other endorsement and marketing material of the Complainant.

7.1.8. The Complainant claims that the Respondent is posing itself to be the Complainant itself and/or an authorized and/or genuine service centre of the Complainant by also claiming to use Genuine Spare Parts; with a team of well qualified and experienced engineers and RO repair professionals and has years of experience and expertise in the field of RO water purifiers.

7.1.9. The Complainant further claims that the Complainant's arbitrary and unique trademark AQUAGUARD is the most striking and essential feature of the impugned domain i.e. www.aquaguard-ro-service-centre.in. Owing to confusing similarity of the impugned domain name with the Complainant's registered trademarks, the customers and internet users

7.1.10. The Complainant claims that it is amply clear that the Respondent/Website owner has adopted and is using the domain name with malafide to Impersonate itself as an authorized and genuine reseller and service center of the Complainant; Misrepresent itself and Pass off its unauthorized, spurious and substandard products and services as that of the Complainant; and Misappropriate the Complainant's reputation, goodwill and customer loyalty for its own wrongful profits. The Complaint further claims that It is much apparent that the Respondent has adopted and is using the highly deceptive domain name to usurp the immense reputation and goodwill associate with the Complainant's trademark. Admittedly, the Complainant is the registered proprietor and owner of the trademarks AQUAGUARD, EUREKA FORBES etc. and hence, the

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Respondent has no right or legitimate interest in respect of the impugned domain name, other than that of reaping undue benefit.

7.1.11. The Complainant claims that by use of domain name, which clearly suggest that the Respondent is an authorized/ genuine service centre of the Complainant, it is much likely that the Respondent has already deceived, cheated and has duped several unwary customers of the Complainant. The adoption and use of impugned domain name has grave consequences in terms of personal safety of the complainant's existing and potential customers, who may allow the Respondent and/or its staff, into their premises, under the belief that they are associated with the Complainant Company. Such misrepresentation and cheating by way of impersonation, can have dire consequences involving threat to life and liberty. It is therefore submitted that in addition to causing blatant infringement of the Complainant's exclusive rights, the Respondent also pose grave danger to the customers, who are entrapped through the impugned domain name. The impugned domain name is thus registered under bad faith and hence be deleted / handed over to the Complainant

7.1.12. The Complainant requests for the following relief: "that the disputed domain name www.aquaguard-ro-service-centre.in shall be transferred to the Complainant, costs be awarded to the Complainant for initiating this arbitration proceedings and any other relief that the Arbitration Panel deems fit."

7.2. Respondent:

7.2.1. The Respondent did not file any reply to the Complaint.

8. Discussion and Findings

8.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.



8.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

8.2.1.The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

8.2.2.The Respondent has no rights or legitimate interests in respect of the domain name; and

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

8.3. Identical or Confusingly Similar

8.3.1.The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

8.3.2.It is well established that the following list of trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has established that it has rights in the trademark "AQUAGUARD" in India. The documents filed by the Complainant also shows that it has used the mark extensively for a considerable period. Evidence of use of the mark for several years by the Complainant undoubtedly shows its rights in the mark.

S.No.	Application No.	Trademark Name	Class	Status
1.	571900	AQUAGUARD SE 1000	11	Registered
2.	617434	AQUAGUARD ST 2000	11	Registered
3.	1118610	AQUAGUARD ZNOVA (label)	11	Registered
4.	1470449	AQUAGUARD UV (LABEL)	11	Registered
5.	1470450	AQUAGUARD RO REVIVA (LABEL)	11	Registered
6.	1523668	AQUAGUARD RO+M (LABEL)	11	Registered
7.	1468949	AQUAGUARD NANO	37	Registered

		GOLD (LABEL)		
8.	1468955	AQUAGUARD RO (LABEL)	37	Registered
9.	1470452	AQUAGUARD RO REVIVA (LABEL)	37	Registered
10.	1470453	AQUAGUARD UV (LABEL)	37	Registered
11.	1561437	AQUAGUARD TOTAL (LABEL)	37	Registered
12.	1561443	AQUAGUARD TOTAL (LABEL)	37	Registered
13.	2306558	Aquaguard Geneus	37	Registered
14.	2306568	Aquaguard WORLD SERIES	37	Registered
15.	2350406	Aquaguard RO-Tech	37	Registered
16.	2526725	Aquaguard	37	Registered
17.	2545361	Aquaguard	37	Registered

8.3.3.The Complainant has established that it has rights in the trademark “AQUAGUARD”.

8.3.4.The disputed domain name incorporates the variations of trademark “AQUAGUARD” in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark. This position was upheld in *Ducati Motor Holding S.p.A. v. Abhishek Chordia* [INDRP/ 834] and *Akshaya Pvt. Ltd. v. Mr. Prabhakar Jeyapathy*[INDRP/277].

8.3.5.The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

8.4. Rights and Legitimate Interests

8.4.1.The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

8.4.2.The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name and that the Respondent has registered the domain name

["www.aquaguard-ro-service-centre.in"](http://www.aquaguard-ro-service-centre.in) with a mala fide intention to show that the domain name is associated with the Complainant. The Complainant states that the Complainant's adoption and extensive use of the mark "AQUAGUARD" predates the Respondent's registration of the infringing domain name and further states that the infringing domain name is redirected to domain name namely www.aqua-ro-service-centre.com.

8.4.3. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) the registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

8.4.4. The Respondent has not responded in these proceedings and has not provided any material to show any rights in the disputed domain name. The Arbitrator finds no material on record to show that the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights.

8.4.5. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating a third party's trademarks in a domain name gives a false impression to users and does not constitute a *bona fide* use under the Policy. This view has been upheld in *Dell Inc. v. Mani, Soniya INDRP/ 765*.



8.4.6. The Arbitrator finds the Complainant have made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

8.5. Bad Faith

8.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

8.5.2. The Complainant have asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "AQUAGUARD", and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose.

8.5.3. The Complainant's prior adoption of the mark predates the Respondent's domain name registration and the registration of a name that is so obviously connected with the Complainant is suggestive of the Respondent's bad faith.

8.5.4. The Arbitrator finds the Complainant have established its prior adoption and rights in the trademark "AQUAGUARD". Further, the Complainant's trademark applications were clearly made before the disputed domain name was registered. The evidence on record shows that the Complainant's trademark is well known. Thus the choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.



8.5.5. The registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name is being operated or endorsed by the Complainant. This view was upheld in the decision in *Pentair Inc. v. Bai Xiqing* INDRP 827.

8.5.6. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no other reasonable explanation for the registration of the disputed domain name by the Respondent.

8.5.7. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

8.6. The above-mentioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by them.


9. Decision

9.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

9.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name "www.aquaguard-ro-service-centre.in" to the Complainant without any costs.

9.3. The Award is accordingly passed on this the 28th day of January, 2019.

Place: Chennai


Dr. Sudhir Raja Ravindran
K Sole Arbitrator