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4 OCT 2012

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P.S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L No. B4 / 109 / 33
HIGH COURT CAMPUS,
CHENNAI-600 104. (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY

(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: www.argiletz.in

Mr.Jean Heitz
(Laboratoire Argiletz S.A.)
1 Chemin de la Glaciere
77910 Germigny Leveque
France
contact@argiletz.com
litigation@dpahuja.com

Complainant

Vs.

Liu Jiapeng
Room 503, Unit 2
Fuxing Lou Shaoshui Dong Road
Shaoyang City, Hunan Province
China 422000
aucifer212@gmail.com

Respondent





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OCT 2011

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V 375864
P.S. CHANDRASEKARAN,
STATE WINDOR,
I.L. No. 84 / 199 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104. (TAMIL NADU)

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1. The Parties:

The Complainant is Mr. Jean Heitz, (Laboratoire Argiletz S.A.) 1 Chemin de la Glaciere, 77910 Germigny Leveque, France.

The Respondent is Liu Jiapeng, Room 503, Unit 2, Fuxing Lou Shaoshui Dong Road, Shaoyang City, Hunan Province, China 422000

2. The Domain Name and Registrar:

The disputed domain name: www.argiletz.in. The domain name registered with .IN REGISTRY.



3. Procedural History:

- November 05, 2011 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- November 05, 2011 : Arbitrator accorded his consent to act as an arbitrator and also submitted a statement of declaration.
- November 14, 2011 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant, Complainant's authorised representative and .IN REGISTRY.
- November 19, 2011 : Complainant submitted a scan copy of the Power of Attorney through email.
- November 21, 2011 : Respondent sent an email stating that *"Can you accept conciliatory ? Because According to the rules, our registration of those domains is absolutely within the law ! However,if someone do think that those domains are in great value for their business and willing to acquire them by an amicable way,we can consider transferring our domains to them on the condition of a compensation for our cost and lost that both accepted. Anyway, we must say it again: we accept friendly negotiation to both interests but not menace or fraud from anyone!"*
- November 24,2011 : Complainant sent an reply email stating that *"The Complainant has no comment to the Respondent's email of 21st November, 2011 before, and wishes the arbitration to continue. If however, the Respondent submits his reply to the Complaint, the Complainant may please be allowed to file its rejoinder to the reply."*
- : The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The Complainant is Mr.Jean Heitz, (Laboratoire Argiletz S.A.) 1 Chemin de la Glaciere, 77910 Germigny Leveque, France, rep. by its constituted attorney Mr.Sudhir D Ahuja, D.P.Ahuja & Co.,



4.2 Complainant's Activities:

The Complainant states that he is the founder-owner of the internationally well known company, Laboratoire Argiletz S.A., formed in 1963. The company specializes in the extraction and production of natural sun-dried coloured clay, which is extensively used in the cosmetics, skin care, health care, and the well being industries around the world. Argiletz clay is extracted in France and quality tested before it is used for production, in different shades of green, red, yellow, and white, that represent the diverse healing and purifying properties of Argiletz clay. The first manufacturer of natural and organic products to be granted ISO 9001 certification in 2007, Argiletz' process of innovation continues to offer customers an ever growing range of products targeted at individual well-being and the environment. The Complainant's company is the undisputed market leader in this speciality segment, and to the discerning consumers and the concerned segment of the market, Argiletz Clay is a well known product readily identified and associated with the Complainant and his company. Documents and other material about the Complainant and his company, its corporate history, business and activities are collectively marked as **Exhibit A**.

4.3 Complainant's Trade Marks and Domain Names:

The Complainant states that he is the owner of a number of domain names, most of which support the Complainant's dedicated and official websites for its consumers and other visitors from different countries and jurisdictions, which are 1) argiletz.com, 2) argiletz.fr, 3) argiletz.com.cn, 4) argiletz.info and 5) argiletz.us. The Complainant states that he owns several registrations for the ARGILETZ and ARGILETZ formative trademarks and their variants ("the ARGILETZ marks"). The Complainant relies on international registration No. 865411 dated 27.07.2005; French registration No.97679211 dated 23.05.2007; US registration No. 3159324 dated 17.10.2006, and Indian registration No. 1450678 dated 11th May, 2006. A list of world wide trademark registrations and pending applications for the ARGILETZ marks together with some representative registration certificates, including the Indian trademark registration certificate, is marked as **Exhibit B**. The Complainant further



states that his trademark and corporate identity ARGILETZ is distinctive and globally well known. Copies of articles and news items about the Complainant and its founder-owner published in international media are marked collectively as Exhibit C.

4.4 Respondent's Identity and activities:

The Respondent is Liu Jiapeng, Room 503, Unit 2, Fuxing Lou Shaoshui Dong Road, Shaoyang City, Hunan Province, China 422000

5. Parties contentions:

A. Complainant:

The Contentions of the Complainant are as follows:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has Rights:

The Complainant states that the disputed domain name is identical to the Complainant's registered trademarks. There is strong likelihood that a web browser looking for Argiletz products in India would mistake the offending website, www.argiletz.in for the Complainant's India-specific website, and once there, would be directed to the other links on this website unrelated to the Complainant and its products. The Complainant further states that the ownership issue concerning the trademark argiletz has been considered by a number of international arbitration panels, including the WIPO Arbitration & Mediation Panels, and decided in favour of the Complainant. A list of WIPO cases and decisions concerning disputed domain names containing "argiletz", that have been filed by the Complainant is marked as Exhibit D.

(b) Respondent has no rights or legitimate interests in the domain name:

The Complainant further states that the disputed domain name resolves to a dummy website parked with Sedo's Domain Parking. The website carries the legend, "The domain

argiletz.in may be for sale by its owner!'. A print of the web page is marked as **Exhibit E**. It is obvious that aside from confusing the Internet users looking for the Complainant's website and diverting traffic to unrelated websites, the Respondent has acquired the subject domain purely to make illegal profit therefrom. The Complainant further states that the Respondent has made no use of the domain name in connection with a bonafide offering of goods or services, and is holding on to the domain name for dishonest purposes. Because the Respondent uses the domain name to support an essentially dormant website, Respondent does not use the domain name for any legitimate, non-commercial or fair use. The Complainant further states that the Respondent does not use the mark/ name ARGILETZ as his business name/ corporate name or otherwise in course of trade, and neither does he use the said mark/ name for any legitimate commercial purposes. The Respondent clearly did not independently arrive at the term "argiletz" for its domain name. Respondent's registration and passive holding of the domain name <argiletz.in> fails to demonstrate any use in connection with a bonafide offering of goods or services. The Complainant further states that it has been held by a number of Arbitration Panels that passive holding of domain name does not create any rights or legitimate interests and merely registering the domain name is not sufficient to establish rights or legitimate interests. The Complainant further states that due to wide recognition and goodwill accrued in the Complainant's marks, it is obvious that the Respondent is attempting to usurp this recognition and goodwill. The Complainant submits that the Respondent has no legitimate interest and no basis to claim non-commercial fair use or, under the circumstances, any kind of use of the Complainant's mark ARGILETZ. The Complainant further states that from the above circumstances that the Respondent does not and never had any intention of providing a legitimate, non-commercial fair use of the disputed domain name.

(c) Respondent has registered and is using the domain name in bad faith:

The Complainant states that the disputed domain name <argiletz.in> was previously registered in the name of Mr.Amit Gupta, of JP-28 Pitampura, Delhi - 110 008, India. Consequent to a formal objection by Mr.Amit Gupta, the sponsoring registrar changed/amended the registrant details to reflect correct details of the present registrant, Liu Jiapeng. .IN Registry Whois records of the domain name <argiletz.in>, printed on



13.12.2010, 18.04.2011, 27.09.2011 and 20.10.2011 are collectively marked as **Exhibit F**. Complainant's counsels had sent a cease and desist letter to Amit Gupta on 17 December, 2010. Complainant's counsels received an email from one 'Alice' at aucifer212@gmail.com on 18th December, 2010, offering to sell the disputed domain name for GBP2,000. Complainant's counsels replied to the email on 21st December, 2010. On 2nd January, 2011, Complainant's counsels received another email from 'Alice' regarding sale of the disputed domain name, and replied to that mail on 3rd January, 2011. Copies of all communications exchanged between the Complainant's counsels and 'Alice' at aucifer212@gmail.com in relation to the disputed domain name are collectively marked as **Exhibit G**. The Complainant has ascertained that the present registrant of the disputed domain name is a habitual and known cyber-squatter, whose modus operandi is similar for gTLDs and ccTLDs. Copy of the decision of National Arbitration Forum in Claim No.FA1009001345499 (Mason Companies, Inc. v Liu Jiapeng) is marked as **Exhibit H**.

The Complainant further states that he has neither authorized nor consented to the present Respondent's adoption and use of the Complainant's well known and registered ARGILETZ trademark. It has long been held that registering the disputed domain name for no apparent purpose and passive holding are evidence of bad-faith registration (HSBC Holdings plc v. Hooman Esmail Zadeh, Case No.L-2/5/R2 (March 24, 2007); copy of decision is marked as **Exhibit I**. The temporary page currently available on www.argiletz.in and Whois search results indicate that the disputed domain has already been put up for sale. The page linked to <http://www.argiletz.in> carries the slogans - "This website is for sale" and "The domain argiletz.in may be for sale by its owner!" The Complainant further states that the Respondent had registered the domain name on 24th November, 2010, albeit under a different identity, but retaining his email address - aucifer212@gmail.com to intercept mails and negotiate/transact sale. The Complainant further states that if the Respondent had a bona fide reason or intention for registering the said domain name, he would have proceeded to host a proper and relevant website with the domain name, on the other hand the fact that the Respondent has chosen not to do so proves mala fides on his part to sell the domain name to a third party or to use the domain name for a fraudulent purpose. The Complainant further states that the Complainant's trademark is distinctive and is well known around the world; the fact that the Respondent has registered a domain name that is

identical to it, indicates that the Respondent had knowledge of the value of the Complainant's trademarks at the time of registration of the disputed domain name. The Complainant further states that certainly the Respondent's intention, by knowingly choosing a domain name consisting of the Complainant's trademark "ARGILETZ", was clearly to take advantage of the reputation and the fame of the Complainant's trademark. The Complainant further states that the Respondent has acquired the domain name at issue to attract internet users for commercial gain, such as, facilitating "pay-per-click" on various unrelated links, while no doubt hoping for substantial compensation from the Complainant for release of subject domain name. Several WIPO and NIXI decisions have relied on by the Complainant to determine bad faith on the part of the Registrant-Respondent which are collectively marked as **Exhibit J** such as, Rediff.com India Limited and Mr. Abhishek Verma, iAdvance Media <rediff.in>; Siemens AG/Siemens Limited and Gunsung Kim <siemens.in>; and Intesa Sanapalo S.p.A. and Sriratree Meekhot <intesa.in>. The Complainant further states that the registration of the disputed domain name by the Respondent is thus a typical example of "cybersquatting". It has been further stated that the Respondent has registered the domain name argiletz.in in order to sell, resell or rent the same to the true and lawful owner of the subject trademark - the Complainant herein, or to a competitor of the Complainant.

B. Respondent:

The respondent did not submit any response on merits of the dispute.

6. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? And Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. In fact, no parties raised any objection over constitution Tribunal and that both the parties have participated in the process of dispute resolution.



Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(a) Identical or confusing similarity:

The Complainant has furnished the Trade Mark Registration Certificate under "Annexure-B" for having the registered trade mark "ARGILETZ" vide Regn. No. 1450678 dated 11.05.2006 and also furnished Trade Mark Registration Certificates under various jurisdictions throughout the world. It is seen that the ownership issue regarding the trademark "ARGILETZ" has been decided in favour of the Complainant under **Exhibit D** by various panels.

(i) Admittedly, the disputed domain name <argiletz.in> include the registered trademark "ARGILETZ", which is identical and confusingly similar as a whole to the registered trademark "ARGILETZ" in which the Complainant has statutory rights as well as rights in common law, by virtue of a long and continuous user and being its registered proprietor thereof. The respondent's domain name <argiletz.in>, consists of entirely Complainant's trade mark, except ccLTD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <www.argiletz.in> is confusingly similar or identical to the Complainant's marks. Thus respondent's domain name is likely to cause confusion, mistake and deception, and hence constitutes infringement of Complainant's domain name and trademark, as well as constituting unfair competition.



(ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution policy sets out three elements any of which shall demonstrate the Respondent's right or legitimate interest in the disputed domain name for the purposes of paragraph 4(ii) of the policy. The respondent had been given sufficient opportunities to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The respondent despite sufficient opportunities, has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist in demonstrating any right or legitimate interest in the disputed domain name. Though the Complainant is not entitled to relief simply by default of the Respondent to submit a response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the respondent to respond. The Complainant has established prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) From the materials exhibited, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7 (i) of the policy nor is there any legitimate non-commercial or fair use of the disputed domain name as such there is no evidence that Paragraphs 7(ii) or 7(iii) of the policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.



(c) **Registration and Use in Bad faith:**

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in the similar business competing with the Complainant and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks, trade names and corporate name of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal holds that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy, more particularly when the Respondent himself has not only offered to sell the disputed domain name to the Complainant but also the Respondent is a habitual and known cyber-squatter. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to the Complainant itself or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names and the registration has intentionally attempted to attract



Internet users to its website for commercial gain, by intentionally creating a likelihood of confusion with the Complainant's mark, thus misleading consumers and public at large.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. **Decision:**

For all the foregoing reasons, in accordance with Rule 3(b) (vii) of the INDRP rules, the Arbitral Tribunal orders that the disputed domain name <www.argiletz.in> be transferred to the Complainant.

Dated at Chennai (India) on this 9th day of December, 2011.



(D.SARAVANAN)
Sole Arbitrator