



दिल्ली DELHI

S 114589

VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
IN
ARBITRATION PROCEEDINGS OF DOMAIN NAME
"hershey.in"

THE HERSHEY COMPANY

...COMPLAINANT

AND

WANGYUAN

...RESPONDENTS

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued

notice to the parties on 23/12/2011. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier and also supply a copy of the same to this Arbitral Tribunal.

2. That compliance of the order was done by the Complainants vide their letter dated 27/12/2011 and the DHL Courier sent by waybill no. 2554330251 was duly received by the Respondent on 30/12/2011, hence this Tribunal vide order dated 31/12/2011 directed the Respondent to send their Response/ Statement of Defense to the Complaint by sending the soft copy by email and a hard copy by Courier so as to reach this Tribunal latest by 10th January 2012.

3. That this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have served the

Respondents. Moreover, the copy of the order has been emailed as well hence it cannot be said that the Respondents are unaware of the proceedings.

4. That despite specific directions of 10.01.12 being notified this Tribunal has not received any communication from the Respondents let alone a Statement of Defense. Hence, this Tribunal reserved its Award vide order dated 11/01/2012, still giving time to the Respondents to file any Reply/ Statement of Defense till publication of award. This Tribunal notes that the Respondent has not filed any Statement of Defense till the date of signing of Award.
5. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal is to decide the controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.



CLAIM

6. The Complainant allege that the Respondent is the registrant of the domain name <hersheys.in>, as evidenced by the WHOIS search results for <hersheys.in>. Search results are attached with the Complaint as **Annex F**. It is claimed that HERSHEY'S trademark, has been in use for more than 100 years, is famous and recognized globally and it belongs to the Complainant for which reliance is placed upon **Annex A**. Hence, it is alleged that the Respondent's domain name <hersheys.in> is confusingly similar to the HERSHEY'S trademarks which the Complainant and its wholly-owned subsidiary have rights through continuous and exclusive use of the mark as evidenced by **Annex B, C, D and E** and the decision cited as *Hershey Foods Corporation and Hershey Chocolate & Confectionery Corporation v. DRP Services*, D2003-0841 (WIPO Dec. 1, 2003) It is also alleged that the Complainant and its wholly-owned subsidiaries own numerous domain names incorporating a form of "hershey," one of them being the domain name <hersheys.com>, which is highly

similar to the disputed domain name, <hersheys.in>. The complainants place reliance on **Annex G**. Besides the Complainant give a complete listing of the domain names owned by Complainant and its wholly-owned subsidiaries incorporating a form of "hershey," by relying upon **Annex H**.

7. It is reiterated that the Respondent has registered the <hersheys.in> domain name which is nearly identical to the Complainant's famous HERSHEY'S trademark except that the domain name adds the generic country code ".in." The addition of the country code ".in" is insufficient to distinguish the Domain Name from Complainant's famous HERSHEY'S mark and for this complainants rely upon *Société Nationale des Chemins de Fer Français (SNCF) v. Nextone Media Ltd*, DCO2010-0023 (WIPO Nov. 15, 2010) and *Irotama S.A. v. Mr. Richard Bonn III*, DCO2010-0036 (WIPO Dec. 17, 2010)
8. It is further alleged that there is no relationship between the Complainant and the Respondent which would entitle the

Respondent to use Complainant's mark. Further the complainant alleges that the Respondent's sole purpose in registering and using the disputed domain name is to trade on the fame of Complainant's trademark and to deliberately increase Internet traffic to its website, <hersheys.in>, which has no relation to Complainant to fortify their allegations the complainant rely upon **Annex I.**

9. It is also alleged that the information found at the disputed URL < hersheys.in> is essentially a website for sponsored listings and related searches for candy or chocolate bars and upon accessing the site, the user encounters various sponsored links (pay-per-click advertising), one of which leads to a legitimate website of Complainant, but most of which divert to the websites of competing chocolate and candy manufacturers, all while presumably accruing pay-per-click advertising revenues for Respondent. Hence, it is strongly contended that Respondent is attempting to capitalize on Complainant's fame which it has built

over years. Reliance is placed on **Annex J,K,L,L-1& L-2** by the complainants.

10. It is contended that the Respondent is intentionally trading on the fame of Complainant's famous "Hershey's" trademark, deliberately cyber-squatting on Complainant's well-known domain names, including <hersheys.com>, using a name that is confusingly similar to Complainant's well-known HERSHEY'S mark. Such actions cannot constitute a bona fide offering of goods or services. To buttress reliance is placed on *Big Dog Holdings, Inc. v. Day*, FA 93554 (Nat. Arb. Forum Mar. 9, 2000) also *Vapor Blast Mfg. Co. v. R & S Tech., Inc.*, FA 96577 (Nat. Arb. Forum Feb. 27, 2001)
11. It is also alleged that Respondent is not licensed or otherwise authorized by Complainant to use Complainant's trademark HERSHEY'S nor he is commonly known by the name, "hersheys.in."

12. To establish the fame of their trademark the Complainants rely upon **Annexes B** through **E**.
13. It is also alleged that the Respondent deliberately chose the HERSHEY'S mark to lead Internet users to its <hersheys.in> site to encash the global fame of the HERSHEY'S mark. Besides above the complainants also allege bad faith on the part of the Respondent and to buttress their Claim of bad faith the Complainants rely upon copies of the decisions mentioned above are collectively as **Annex M**.

ORDER

14. This Tribunal has given an anxious consideration to the allegations of the complainants and notes that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give their Statement of Defense chose not to give any and hence the allegations of the

complainants remain un rebutted. Be it that as it may, in view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <hershey.in> hence this Tribunal directs the Registry to transfer the domain name <hershey.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 17th day of January 2012.

NEW DELHI
17/01/2012



V. SHRIVASTAV
ARBITRATOR