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NATIONAL INTERNET EXCHANGE OF INDIA
Incube Business Centre, 5th Floor,
18, Nehru Place,
NEW DELHI – 110 019

Mead Johnson & Company v. Guangxin

AWARD

1. The Parties

The Complainant is Mead Johnson & Company, 2400 West Lloyd Expressway, Evansville, IN 477212, U.S.A.

The Respondent is Mr. Guangxin, Yerec International Limited, No. 23, Floor 5th, Nanhai Road, Hong Kong 999077, HK

2. The Domain Name and Registrar

The disputed domain name is <MEADJOHNSON.IN>. The said domain name is registered with DomainTools

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3. Procedural History

- (a) A Complaint dated April 25, 2012 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure E & H. It is confirmed that the Respondent is listed as 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 (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on May 17, 2012. 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.
- (c) In accordance with the Rules, on May 21, 2012 the Sole Arbitrator formally notified the Respondent of the Complaint through post. The Respondent was required to submit his defence within 15 days from the date of receipt of the letter. The Respondent was informed that if his response was not received within the aforesaid period, he would be considered in default and the matter will proceed ex-parte.
- (d) The postal authorities have returned the said notification as unserved. Thus, no response has been received from the Respondent.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant is a company existing under the laws of the United States of America. It was established in the year 1905. The Complainant deals in nutritional supplements, vitamin preparations, infant formulae, as well as pharmaceutical preparations for treatment of sleep diseases and disorders. The Complainant specializes in

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“pediatric nutrition” and operates in more than 50 countries including India. According to the Complaint, since its inception the Complainant has adopted MEADJOHNSON as trade name as well as trademark.

As per the whois information, initially the domain name <meadjohnson.in> was created and registered on June 7, 2011 by Mr. Guan Rui, Room No. 403, No. 29 Shanxi Street, Hong Kong. The domain name resolves to a website dedicated to providing a listing of pay-per-click advertising links which is linked to “Sponsored Listings”. Subsequently, the disputed domain name was transferred in the name of the present Respondent. The said registration is valid till June 7, 2013.

Respondent’s Identity and Activities

The Respondent could not be contacted. Hence, the Respondent’s activities are not known.

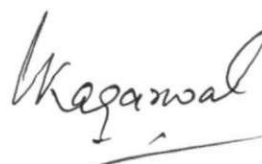
5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that it is one of the leading companies in infant and children’s nutrition products. The word “MEAD JOHNSON” was commercially used and registered as trademark as early as May 1998.

The Complainant is the owner of a number of domain names with the words “MEAD JOHNSON”. These domain names are registered in various countries. Some such domain names and the countries where they are registered are <meadjohnson-arg.com.ar> in Argentina; <meadjohnson.com.cn> in China; <meadjohnson.ca> in Canada; <meadjohnson.dk> in Denmark; <meadjohnson.fr> in France; <meadjohnson.com.hk> in Hong Kong; <meadjohnsonasia.com.my> in Malaysia; <meadjohnson.com.mx> in Mexico; <meadjohnson.nl> in Netherlands; <meadjohnson.no> in Norway; <meadjohnson.com.ph> in Philippines; <meadjohnson.ru> in Russia; <meadjohnson.es> in Spain; <meadjohnson.se> in Sweden and <meadjohnson.com> in the U.S.A.



Therefore, the Complainant is well known to its customers as well as in business circles as MEAD JOHNSON all around the world.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark “meadjohnson”. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.meadjohnson.in> by the Respondent is to earn profit by selling the domain name and to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

In support of its contentions, the Complainant has placed reliance on a number of decisions delivered by various bodies and authorities. In the present case, it is not necessary to go into all these decisions.

B. Respondent

The Respondent could not be contacted. Hence, the Respondent’s contentions are not known.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:



- (i) The 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 interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

According to the information submitted by the Complainant, the Complainant is the owner of several registrations of trademarks MEAD JOHNSON. The trademark MEAD JOHNSON is registered in many countries of the world. It is registered with the U.S. Patent and Trademark Office under Registration No. 3,092,321 in Class 5 (US CLS 6, 18, 44, 46, 51 and 52). The trademarks “MEAD JOHNSON NUTRITION” and “MEAD JOHNSON NUTRITIONALS” are also registered under Registration Nos. 3,832,632 and 2,269,727 respectively.

The present dispute pertains to the domain name <www.meadjohnson.in>. The Complainant possesses a large number of other domain names with the word “meadjohnson” as indicated above. The Complainant is also the owner of trademark “meadjohnson” etc. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent.

The disputed domain name contains the complete trademark “MEAD JOHNSON” of the Complainant. Thus, it is very much similar or identical to the trademark and other domain names of the Complainant. The only addition to the domain name is the generic top level domain (gTLD) “.in”. This addition does not make the domain name in any way different.

Therefore, I hold that the domain name <www.meadjohnson.in> is confusingly similar to the Complainant’s marks.



B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a 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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

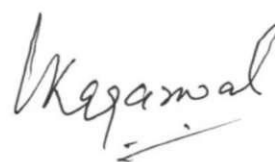
Mead Johnson is the name and mark of the Complainant. The Respondent is known by the name of Mr. Guangxiu. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has



registered or 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 that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or

- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent 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 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 its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. Further that, misleading internet users to attract them to the disputed website for commercial gains indicates bad faith registration.

The MEAD JOHNSON trademarks have become synonymous with quality infant and children's nutrition products. Complainant has therefore built up considerable goodwill amongst its customers with its MEAD JOHNSON marks. The Respondent by using the disputed domain name attracting the customers of the Complainant and misleading them. Thus, the registration of the disputed domain name by the Respondent is in bad faith.

The foregoing circumstances lead to the presumption that the

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domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith and for the purposes of sale, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.meadjohnson.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: June 14, 2012