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N 288776

BEFORE THE SOLE ARBITRATOR UNDER THE
IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF

E. REMY MARTIN (REMY CONTREAU),
A French Corporation.
20 rue de la societe vinicole,
16100 CONAC (FR), France.

The Complainant

vs.

Ntlon Inc.,
Riguo Ding,
3F, No. 199 Shifu Road
Taizhou, Zhejiang, 318000, CN.

The Respondent

THE PARTIES

The complainant in the present proceeding is REMY MARTIN (REMY CONTREAU), a French Corporation having its registered address at 20 rue de la sociat vinicole, 16100 CONAC (FR), France. The complainant in these proceedings is represented through its authorised representative, NAMESH IELD, 27 rue des arenes 49100 Angers, France.

The respondent in this proceeding is Netlon Inc. having its registered address at Ntlon Inc., 3F, No. 199 Shifu Road, Taizhou, Zhejiang, 318000, CN (according to Whois database).

THE DOMAIN NAME AND REGISTRANT

The Domain Name in dispute is REMY-MARTIN.IN. The Registrant is Netlon Inc (Rigou Ding).

PROCEDURAL HISTORY:

I was appointed as an Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <remy-martin.in>.

.In Registry has supplied the copy of the Complaint and Annexures to me.

On 03.01.2011, I sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 03.01.2011 itself, I sent an email to Complainant requesting them to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 03.01.2011 with the instructions to file his say latest by 18.01.2011.

On 03.01.2011, I received an email from the Counsels of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. According to this mail the copy of the complaint was served upon the respondent via an email on 29.11.2010.

The Respondent failed to file his reply to the Complaint by 18.01.2011.

Thereafter in the interest of justice and fairness, on 22.01.2011, a reminder was sent to the Respondent to submit his say, if any, on the Complaint by allowing extension till 29.01.2011.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted.

That I have perused the record and Annexures / document.



FACTUAL BACKGROUND:

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

E.REMY MARTIN is a brand of the company CLS REMY COINTREAU founded in 1724 by Remy Martin.

The Complainant is a registered proprietor of various trademarks with the term "REMY MARTIN" in various countries including India, a list of which is provided by the Complainant.

The complainant has acquired worldwide public recognition and goodwill in connection with aromatic and flavourful cognac.

The average annual turnover of the Complainant is about GBP 405.7 million. Accordingly it claims that it has established itself as leading, reputed and established manufacturer of a range of aromatic and flavourful cognac all over the world.

The Complainant has also claimed that search on Google shows that REMY MARTIN words take us to their website www.remymartin.com. It also tops the rankings with these words on making search.

The domain name "www.remymartin.com" was registered on 25.09.1997 which gives information about the complainant and their products.

The Complainant owns the intellectual property of all the worldwide trademark applications and registrations and domain name registrations of the brand name "REMY MARTIN".

The Respondent's domain name <remy-martin.in> was registered on 24.08.2010 by Netlon Inc.(Rigou Ding) which is identical to the said mark "REMY MARTIN" in which the Complainant has rights on account of prior registrations and use all over the world.

The Respondent has not created any content to his website and merely offering his domain for sale for \$3,000 USD. This act of the Respondent establishes malafide intention of his part to merely ride on the goodwill associated with the Complainant.

PARTIES CONTENTIONS:

Complainant

The Complainant contends as follows:

The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.

The Respondent has no rights and legitimate interest in respect of the domain name.

The Respondent has registered and is using his domain name in bad faith.



Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

DISCUSSIONS AND FINDINGS:

As earlier pointed out, the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above fair opportunity has been given to the Respondent to file the reply but no response has been received from his side. Therefore, the Arbitration proceedings have been conducted ex parte.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable"*

In the present circumstances, the decision of the Arbitrator is based upon the Complainant contentions and evidence and conclusion drawn from the Respondent's failure to reply. Having perused the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark "REMY MARTIN".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

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

BASIS OF FINDINGS:

The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant contends in the complaint that the domain name of the respondent i.e. <remy-martin.in> is identical and confusingly similar to E. REMY MARTIN, its trademark "REMY MARTIN" and its domain names associated. It is further stated by the complainant that E.REMY MARTIN is the registered proprietor of the "E.REMY MARTIN" trademark in



numerous countries in the world including INDIA and has gained significant reputation and its mark can be termed as a well known brand.

Thus the Complainant has the right over the name REMY MARTIN and Respondents domain is also confusingly similar to it. In support of his submissions the complainant has relied upon the judgment of Monster.com (India) Pvt. Ltd. v. Domain Leasing Company, INDRP/002 (May 20,2006).

The Complainant has further relied upon the judgment of Lego juris A/S v. Robin Martin, INDRP/118 (February 14, 2010) in support of his submissions that the addition of country code ("CTLD") in the domain name is not sufficient to distinguish from the mark and does not change the overall impression of the designation as being connected to a trademark of the Complainant.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

The Registrant has no rights or legitimate interests in the respect of the domain name

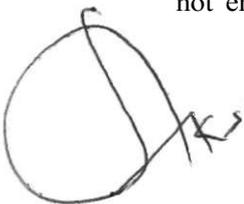
According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant'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;*

The Complainant has contended that Respondent has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it.

- (ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

The Complainant has stated that Respondent is neither commonly known by the disputed name, nor it is a personal name. The Complainant has further contended that Respondent has not engaged in any business or commerce under the domain name. The Complainant has



relied upon the judgment of Morgan Stanley v. Keep Guessing, INDRP/024 (June 27, 2007). It has been held in the said judgment that Respondent has failed to show that he has a right or legitimate interest in the domain name, as he is neither known by the domain name, nor is it his personal name.

The complainant has further relied on the judgment of Croatia Airlines d.d. v. Modern Empire Internet Ltd, WIPO case No. D2003-0455, where it was held that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of proving rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4 (a) (ii) of UDRP.

(iii) the Registrant 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 Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name. According to Complainant, disputed domain name has been only adopted by the Respondent for commercial gain. The sole purpose of the Respondent is to divert Internet users to its web site. Complainant has relied upon the judgment of Accor v. Tang Wei, INDRP/127 (February 24, 2010) to prove his contentions.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

The Registrant domain name has been registered or is being used in bad faith

The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to attract users to its website by creating likelihood of confusion with Complainant's REMY MARTIN mark. The Complainant has further stated that Respondent has no connection with the disputed domain name, the whole purpose of registering the domain name is to create confusion and deception among the consumers, who would assume a connection or association between the Complainant and Respondents website.



The Complainant has relied upon the judgment of Luxottica Holding Corp. V. Lokesh Morade. INDRP/139 (April 28, 2010) to prove his contentions.

The Complainant also alleges that the Respondent has registered the domain name only with the intention and purpose of sale. In support of this contention the Complainant has relied upon the judgment of Adidas-Saloman AG V. Vincent Stipo. WIPO Case No.D2001-0372, where it was held that, registering a domain name for the primary purpose of offering to sale, rent, or otherwise transfer the domain name for an amount in excess of the registration cost is evidence that a domain name was registered in a bad faith.

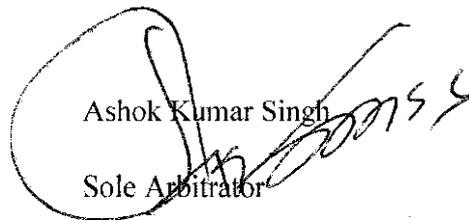
Another judgment of Ferrari S.P.A V. American Entertainment Group Inc., WIPO Case No. D2004-0673, was referred by the Complainant to prove his contention.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

Decision

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint. In the facts and circumstances of the case it can be presumed that only purpose for the registration of the disputed domain name was to capitalized on the fame and reputation of Complainant and to make monetary benefit.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <remi-martin.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 11th day of February, 2011.


Ashok Kumar Singh
Sole Arbitrator

Date: 11th February, 2011