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N 998008

ARBITRATION CASE NO.9 OF 2011

IN THE ARBITRATION MATTER OF:-

ZESPRI GROUP LTD., NEW ZEALAND

COMPLAINANT

VERSUS

DUAN ZUOCHUN, CHINA

RESPONDENT

AWARD:

The present dispute relate to the registration of the domain name <zespri.co.in> in favour of the respondent.

The complainant has filed the instant complaint challenging the registration of domain name <zespri.co.in> in favour of the Respondent. Pursuant to the In Domain Name Dispute Resolution Policy (INDRP) and the rules found there under, the complainant has preferred this arbitration for raising this dispute for redressal of its grievances.

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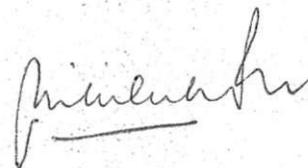
I am appointed as arbitrator in terms of provisions of INDRP and a notice was sent to the respondent calling upon his response to the said complaint.

The respondent however has failed to give any reply in spite of due notice being sent and considerable time granted to file its response. In the interest of justice, any further delay in deciding this matter is uncalled for. Hence I choose to proceed ex-parte against the Respondent.

In its complaint, the Complainant has stated that the mark "ZESPRI" is a corporate name, trade mark, trade name and trading style by the Complainant in relation to various goods and services especially in respect of fresh food products viz: kiwi fruit. The Complainant has further stated that it has also registered the rights of "ZESPRI" with the Office of Trade Mark India in various Classes viz: Class 29 in respect of preserved, dried and cooked fruits, and vegetable jellies, jams, fruit sauces; Class 30 in respect of flour and preparations made from cereals, bread, pastry and confectionery, sauces (condiments) ; Class 31 in respect of agricultural and horticultural products, fresh fruit, vegetables, seeds, natural plants and Class 32 in respect of non-alcoholic drinks including fruit drinks and fruit juices, syrups other preparations for making beverages, kiwifruits flavoured beverages. The mark "ZESPRI" has been in extensive and continuous use by the Complainant and therefore it has the right to prevent unauthorized use of the said mark. It is contended that as a result of continuous, extensive and uninterrupted use of the mark "ZESPRI" in relation to the various goods and services of the Complainant, the mark "ZESPRI" has acquired tremendous goodwill and reputation all over the world including India.

The complainant has contended in its complaint that it is the registered proprietor of the trade mark "ZESPRI" in almost 50 countries including India and is the owner of the domain name ZESPRI.COM as well as numerous variations thereof in the .com and .GTLDS. It is also contended that the complainant is the owner of the domain name ZESPRI.IN. The respondent's domain name ZESPRI.CO.IN is identically or confusingly similar to the mark of complainant and the domain names ZESPRI.COM and ZESPRI.IN and that the Respondent has no right or legitimate interest in the said domain name

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and park the disputed domain name for sale. Further the Complainant submitted that the Respondent is not a licensee of the Complainant to use the mark "ZESPRI" or to register the disputed domain name. It is contended that since the registration of domain name is in bad faith and with the sole object of capitalizing on the reputation and goodwill of the Complainant, hence the said domain name be transferred to the Complainant.

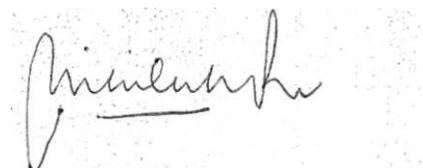
In support of its contentions the Complainant has referred to the precedents laid down in the cases of Samsung Electronics Co. Ltd. v. Vishal Didwani and Morgan Stanley USA v. Bharat Jain USA.

I have perused the records and have gone through the contents of the complaint. Although there has been no reply on behalf of the Respondent to the complaint, I shall deal with the complaint on the basis of its merits. Grounds have been raised by the Complainant regarding the transfer of the domain name <zespri.co.in> in its favour.

Firstly I shall deal with the ground regarding the rights of the Complainant vis-a-vis that of Respondent's over the domain name <zespri.co.in>. The mark "ZESPRI" is a unique and distinct word and has acquired distinctiveness as the word has been coined by the Complainant and is registered in favour of the Complainant in various countries including India. The complainant is the owner of the domain names zespri.com as well as numerous variations thereof in the .com and other gTLDs and it includes the domain name zespri.in. This mark has been used by the respondent and has merely added the suffix '.co.in'. This itself reflects the fact that the respondent wanted to create confusion the minds of the public. **Hence** the Respondent's action to register the said domain name is not bonafide as he has no right over the mark "ZESPRI."

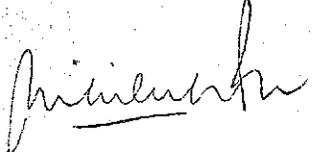
Secondly the Respondent's action to register the said domain name is not bonafide as the Respondent has not made use of it in any manner and the Respondent does not have any business under the name ZESPRI. It is seen that the Respondent has parked the said domain name for sale.

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Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the complainant has proprietary right over the mark "ZESPRI". Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant in its favour and direct the Registry to transfer the said domain name i.e. <zespri.co.in> in favour of the complainant.

Parties to bear their costs.



(NIKILESH RAMACHANDRAN)
ARBITRATOR

Dated 6th May 2011.