

दिल्ली DELHI

AA 667278

ARBITRATION CASE NO. 14 OF 2011

IN THE ARBITRATION MATTER OF:-

COMPAGNIE GERVAIS DANONE

COMPLAINANT

VERSUS

JACK SUN

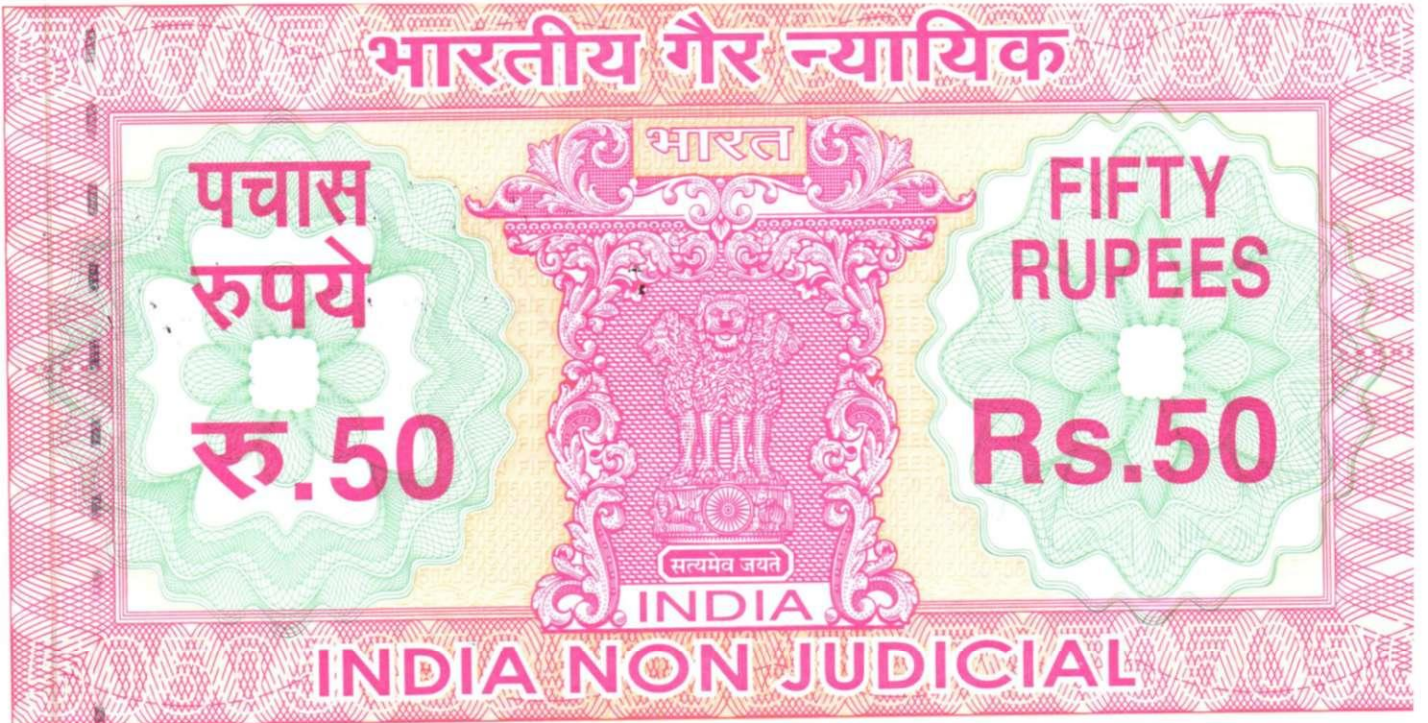
RESPONDENT

AWARD

The present dispute relates to the registration of the domain name www.actimel.co.in in favour of the Respondent.

The Complainant has filed the instant complaint challenging the registration of the domain name <www.actimel.co.in> in favour of the Respondent. The complainant has stated that it's main brand DANONE, was launched marketing yogurts in Barcelona, Spain around 1919 and that thereafter in 1932 the brand DANONE started its international commercial activity in France by opening its fresh dairy products. The

Chinmoy



दिल्ली DELHI

AA 667281

complainant further states that it has grown over a period of time in international market in fresh dairy products, bottled water, baby food and medical nutrition and employs nearly 100,000 people in all five continents and has its presence in 120 countries.

The complainant has stated in its complaint that ACTIMEL is complainant's most renowned trademark in the world and is known and is associated with probiotic drinking yogurt which helps support the body defences when consumed daily as part of a healthy and balanced diet and life style and that the product ACTIMEL is present in more than 30 countries and its sales have estimated to be one billion euros worldwide.

The Complainant has stated that even before starting the instant proceedings under policy of IN DRP, it had made efforts to resolve the disputes with the Respondent amicably. However, as nothing was forthcoming from the Respondent leave alone any settlement, the Complainant preferred to file the instant complaint.

Chinmoy

The complainant has also stated that the disputed domain name was offered for sale at Sedo.com for an undetermined price, which the Sedo has removed for its site after the request from complainant to do so.

The complainant's grievance is that the domain name registered by the Respondent has been done in bad faith as name registered was identical to the trademark of complainant and that the Respondent has no interest in the said domain name.

I entered upon reference regarding the instant dispute however due certain reason the matter could not proceed and again a notice was sent to the Respondent on 1st March 2012 calling upon for their response to the said complaint. However, after granting considerable time to the Respondent, there has been no response. Accordingly, the Respondent is proceeded ex-parte.

On consideration of entire complaint as well as the documents filed along with it, I am of the view that the complainant who has established proprietary right over the mark ACTIMEL by showing its registration in various countries as well as in India. The complainant's main business is in field of dairy products and has been proved by evidences in support of it.

There is substance in the contentions raised by the Complainant that the Respondent has no interest in the disputed domain and that the registration of it has been done in bad faith. As submitted by the complainant that it had sought to settle the issue directly with the Respondent on coming to know it had placed disputed domain name for sale at Sedo.com, however the Respondent never came forward for any settlement. This fact clearly shows that the Respondent is a professional cyber squatter and has registered the disputed domain name with the purposes of selling it.

Furthermore, the complainant's claim that the registration is not bonafide for the reason that the Respondent is not associated with the name or mark ACTMEL, is also worth considering. In fact there is nothing to suggest that the Respondent has a right to use the said name or mark. In fact it is the complainant who has been



able to show that it has a legitimate and proprietary in using the said name and mark ACTIMEL. In support of which it has placed various registration in India as well as in other countries.

The complainant has placed reliance various judgements of WIPO and INDRP Dispute Decisions in support of its stand and I have considered the same.

I find the contention of the complainant quite valid and with substance. Eventhough the Respondent has not entered his appearance and defended the claims of the complainant, but I find it hard to believe that the Respondent has a legitimate right or claim in using the disputed domain name. The only intention use of domain name was probably to sell or to benefit commercially.

Considering such facts and circumstances I am of the view that the complainant as a proprietary right over the mark **ACTIMEL** and therefore, I deem it fit and proper to allow the prayer as prayed in para 12 of the complainant in its favour and direct the registry to transfer the said domain name i.e. <www.actimel.co.in> in favour of the complainant.

Parties to bear their costs.


(NIKILESH RAMACHANDRAN)

ARBITRATOR

Dated 29th March 2012.