



हरियाणा HARYANA

M 452362

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

M/s. Agfa-Gevaert NV & Co. KG
Im Mediapark 5b
50670 Koln
Germany

..... Complainant

Mr. Yitao
Apex Laboratories Limited
76, C.P Rama Road,
Postal Code – 999077
Hong Kong

..... Respondent

Disputed Domain Name: www.agfaphoto.co.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is M/s. Agfa-Gevaert NV & Co. KG Im Mediapark 5b, 50670 Koln, Germany. The Complainant is represented by its authorized representatives DePenning & DePenning, 120 Velachery Main Road, Guindy, Chennai – 600 032, India, who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Mr. Yitao, Apex Laboratories Limited, 76, C.P. Rama Road, Postal Code – 999077, Hong Kong as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.agfaphoto.co.in. The Registrar is Bharat Domains.

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on February 20, 2013 and the notice was issued to the Respondent on February 21, 2013 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. On March 05, 2013 the Arbitrator granted further opportunity to the Respondent to submit its response on or before March 15, 2013. However, no response was submitted by the Respondent within the stipulated time of thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.



Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions

- a) The trade mark 'AGFA' of the Complainant is an invented word and the same is the abbreviation of Aktien-Gesellschaft fur Anilin-Fabrikation (Agfa AG). The word AGFA is not only the trade marks of the complainant group of companies but also a dominant and prominent part of their trading style, brand name and corporate name.
- b) The Complainant is running business pertaining to digital cameras and camcorders, digital storage media, photographic film and paper, digital and classical photo frames, LCD televisions and a vast assortment of accessories and products for home and office use under the name and style M/s. AgfaPhoto Holding GmbH and trade mark 'AGFA'. The Complainant's company is a pioneer of modern photography.
- c) The complainant's Group of Companies develops, produces and distributes an extensive range of analog and digital imaging systems and Information Technology solutions, mainly for the printing industry and the healthcare sector, as well as for specific industrial applications. The complainant has three focused business groups: Agfa Graphics, Agfa Healthcare, and Agfa Specialty Products. The complainant has production facilities around the world, with the largest production and research centers in Belgium, the United States, Germany and China.
- d) The Complainant's group of companies has more than 700 trade mark applications and registrations throughout the world. Further the Complainant Agfa brand has gained a huge customer base internationally and is identified, associated and recognized only with the complainant.
- e) The complainant exists in almost 186 countries. The complainant owns the worldwide intellectual property of inclusive of trade mark applications and registrations pertaining to the trade mark 'AGFA', 'AGFAPHOTO' and its other variants. The Complainant is also the owner of several domain names consisting of the mark 'AGFA' as an essential feature. The word 'AGFA' being the essential feature of the complainant's corporate name connoting distinctiveness, reputation quality and goodwill acquired over scores of years.



- f) The business of complainant has acquired excellent and enviable reputation in the market under the said mark 'AGFA', 'AGFAPHOTO' and its other variants as evident from the year-wise global sales turnover.
- g) The complainant has advertised the said trade mark 'AGFA', 'AGFAPHOTO' and its other variants through various media such as print and electronic media through participation in the fairs and exhibitions etc. and has already spent substantial amount of money on the publicity of the said trademark and in consequence thereof the said trademark enjoys solid, enduring and first class reputation in the market. On account of extensive usage of the trademark 'AGFA' and 'AGFAPHOTO' the said marks are identified solely and exclusively only with the complainant and none other. Further, the Agfa brand, has gained a huge customer base internationally and is identified, associated and recognized only with the complainant.
- h) The complainant is also the registrant and proprietor of various Domain name registrations International level and domestic level.
- i) The complainant also owns and controls domain names with the prefix 'AGFA' such as agfa.com, agfaphoto.com, agfa.in, agfahealthcare.com and agfagraphics.com.
- j) The respondent has adopted and registered the disputed name, which is deceptively similar to the corporate name of the complainant, thereby wrongfully, illegally and dishonestly trading upon the reputation of the complainant.
- k) The respondent's domain name is identical to that of the complainant. The very existence of the respondent's domain name would cause the public to believe that the respondent and their domain name is sponsored by or affiliated to the complainant.
- l) The respondent's domain name without any due cause is taking and would take unfair advantage of distinctive character and repute of the complainant's mark, corporate name and domain names.
- m) The respondent has created and registered the disputed domain name subsequent to the complainant's conception, adoption and usage of the trade marks and domain name. Further, the respondent's domain name has been created subsequent to the launch of www.agfaphoto.com by the complainant.
- n) The disputed domain name is identical to the Complainant's trademarks 'AGFA' and other marks with prefix 'AGFA' such as 'AGFAPHOTO', which on account of having acquired both statutory and common law right in various jurisdiction of the world including India has also obtained the status of well know. It is



further submitted that the disputed domain name www.agfaphoto.co.in has been registered by the respondent without any authorization/approval from the complainant.

- o) The disputed domain name is nearly identical to the trade mark 'AGFA', 'AGFAPHOTO' and its other variants of the complainant and is also highly similar to the complainant's corporate names and domain names.
- p) The disputed domain name was registered by the Respondent on 10th September 2012. At this time, the complainant had already established considerable reputation in the trade marks 'AGFA', 'AGFAPHOTO' and its other variants and had been actively using the website www.agfa.com and www.agfaphoto.com which can be accessed from any corner of the world.
- q) As far as use of the trade mark AGFA in India is concerned, the complainant has been continuously using their said well known trade mark since 1952 and the predecessor in title of the complainant has made its first application for registration of the trade mark 'AGFA CAMERA WERK' under no. 147567 way back in the year 1951 in India. Whereas the disputed domain name was created by the respondent on 10th September 2012, which is almost after 50 years of the adoption and use of the trade mark 'AGFA' by the complainant.
- r) The information available in the respondent's disputed domain name i.e www.agfaphoto.co.in is related and/or cognate and allied to the goods and services offered by the complainant. This clearly shows that this is a cyber squatting activity, which is a menace to the society as a whole and stringent curbing measures should be adopted to eradicate the same.
- s) The respondent's registration and use of the disputed domain name is a clear case of cyber squatting, whose intention is to take advantage of the complainant's substantial reputation and its prominent presence on the internet in order to confuse the public by offering similar services and goods as that of the complainant, divert business, tarnish the repute and goodwill of the complainant and the said marks and unduly gain in all aspects to the detriment of the complainant.
- t) The registration of the disputed domain name and its subsequent user by the respondent is a deliberate attempt by the respondent to attract, for commercial gain, Internet users to another online location by creating a likelihood of confusion with the complainant's 'AGFA' & 'AGFAPHOTO' trade mark, trade name and domain name such that the public would in all likelihood falsely believe that the disputed domain name is sponsored, endorsed or authorized by or in association with the complainant.



- u) The complainant on or about November 06, 2012 came to know about the existence of the disputed domain name and contacted respondent to retrieve the disputed domain name but the respondent showed willingness to transfer the domain name to the complainant only on payment of sum of money mutually agreeable. Therefore, it is apparent from the conduct of the respondent that the respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration, to the complainant who owns trademark, for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain.

5) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the marks 'AGFA' and 'AGFAPHOTO' leads to the conclusion that the Complainant has superior and prior rights in the marks 'AGFA' and 'AGFAPHOTO'. Thus it can be said a) the web users associate the word 'AGFA' and 'AGFA PHOTO' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the www.agfaphoto.co.in and c) they may believe it is a website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the marks 'AGFA' and 'AGFAPHOTO'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'AGFA' and 'AGFAPHOTO' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.



- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'www.agfaphoto.co.in' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name [agfaphoto.co.in](http://www.agfaphoto.co.in).


- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that the domain name/marks 'AGFA' and 'AGFA PHOTO' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.agfaphoto.co.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.agfaphoto.co.in be transferred to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

April 02, 2013