



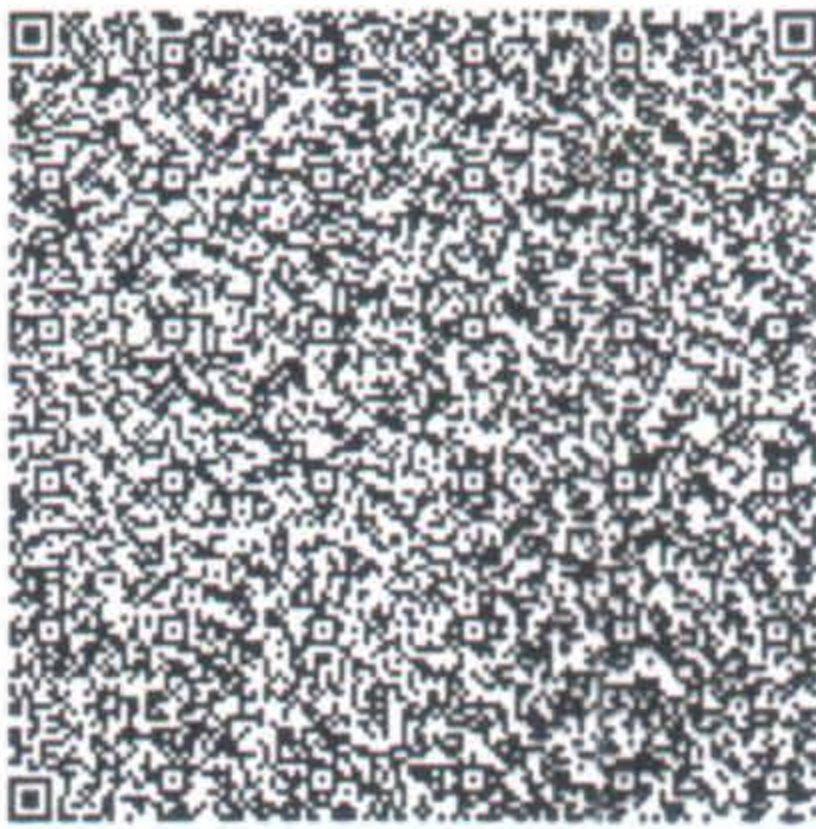
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Certificate Issued Date	: 25-Mar-2017 04:07 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130326068472647466P
Purchased by	: SONAL KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SONAL KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: SONAL KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Arkema France
420 rue d'Estienne d'Orves
92700 Colombes
France

...(Complainant)

v.

Liheng of Just Traffic Supervision Consulting
Room No. 1326, Kexin Building
Hong Kong-999077

...(Respondent)

Statutory Alert:

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The Parties

The Complainant in this proceeding is Arkema France, 420 rue d'Estienne d'Orves, 92700 Colombes, France.

Respondent in this proceeding is Liheng of Just Traffic Supervision Consulting, Room No. 1326, Kexin building, Hong Kong - 999077.

The Domain Name

The disputed domain name is **WWW.ALTUGLAS.IN**

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.Altuglas.in

On 24.01.2017, NIXI sent the soft copy of the complaint along with the annexures to the respondent on his email address as mentioned in the WHOIS details.

On 30.01.2017, NIXI informed the Arbitrator that the courier agency has sought alternate consignee details for delivering the complaint and documents to the respondent and NIXI sought advice on the same from the Arbitrator.

On 01.02.2017, I sent an email to the parties informing them about my appointment as an Arbitrator. The said e-mail was sent to the respondent on the address as mentioned in the WHOIS details.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexures to the Respondent and to provide me with the details of the service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 01.02.2017 through e-mail, with the instructions to file his reply within 15 days from the receipt of the stated email or the receipt of the copy of Complaint, whichever is later.

On 02.01.2017, The Arbitrator apprised NIXI that if any other address of the respondent is available, an attempt to serve the complaint be made on the said alternate address. In case no other alternate address is available, service be made through email address available in record.



On 02.01.2017, NIXI informed the Arbitrator that no other address of the respondent is available in the complaint or with NIXI. It also informed that the soft copy of the complaint with annexures has been sent to the respondent on 24.01.2017 by NIXI and further it sought directions as to whether the courier agency should be directed to destroy or return the consignment containing the complaint and the annexures.

On 08.02.2017, The Arbitrator informed the parties that NIXI vide email dated 30.01.2017, NIXI informed the Arbitrator that the courier containing the complaint and the annexures has not been delivered to the respondent due to incomplete/wrong address. The Arbitrator further informed that NIXI vide email dated 02.02.2016 informed that no alternate address of the respondent is available and that the soft copy of the complaint and annexures has been delivered to the respondent on 24.01.2017 by NIXI. Thus, the complaint has been duly served on the respondent.

In the same e-mail the Arbitrator directed NIXI to ask the courier agency to return the consignment and the same to be kept with NIXI till the passing of the award by the Arbitrator. The Arbitrator in the interest of justice directed the respondent to file his response to the complaint within 15 days from the date of receipt of this email and on the failure to file his reply within such period, the Arbitrator will proceed with the matter on the basis of the documents and pleadings already on record and will pass it award.

On 28.02.2017, The Arbitrator informed the parties that the time granted to the respondent to file its reply has expired and that the Arbitrator will proceed with the matter on the basis of the pleadings and documents already on record and will pass the award.

Till the date of this award, the respondent has not filed its response to the complaint despite being given several opportunities. E-mail was sent to the e-mail address as mentioned in the WHOIS details and as per the courier receipt, the service was made by NIXI on the address available in the WHOIS details. Thus, the service is considered to be complete.

Apropos of the material on record before the Tribunal, this award is passed.

I have perused the entire record and all the annexures / documents.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.



COMPLAINANT:

The submissions of the complainant are briefly summarized as under:

1. The Complainant submits that it is a company organized and existing under the laws of France. It was founded in the year 2004 and it is a leading specialty chemical and advanced materials company. It is a designer of materials and innovative solutions shaping materials and creating new uses that accelerate customer performance in lightweight and design materials, biosourced materials, new energies, water management, solutions for electronics and the performance and home insulation.
2. The Complainant submits that it is a specialty chemicals global major and its business is organized into three segments i.e. Coating Solutions, Industrial Specialties and High Performance Materials.
3. The Complainant submits that its brands are recognized world over and report annual sales of 7.7 billion Euros having a tremendous global presence. It also submits that its operations are spread in around 50 countries employing approx. 20,000 employees. It further submits that it has around 150 production units, 13 research and development centers and around 1500 researchers who primarily focus on ultra high performance polymers and sustainable development solutions.
4. The Complainant submits that it markets its acrylic resins and sheet under the trade mark ALTUGLAS in Asia, Europe, Africa and Middle East and PLEXIGLAS in America. It further submits that its trademark ALTUGLAS has acquired distinctiveness on account of its extensive publicity worldwide. It is the worldwide proprietor of the trademark ALTUGLAS which also forms the predominant part of the corporate name and trading style of its subsidiary viz. Altuglas International.
5. The Complainant submits that in respect of its acrylic resins and sheets under the trade mark ALTUGLAS, it has an extensive network of over 3000 customers and distributors world-over with its brands being distributed in over 50 countries and has around 9 production plants and 2 research and development teams operating from France and U.S.A in respect thereof. It further submits that as on date it is a global leader in PMMA, manufacturing approximately 20% of the world's PMMA.
6. The Complainant submits that its acrylic resin and sheets, polycarbonate sheet and capstock products under the mark ALTUGLAS are at work worldwide, serving a broad spectrum of Industries and applications. It also submits that anticipation of market trends and customer needs, drive the complainant's business practices along

with innovation and quality driven product development. The key markets where the Complainant has its presence as a leading supplier are Architecture/Construction, Automotive/transportation, Bath and Shower, Consumer goods-appliances, Cosmetic-packaging, Furniture and Toys, Hygiene-Medical, Interior-Decoration, Merchandising, Optical Lenses, Optical LGP, Sports- Leisure Equipment and Urban Fittings.

7. The Complainant submits that it uses its well known trade mark ALTUGLAS upon and in relation to its business/products which is its extremely valued intellectual property. The trademark ALTUGLAS also forms an integral part of its various domain names viz. Altuglas.com, Altuglas.org, Altuglas.biz etc. It also submits that the trade mark ALTUGLAS being the most valued intellectual property, the complainant has taken utmost care to secure statutory rights therein through trade mark registrations in numerous jurisdictions of the works including in India. It further submits that its trademark ALTUGLAS is subject of around 250 trademark registrations/applications in over 70 countries worldwide.
8. The Complainant submits that its earliest registration for the trade mark ALTUGLAS in India dates back to the year 2003. It also submits that owing to the excellent quality of the Complainant's products under the trademark ALTUGLAS, the same commands tremendous popularity and has been used extensively the world over including in India. It further submits that its annual turnover in the year 2015 in respect of its products under the trade mark ALTUGLAS was Euro 880 million approx which amounts to 11.4% of the Complainant's worldwide turnover.
9. The Complainant submits that it has invested years of time, capital, efforts and resources in advertising and promoting its products under the trade mark ALTUGLAS across the globe through all forms of media in various countries of the world. The Complainant also submits that its trademark ALTUGLAS has also featured in a wide variety of press releases and other media coverage and that these press releases and coverage have left an indelible impression in the minds of the public in as much as the trademark ALTUGLAS is exclusively associated with the Complainant and none other. The complainant has also submitted along with the complaint, the copies of press releases and other media coverage featuring the trademark ALTUGLAS of the complainant.



10. The Complainant submits that it has registered top level domain names such as 'Altuglas.com', 'Altuglas.org', 'Altuglas.biz', 'Altuglas.net' etc. in addition to country level domain names such as 'Altuglas.fr', 'Altuglas.co.in', 'Altuglas-int.us' etc. It also submits that the complainant's websites are extremely popular and are a valuable source of knowledge with respect to the Complainant and its products under the trademark ALTUGLAS and thus, the reputation of the Complainant as regards the trademark ALTUGLAS pervades both the real world as well as the cyber space. The Complainant in support of this submission has submitted a list of the domain names registered in favour of the Complainant along with WHOIS details in respect of few domains.
11. The Complainant submits that it has recently become aware of a domain name viz. Altuglas.in registered in the name of the registrant herein. The Complainant also submits that it was shocked and dismayed to learn that the said domain was also parked for sale by the registrant without using or making any bona fide use of the same. It further submits that the registrant of the domain name Altuglas.in has no affiliation with the Complainant.
12. The Complainant submits that the impugned domain name Altuglas.in contains only sponsored listings and further submits that the same establishes that the impugned domain name was registered by the registrant solely for the purposes of making monetary gains.
13. The Complainant submits that the registrant is a habitual cybersquatter and has been the subject of several UDRP decisions. It also submits that the registrant is set out at making illicit gains by registering domain names identical to well known trade/service marks, corporate names/trading styles, domain names etc. The Complainant has supported this contention by submitting copies of various awards directing the registrant to transfer the domain name.
14. The Complainant submits that a reverse WHOIS lookup identifies over 1000 domain names currently registered in favour of the registrant and out of these, over 800 are .IN domain names. It also submits that the exorbitant number of domain names that the registrant has registered demonstrates that the registrant has engaged in a clear pattern of registering domain names in bad faith to block the legitimate and superior rights of trademark owners in those domain names only to later ransom the domain names to the trademark owner.



15. The Complainant submits that no website is active under the domain name in question and the same reveals a few sponsored listings including advertisement for sale of the said domain. It further submits that the registrant is using the objectionable domain name illegally and dishonestly to derive unjust pecuniary gains.

RESPONDENT

1. Respondent in this proceeding is Liheng of Just Traffic Supervision Consulting, Room No. 1326, Kexin building, Hong Kong-999077.
2. The respondent has failed to file her say /reply to the Complaint of the Complainant within the stipulated time nor has he communicated anything to the Tribunal till the date of this award. It has already been observed that service was duly affected by NIXI on the email address of the respondent.

Parties Contentions

i) Complainant

The Complainant contends as follows:

- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

ii) Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

Discussions and Findings:

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"*.

Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the rules.



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 thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the statements and documents submitted before the Tribunal.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "www.altuglas.in".

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.

i. The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

- a) The Complainant submits that the impugned domain name 'Altuglas.in' is identical to and comprises in entirety the Complainant's trade mark ALTUGLAS which is registered in a number of countries including India. It also submits that the registrant has registered the impugned domain name 'Atluglas.in' with malafide intent to trade upon the immense goodwill and reputation enjoyed by the Complainant in its well-known mark/domain name ALTUGLAS and thereby gain undue leverage from it and make illicit pecuniary gains. It further submits that the objectionable domain name has no meaning or significance independent of the Complainant's trade mark ALTUGLAS and that it is a clear case of infringement and passing off which is



violative of the rights enjoyed by the Complainant in its well-known and established mark/domain name ALTUGLAS.

- b) The Complainant submits that the impugned domain name 'Altuglas.in' is identical to a number of domain names registered in the name of the Complainant such as 'Altuglas.com', 'Altuglas.org', 'Altuglas.biz', 'Altuglas.net', 'Altuglas.fr' and 'Altuglas.co.in'.
- c) The Complainant submits that the registrant registered/adopted the impugned domain name 'Altuglas.in' on June 11, 2016 whereas the Complainant's domain 'Altuglas.com' was created on April 1, 1999. It also submits that the complainant's earliest trademark registration in respect of the trademark ALTUGLAS dates back to the year 1958 and the said trademark is also registered in India. The Complainant further submits that its adoption of the trademark/domain name ALTUGLAS is much prior to the registrant's registration of the impugned domain name 'Altuglas.in'.

The above submissions of the Complainant have not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures attached with the complaint establish that the disputed domain name is similar and identical to the well known trademark of the Complainant and as such this issue is decided in favour of the complainant.

ii. The Registrant has no rights or legitimate interests in 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 name 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;*
- 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*



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.*

- a) The Complainant submits that the registrant is not offering any goods/services under the domain name 'Altuglas.in'. It also submits that the review of the website 'Altuglas.in' reflects that the said domain is listed for sale by the registrant and thus, the registrant cannot demonstrate any use relating to bona fide offering of goods or services before any notice of this dispute or at any point in time whatsoever.
- b) The Complainant submits that the registrant is not commonly known by the domain name 'Altuglas.in' and is not authorized or licensed by the Complainant to use its mark ALTUGLAS. It also submits that it provides products under the trademark ALTUGLAS which is inextricably interwoven and identified exclusively with the complainant by the trade and public at large. The complainant submits that it is not only using the trademark since the year 1959 but has also registered the said mark and various domain names comprising the said mark in numerous jurisdictions including India and that due to extensive and continuous use of the trademark ALTUGLAS for many years, the same has become well-known and came to be exclusively associated with the complainant and no one else.
- c) The Complainant submits that the registrant is not making any legitimate non-commercial or legitimate fair use of the domain name 'Altuglas.in'. It further submits that the registration of the impugned domain is aimed to gain leverage from the immense goodwill and reputation of the Complainant's trademark ALTUGLAS, divert visitors/customers by creating initial Internet confusion and thereby commercially profit from use of the complainant's trademark.

The Respondent has neither responded nor has put forth or provided any evidence to show that the circumstances as required under paragraph 7 of the .IN Dispute Resolution Policy exists in her favour. The Respondent is also not engaged in or demonstrably prepared to engage in offering any bonafide goods and services in the name of the disputed domain name. The Arbitrator thus, accepts the submissions made by the complainant.

Even otherwise also the above facts and the documents annexed with the complaint establish that the Respondent has no right or legitimate interest in the domain name www.altuglas.in as the Respondent is not making a non-commercial or fair use of the

domain name under INDRP paragraph 4(ii). Therefore, this issue is also decided in favour of the complainant.

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

- a) The Complainant submits that the registrant has registered the impugned domain name 'Altuglas.in' with the sole purpose of selling/transferring the same for excessive consideration to make illicit gains. The same is evident on visiting the website of the registrant which displays that "The domain altuglas.in maybe for sale".
- b) The Complainant submits that the registrant registered the impugned domain name 'Altuglas.in' knowing fully well of the complainant and its business. It also submits that the registration of the domain name 'Altuglas.in' by the registrant has resulted in the registrant's misuse of the complainant's trademark/domain ALTUGLAS for undue pecuniary gains.
- c) The Complainant submits that the registrant's website has been constructed in a manner so as to portray an association/affiliation with the complainant and that the confusion is further enhanced by the presence of links to the websites of third parties, competitors etc. It also submits that the conduct of the registrant amply proves its mala fide to attract internet users to its website by using the mark of the complainant and consequently creating a likelihood of confusion as to source, sponsorship, affiliation or endorsement of the registrant's website and/or of a product on the registrant's website. It further submits that internet users desirous of accessing the complainant's website may get attracted to the impugned website, thereby creating confusion in their minds.

All above submissions made by the Complainant have not been rebutted by Respondent even after giving sufficient opportunity to respond to the same. The respondent has registered the disputed domain name using the mark of the complainant in toto which creates confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement in relation to the impugned domain name. The Respondent on the website www.altuglas.in is offering to sell the domain name, clearly establishes the bad faith on part of the Respondent.

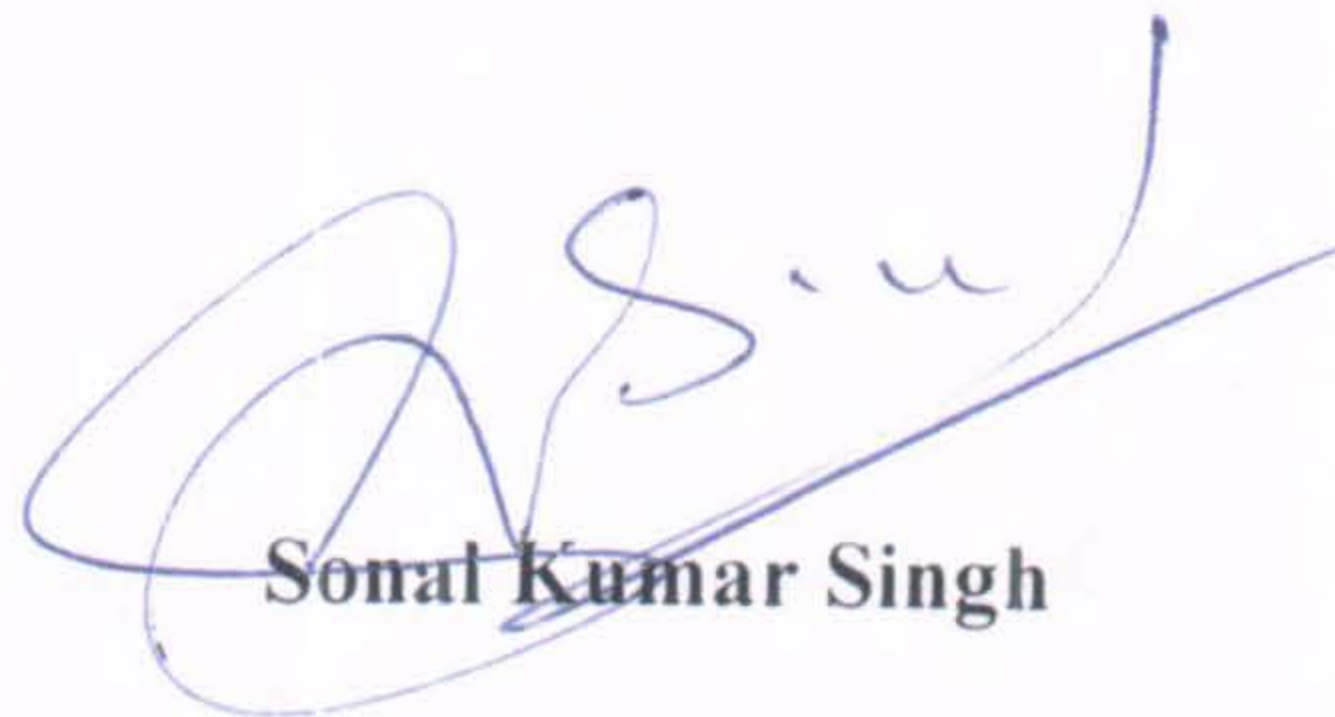


Even otherwise the unrebutted facts and annexures give no reason to doubt that the respondent has registered and used the domain name in bad faith. This issue is decided accordingly.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

NIXI is hereby directed to transfer the domain name of the Respondent i.e. WWW.ALTUGLAS.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 day of 24th March, 2017.



Sonal Kumar Singh

Sole Arbitrator

Date: 24th March, 2017