



हरियाणा HARYANA

K 503534

RANJAN NARULA

ARBITRATOR

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

In the matter of:

Michelin Recherche et Technique S.A.
10 route Louis-Braille,
1763 Granges-Paccot
SUISSE

.....Complainant

Apex Laboratories Limited
76, C.P. Rama Road
Hong Kong 999077
HONGKONG

.....Respondent

Disputed Domain Name: www.bfgoodrichtires.co.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is **Michelin Recherche et Technique S.A.** of 10 route Louis-Braille, 1763 Granges-Paccot, SUISSE. The Complainant is represented by its authorized representatives Nathalie DREYFUS, DREYFUS & ASSOCIES, 78 Avenue Raymond Poincare, 75116 Paris, FRANCE.

The Respondent in this arbitration proceeding is **Apex Laboratories Limited**, 76, C.P. Rama Road, Hong Kong 999077, HK 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.bfgoodrichtires.co.in. The Registrar is Business Solutions, Directiplex, Next to Andheri Subway, Old Nagardas Road, Andheri (East), Mumbai, Maharashtra 400069, INDIA.

The Registrant is **Apex Laboratories Limited**, 76, C.P. Rama Road, Hong Kong 999077, HK.

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 December 13, 2012 and the notice was issued to the Respondent on December 13, 2012 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. The Arbitrator granted further opportunity to the Respondent to submit its response on or before January 04, 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) Michelin enjoys an incontestable reputation across the world in the field of automobile and tire manufacturing industries and also in the field of publishing hotel/restaurant guidebooks and maps.
- b) Michelin owns the trademark BFGOODRICH, largely protected in the world in the field of tire manufacturing.
- c) Michelin is implanted in India via two subsidiaries: Michelin India Private Limited and Michelin India Tyres Private Limited.
- d) Complainant owns numerous BFGOODRICH trademark registrations across the world and notably in China where Respondent is located.
- e) Michelin is notably the owner of the following trademarks:
 - Chinese trademark BFGOODRICH No. 292648, dated of September 4, 1986, duly renewed and covering tires in class 12.
 - Indian trademark BFGOODRICH No. 752558, dated of February 19, 1997 and covering tires in class 12.
- f) In addition, to these trademarks, Complainant is the owner of several domain names that incorporate the trademark BFGOODRICH. Complainant particularly owns the following domain names:
 - <bfgoodrich.com> registered on August 15, 1996;
 - <bfgoodrich.net> registered on June 27, 2003;
 - <bfgoodrich.org> registered on August 27, 2002;
 - <bfgoodrich.in> registered on March 13, 2011;



- g) Complainant sent a cease-and desist letter via registered letter and email on April 19, 2011 to "Zengyan", who was then indicated by the Whois information as the registrant, requesting the transfer of the disputed domain name.
- h) On May 10, 2011, Complainant received a reply in which the registrant asked for 890USD to transfer the disputed domain name.
- i) On May 25, 2011, Complainant noticed that the domain name <bfgoodrichtires.co.in> had been transferred to Respondent Hua An Holdings (H.K.) Limited.
- j) On June 1, 2011, Complainant sent a cease-and-desist letter via registered letter and email to Respondent, to which he received a reply on June 22, 2011, and asked for 890USD in order to transfer the disputed domain name.

5) Decision/s Upholding the Complainant's Rights

The Complainant has relied on the ratio decidendi in the following decisions:

INDRP Dispute Decision n°L-2/5/R1 <bacarrat.in> decided on October 06, 2006 and referring to WIPO Case n°D2001-0505 Britannia Building Society v. Britannia Fraud Prevention; INDRP Dispute decision n°L-2/5/R4 <Bristol.in> decided on April 15, 2008; see also WIPO Case: n°2006-1594 Boehringer Ingelheim Pharma GmbH & Co.KG v. Philana Dhimkana.

When a trademark is incorporated in its entirety in the domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

INDRP Dispute Decision n°INDRP/229 <vat69.co.in>; INDRP Dispute Decision n°INDRP/220 <danonino.co.in>

The suffix to indicate the top level of the domain name has to be disregarded for the purpose of determining whether the domain name is identical or confusingly similar to Complainant's trademark.

WIPO Case No. D2004-0752, Compagnie Generale des Etablissements Michelin CGEM — Michelin & Cie, Michelin Recherche et Technique S.A. v. Horoshiy Inc.

Confusion is heightened when the generic words added by Respondent are descriptive of Complainant's goods and services marketed in relation to the trademark.

Societe Anonyme des Eaux Minerales d'Evian (SAEME) v. Rajesh Aggarwal, Case No. INDRP/099, June 12, 2009

Prior registration of domain name confers prior rights.



INDRP Dispute decision n°L-2/5/R3 <itcportal.in> decided on November 30, 2007,
INDRP Dispute decision n°L-2/5/R4 <bristol.in> decided on April 15, 2008; See also
WIPO Case n°D2000-1374 America Online Inc., v. Xianfeng Fu

The use of a well-known trademark held by a third party in a domain name does not confer rights or legitimate interests in favour of the owner of the domain name.

INDRP Dispute decision no INDRP/167 <lazard.in> decided on November 30, 2010

Using the domain name in connection with a parking website is not bona fide offering of goods or services.

INDRP Dispute Decision 178, <Rhodia Sbi Jing>, decided on December 19, 2010

When Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the domain name, Respondent carries the burden of demonstrating rights or legitimate interests.

INDRP Dispute decision n°L-1/3/R4 <genpact.co.in> decided on March 24, 2008;

INDRP Dispute decision n°L-2/5/R1 <bacarrat.in> decided on October 06, 2006;

INDRP Dispute decision n°L-2/6/R3 <nba.in> decided on November 05, 2007

The registration of a domain name containing a well-known mark is strong evidence of bad faith.

INDRP Dispute decision n°L-2/5/R1 <bacarrat.in> decided on October 06, 2006

If the domain name directs towards a parking website, it does not constitute good faith use of the domain name.

WIPO Case n°D2011-0421 Cleveland Browns Football Company LLC v. Andrea Denise Dinoia

Transfer into the name of Respondent, probably in anticipation of an impending proceeding under the INDRP, corresponds to registration and use in bad faith.

6) 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.

7) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'BFGOODRICH' leads to the conclusion that the Complainant has superior and prior rights in the mark 'BFGOODRICH'. Thus it can be said a) the web users associate the word 'BFGOODRICH' 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.bfgoodrichtires.co.in and c) they may believe it is an official 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 mark 'BFGOODRICH'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'BFGOODRICH' 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 'BFGOODRICH' trademark. 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 even demanded considerable compensation for transfer of the domain name and the amount asked was much higher than reasonable cost and expenses incurred for registering and maintain the domain name.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his 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 Respondent has simply parked its domain for sale and is using the website to generate revenue through sponsored links.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'www.bfgoodrichtires.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. Moreover, the Respondent has demanded amount of 1790\$ from the Complainant, which is far more than its out-of-pocket costs for registration. This has not been rebutted by The Respondent. Thus it can be concluded that the Respondent Registered the Domain name for the purpose of selling or transferring the domain name and is an evidence of bad faith registration. Registering a domain name for the purpose of selling or transferring the domain name for excessive consideration is evidence of bad faith registration.

8) Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.bfgoodrichtires.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.bfgoodrichtires.co.in be transferred from the Respondent to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

11 January, 2013