



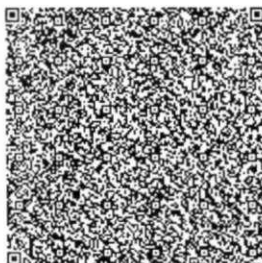
सत्यमेव जयते

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 Description of Document : Article 12 Award
 Property Description : NA
 Consideration Price (Rs.) : 0
 (Zero)
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BEFORE SH. SANJAY KUMAR SINGH SOLE ARBITRATOR

ARBITRATION AWARD

DATED - 21-12-2012

BIOTRONIK SE & CO SE -- COMPLAINANT

vs.
DAVID WONG -- RESPONDENT

Sanjay K. Singh
21-12-2012

Statutory Alert:

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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR

IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN THE MATTER OF:

Biotronik SE & Co. KG,
Woermannkehre 1, 12359 Berlin,
Germany

THROUGH

Authorized representative
Tanvi Misra, anand and anand,
First channel, plot no. 17a,
Sector 16a, film city ,
Noida india.

E-mail:tanvi@anandandanand.com

..Complainant

Versus

David Wong
Bestsun Corporation
138, Feilong Sanjia
Taizhou, Zheijiang- 318014
E-mail: 772337983@qq.com

..Respondent

1. THE PARTIES:

The complainant is Biotronik SE & Co. KG, Woermannkehre 1, 12359 Berlin, Germany.

(Complaint has been filed by authorized representative authorized representative Tanvi Misra, Anand and Anand, First Channel, Plot No. 17A, Sector 16A, Film City , Noida India.E-mail:tanvi@anandandanand.com)

The Respondent is David Wong, Bestsun Corporation 138, Feilong Sanjia Taizhou, Zheijiang- 318014, E-mail: 772337983@qq.com

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2. **DOMAIN NAME AND TRADEMARK IN DISPUTE:**

Domain name of the respondent is "**biotronik.co. in**"

The trademark of the complainant is "**BIOTRONIK**".

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The present dispute pertains to the domain name "**biotronik.co. in**" in favour of the respondent.
3. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "**biotronik.co.in**".
4. The complainant herein has filed the instant complaint challenging the registration of the domain name "**biotronik.co.in**" in favour of the respondent
5. I was appointed as Sole Arbitrator in the matter by NIXI.
6. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
7. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
8. On 04-09-2012 I issued notice to the respondent and informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within seven days of receipt of notice.
9. On 17-09-2012 I again issued notice to the respondent and further directed the respective parties to the complaint, to file their counter/ reply and rejoinder with the supportive document/evidence.

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10. In its complainant has stated that Biotronik SE & Co KG was founded in 1963 by physicist Max Schaldach and electrical engineer Otto Franke who developed the first German implantable pacemaker. Biotronik SE & Co KG a privately held multinational biomedical technology company headquartered in Berlin, Germany. The complainant has also stated that it developed the first German cardiac pacemaker in 1963 and pioneered the creation of remotely-monitored implanted cardiac device. The complainant has marketed these telemedicine technologies in Europe since 2000, in the USA since 2001, and thereafter their presence has expanded to over fifty countries, focusing on patient's care and the development of immovable solution ever since.
11. The complainant has also stated that it has strongly grown to become a market leader, being a global player operating a network of about 5600 employees who are involved in the research, development, production and sale of '**Biotronik**' products.
12. The complainant has also stated that it has been using the corporate name 'Biotronik' since the year 1963. Since then it has made extensive and prominent use of its trademark/corporate name '**Biotronik**' in connection with wide range of related goods and services, including providing detailed description and latest innovations of its goods and services online through numerous '**Biotronik**' domain names. The complainant has annexed the list of domain names with 'Biotronik' held by it world over as **annexure-B**. The '**Biotronik**' trademark has become famous and well-known, and complainant has developed enormous goodwill in the mark and widespread consumer recognition from very beginning.
13. The complainant has also stated that it was nominated for the 'Deutscher Zukunftspreis' an award conferred by the German Federal President for achievements in technology and innovation.
14. The complainant began doing business in India in 1961. '**Biotronik**' is the pioneer in remote monitoring technologies for patients with

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cardiac devices. '**Biotronik**' has now established commercial headquarters in India for both its Cardiac Rhythm Management and Vascular Intervention business. The complainant has two registered office in India:

1. Delhi Office (South Asia Head Quarters) **BIOTRONIK** Medical Devices India Pvt. Ltd. Located at 101-106, plot No. 14 LSC, Kalkaji, New Delhi-110019, India.
2. Kolkata Office (India branch Office) **BIOTRONIK** Medical Devices India Pvt. Ltd. located at 1st Floor, 47A Lake Avenue, Kolkata-26, India.

The complainant has filed the extract from the ministry of corporate affairs as **annexure-D**.

15. The complainant has stated that it has adopted and commenced the use of trademark '**Biotronik**' in the year 1963 and has been using it continuously and extensively, not only as trademark but also as its corporate name. The trademark '**Biotronik**' has been associated with the complainant ever since its inception and is the source identifier for all the innovative products created by the complainant. The corporate name '**Biotronik**' is a well known trademark through out the world and is exclusively identified and recognized by the public as relating to the goods and services emanating from the complainant and no one else.
16. The complainant has stated that it also applied in India for the registration of '**Biotronik**'. The Trademark Application No. 1574382 was filed on 29th June 2007 and is pending before the trademark registry. The complainant also has registered its trademark '**Biotronik**' in various other jurisdictions. The complainant has submitted copies of registration certificates in few jurisdictions as **annexure- A**.
17. The complainant has stated that the trademark '**Biotronik**' has become a distinctive and famous trademark throughout the world.

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18. The complainant has stated that it has huge internet presence and numerous websites that provide information on their business activities, products and services and are accessed by shareholders, customers and other Internet users. The information regarding the complainant's business and operations can be found on its websites '**Biotronik.com**'. The complainant has stated that it owns over thirty eight domain names several of which contain the trademark '**Biotronik**'.
19. The complainant has submitted that the respondent has registered the domain name "**biotronik.co.in**" illegally and without authority. The complainant has further submitted that '**Biotronik**' is the exclusive property of complainant. The respondent has registered the domain name "**biotronik.co.in**" in complete bad faith primarily for the purpose of selling, renting or otherwise transferring the said name or has done so as to harass the complainant into purchasing the same from respondent.
20. The complainant has further submitted that the respondent's Domain name "**biotronik.co.in**" is confusingly similar to complainant's highly successful internet sites '**Biotronik.com**'.
21. The complainant has stated in his complaint that the respondent has registered the domain name which respondent has no legitimate right or interests.
22. The complainant has relied on INDRP cases in its support. The complainant has relied on HSBC Holdings pic -vs- Hooman Esmail Zadeh, M-Commerce Ag INDRP/032; Nike Inc vs B.B de Boer, Case No. D2000-1397(WIPO Dec 21, 2000); Victoria's Secret et. al. vs Atchinson Investments LTD. FA 096496 (Nat. Arb. Forum Feb 27, 2001).
23. The complainant has stated in his complaint that there is no relationship between complainant and respondent.

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24. The complainant as such has prayed for an award in the above matter for transfer of the domain name "**biotronik.co.in**" in favour of the complainant.
25. I have perused the records and have gone through the contents of the complaint. Since respondent has not filed any reply hence the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.
25. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward inspite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has nor provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.
26. It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of word 'net' in one of them would not make them dissimilar. It is held in above case that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different

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business or field, or sphere, can still be confusingly similar or identical.

27. Thus the conclusion is that the domain name "**biotronik.co.in**" is identical and confusingly similar to the trademark of complainant "**BIOTRONIK**" and the complainant has established that he has right in the trademark and further the respondent has got registered his domain name "**biotronik.co.in**" in bad faith.

RELIEF:

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "**biotronik.co.in**" to him, as it has established its bonafide rights in trademark in facts and circumstances and as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

Delhi

Date: 21-12-2012.

Sanjay Kumar Singh

(Sanjay Kumar Singh)

Arbitrator