

हरियाणा HARYANA

L 609738

RANJAN NARULA

ARBITRATOR

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

In the matter of:

Perfetti Van Melle SpA

Via XXV Aprile 7
20020 Lainate (MI)
Italy

.....Complainant

Deborah R. Heacock

1256 Horizon Circle
Seattle 98119
Washington
United States of America

..... Respondent

Disputed Domain Name: www.chupachups.co.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Perfetti Van Melle SpA Via XXV Aprile 7 20020 Lainate (MI) Italy. The Complainant is represented by its authorized representatives Ms. Sudarshana Sen-Mitra, D.P Ahuja & Co., 14/2, Palm Avenue, Kolkata - 700 019 who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Deborah R. Heacock 1256 Horizon Circle, Seattle 98119 Washington, United States of America 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.chupachups.co.in. The Registrar is Dynadot LLC (R117-AFIN).

The Registrant is Deborah R. Heacock 1256, Horizon Circle, Seattle 98119 Washington, United States of America.

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 April 02, 2014 and the notice was issued to the Respondent on April 07, 2014 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 April 21, 2014 the Arbitrator granted further opportunity to the Respondent to submit its response on or before May 01, 2014. 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 Complainant is one of the largest confectionery companies in the world with manufacturing units in Italy, Bangladesh, Brazil, China, Indonesia, Turkey, Vietnam, Holland, U.S.A, Mexico, Russian Federation, Sri Lanka, Spain and India. The Complainant's Group has a large number of Sales and distribution offices throughout the world.
- b) Ambrogio and Egidio Perfetti, two Italian brothers, started a confectionery business under the name of Dolcificio Lombardo in Italy in 1946, which name was later changed to Perfetti SpA. In March 2001, Perfetti SpA, acquired Van Melle B.V. and formed the Perfetti Van Melle Group.
- c) Chupa Chups is the trademark and brand name of Complainant's globally popular lollipop range.
- d) Complainant acquired the Spanish confectionery company Chupa Chups SAU, Complainant's predecessor-in-title with respect to the trademark CHUPA CHUPS, in July 2006. The parent company of Chupa Chups SAU was founded by Mr. Enrique Bernat Fontlladosa in 1958.
- e) In India, the Complainant's Group operates through its subsidiary, Perfetti Van Melle India Pvt. Ltd. which was incorporated on June 26, 1992, under the Companies Act, 1956.
- f) In India the Complainant owns several trademark registrations for CHUPA CHUPS bearing nos. 321466, 338043, 815249, 748836, 796549, 797992, 1713880 and also owns the domain names chupachups.in and chupachups.com.
- g) Further, the Complainant has incurred considerable expense towards promotion of its CHUPA CHUPS mark, all over the world, through various media. Due to such long, extensive and illustrious global use, Complainant's trademark CHUPA CHUPS has acquired tremendous reputation throughout the world, and consumers and the trade worldwide



associate the expression CHUPA CHUPS with high-quality products originating only from Complainant.

- h) As per whois records, the disputed domain name chupachups.co.in was created on July 19, 2013 and registered in the name of one Deborah R. Heacock.
- i) The Complainant wrote to the Respondent on December 12, 2013, advising her of Complainant's trademark right and its infringement, and requesting transfer of domain name to the Complainant. In reply, Respondent demanded a payment of US dollars 8000 in exchange for the transfer of the domain name. Further, on the date of filing this complaint the whois record of the disputed domain carried the message chupachups.co.in is for sale. The owner of the domain has increased her price to US dollar 8625 which is listed for sale. This clearly shows that the Respondent is a prolific cyber-squatter, she registers or acquires a domain name primarily for the purpose of selling, renting or otherwise transferring the domain name.
- j) The Complainant submits that the disputed domain name chupachups.co.in is identical to Complainant's registered and well-known trademark CHUPA CHUPS. The disputed domain name entirely comprised of Complainant's trademark CHUPA CHUPS with the ccTLD .co.in as extension.
- k) The webside address <http://www.chupachups.co.in> directs internet users to a parking page which displays the message, "Buy this domain.... The assorted links on this parking page change, depending on the interests and visitors the website generates, and often include links relating to offer and sale of lollipops, which the core and primary product of Complainant under its CHUPA CHUPS trademark.
- l) An internet user would likely mistakenly believe that a website accessible by the URL <http://www.chupachups.co.in> is managed or endorsed by Complainant, or enjoys the benefit of Complainant's news and information resources. Somebody looking for Complainant's India-specific offers, would be mislead by the address <http://www.chupachups.co.in>.
- m) The trademark CHUPA CHUPS is a coined term and has no meaning other than to identify Complainant's products. Respondent has no justification to adopt the identical expression and clearly has not independently arrived at its use of CHUPA CHUPS in its domain name.
- n) The Complainant submits that the Respondent's name is Deborah R. Heacock. There is no indication that Respondent is commonly known by a name or carrying on business under a name corresponding to the disputed domain name.



- o) Complainant has defended its well-known trademark all over the world; Respondent, on the other hand does not appear to have registered or applied for registration of CHUPA CHUPS as a trademark in any jurisdiction.
- p) Complainant submits that the Respondent is very well aware of the CHUPA CHUPS brand name and no doubt also familiar with the highly popular range of CHUPA CHUPS lollipops of Complainant which are extensively advertised in Respondent's country, besides several others.
- q) Respondent currently owns over 400 domain names. Respondent has previously registered at least six domain names which were the subject of domain dispute cases filed against Respondent before WIPO Arbitration and Mediation Centre (WIPO) and National Arbitration Forum (NAF). In all six cases, the disputed domain names were directed to be transferred to the respective Complainants.
- r) The disputed domain name is not being used for any bona fide business or commercial purpose. By registering and maintaining passive holding on the disputed domain name, Respondent has attempted to attract, for commercial gain, internet users to her online location/parking page by creating a likelihood of confusion with the Complainant's mark.
- s) Even when Internet users realize that the Respondent's web page is not connected with the owner of the mark, the Respondent is still liable to profit from their initial confusion, since they may still be tempted to click on the sponsored links.
- t) CHUPA CHUPS as a brand name has a strong recall value among consumers around the world. It has been held that bad faith is found if it is unlikely that the registrant would have selected the domain name without knowing the reputation of the well-known trademark in question.

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 mark 'CHUPA CHUPS' leads to the conclusion that the Complainant has superior and prior rights in the mark CHUPA CHUPS. Thus it can be said a) the web users associate the word 'CHUPA CHUPS' 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.chupachups.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 policies which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant. In addition, the Respondent by providing incomplete address at the time of registration, which is evidence from non-delivery of courier containing the Complaint (as per the report provided by NIXI dated April 21, 2014 from Blue Dart Express), violated clause 3 (a) of .IN Domain Dispute Resolution policy.

- (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 'CHUPA CHUPS'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'CHUPA CHUPS' trademark in its entirety. The mark is being used by the Complainant to identify its products. 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 'chupachups.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 domain name has been allegedly offered for sale which amply proves the Respondent has no legitimate interests in the domain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to explain its adoption or 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 Respondent has simply parked its domain for sale.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'www.chupachups.co.in'

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

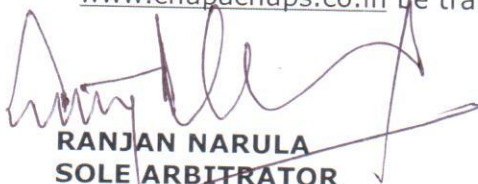
It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the

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. Further offering the domain for sale in excess of reasonable cost incurred in registering and maintaining the domain name shows bad faith.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'CHUPA CHUPS' 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.chupachups.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.chupachups.co.in be transferred to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

08 May 2014