



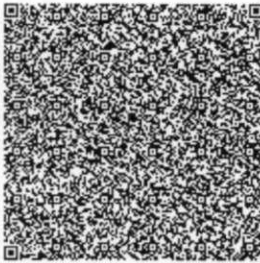
सत्यमेव जयते

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Certificate No.	: IN-DL17503851111874L
Certificate Issued Date	: 23-May-2013 10:29 AM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SHCIL34270410838603L
Purchased by	: A K SINGH ADVOCATE
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: A K SINGH ADVOCATE
Second Party	: NA
Stamp Duty Paid By	: A K SINGH ADVOCATE
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

Blogmusik SAS
12 rue d' Athe'nes
75009 Paris, France

(Complainant)

v.

Ye LI
Tianmushan Lu, 2800 Hao DS
Hangzhou-320000
Zhejiang, China

(Respondent)

The Parties

The Complainant in this proceeding is Blogmusik SAS, a French company situated 12 rue d' Athènes 75009 Paris, France.

The Respondent in this proceeding is Ye Li, having his office at Tianmushan Lu, 2800 Hao DS, Hangzhou- 320000, Zhejiang, China

The Domain Name & Registrant

The disputed domain name www.deezer.co.in is registered with Directi Web Services Pvt. Ltd. The Registrant is Ye Li of China.

Procedural History

The arbitrator was appointed by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.deezer.co.in.

.IN Registry had supplied the copy of the Complaint and Annexures to the Arbitrator.

On 17.05.2013, the arbitrator sent an email to the parties informing them about his appointment as an Arbitrator.

Vide the abovementioned mail the arbitrator requested the Complainant to supply the copy of the complaint with annexure to the Respondent and in case it has already been served, then to provide the details of service record to the arbitrator.

On 17.05.2013, the Complainant sent a mail to know as to how it should serve upon the Respondent a copy of the complaint.

The arbitrator replied to the abovementioned mail of the Complainant on 24.05.2013 and directed the Complainant to serve a copy of the Complaint upon the Respondent by registered mail as well as e-mail and to provide a copy of the proof of the service.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent, via e-mail on 24.05.2013 and by Blue Dart on 10.05.13, with the instructions to file his say latest within 15 days of the receipt of the e-mail or the copy of the complaint, whichever was later.



On 24.05.2013, the arbitrator received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Respondent via e-mail. According to this mail, copy of the complaint was duly sent to the email address of the Respondent.

NIXI, on 28.05.2013, informed the arbitrator about the failure of delivery of the hard copy of the complaint by NIXI due to incorrect address of the Respondent provided in the .IN Registry.

Thereafter the Complainant further on 03.06.2013 informed the Arbitrator about the failure of delivery of the hardcopy of the complaint to Respondent by DHL due incorrect address.

The Arbitrator, on 08.06.2013, replied to the abovementioned mail. In this mail the Arbitrator noted that since the copy of the complaint sent to the Respondent by email did not bounce back, the service to the Respondent is considered to be completed. Since no reply was received from the Respondent within 15 days, the Arbitrator granted, the Respondent, further time of 7 days, in the interest of justice, to file its reply.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly, he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted on the basis of documents on record.

The Arbitrator feels that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present award is passed.

That the arbitrator has perused the record and annexures / document.

Factual Background

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

In the present matter, the Complainant Blogmusik SAS is a registered French company and the Respondent, in this matter, is Ye Li.



The Complainant company, owner of the website www.deezer.com under which it has been offering its service, is trading internationally under the name 'Deezer', offering an international online music on demand service, since 2007 and became the leader of the market internationally and developed its renown presence on the internet and the music industry. The website is the main distribution channel of its service. The Complainant as a result of launching its services in more than 130 countries at once, decided to register several new domain names including the Disputed Domain Name. However, on February 6th 2013, Complainant discovered the fact that the Respondent has infringed his rights in the term 'Deezer' by registering the Disputed Domain Name without his authorization.

The Complainant had issued a cease and desist, dated February 11th 2013 sent through post and email, for transfer of disputed domain name but no response was received, by either traditional post or email. Subsequently to the aforementioned events, the Complainant decided to file a complaint before the arbitrator duly appointed by the .IN registry to legally enforce its right in the disputed domain name. According to .IN Domain Name Dispute Resolution Policy, Paragraph 4, the Complainant filed the present complaint.

Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical to the trademark DEEZER of the Complainant.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent was registered and is using his domain name in bad faith.

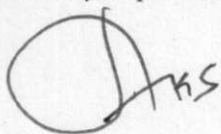
(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

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"*.



As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded *ex-parte* and the hence conducted in his absence.

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 Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

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

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.

The Complainant has stated in its complaint that domain name of Respondent www.deezer.co.in is confusingly similar and identical to its name/mark DEEZER. It has further stated that the Respondent has applied for domain name that is identical with the Complainant's trademark DEEZER. The Complainant has also stated that the Respondent has registered a domain name without making any changes, whatsoever, to the trademark of the Complainant.

The Complainant has contended that it has been using the mark DEEZER since 2007 for the worldwide distribution of the Deezer services available at the website www.deezer.com. The

term DEEZER was coined by the Complainant itself and it has been an endeavor of the Complainant to protect its mark.

The Complainant has alleged that, in order to protect its mark, it has registered the mark DEEZER in various jurisdictions around the globe viz. the International Trademark n° 1024994, the Community Trademark n°008650079, the United-States Trademark n°3803079 and n°383078, and several French trademarks among which the trademark n°073520218. The Complainant is not only the owner and editor of the website www.deezer.com but it is also the main distribution channel for Deezer services.

The Complainant has contended that it is also the owner of the domain names corresponding to its mark DEEZER and it has registered various domain names including deezer.com, deezer.fr, deezer.es, deezer.be, deezer.ch, deezer.dk, deezer.de, deezer.lu, deezer.hu, deezer.me, deezer.pl, deezer.pt, deezer.com.bo, deezer.bo, deezer.com.my, deezer.tw.

The Complainant also states that the name DEEZER has become famous throughout the world among internet users who utilize its services and associate the mark Deezer with the Complainant's services. In addition, the Complainant has benefitted from the media coverage after it expanded its services across the world. It has further been submitted by the Complainant that the mere addition of ".in" suffix does not influence the consideration of identity between the trademark and the disputed domain name.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

ii) The Registrant has no rights or legitimate interests in the 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 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.*

The Complainant has submitted that the Respondent has never shown any preparation to register the disputed domain name either in India or in his country. The Complainant on the other hand has taken various steps and made adequate preparation for the registration and the protection of the mark DEEZER. It has further submitted that to the best of its knowledge the Respondent does not own any legal rights for the mark DEEZER that would justify the registration of the domain name in dispute.

The Complainant has alleged that the Respondent, unlike the Complainant who has been using the mark DEEZER since 2007 and has earned quite a lot media renown for the mark DEEZER, has not been known in its country or worldwide by the name DEEZER. It has also been alleged that the disputed domain name, for the past few months has been directing to a parking page and hence the Respondent cannot say that it has a legitimate interest in the disputed domain name.

The Complainant further contends that there has been no evidence that the Respondent has been preparing for using the mark DEEZER or the disputed domain name for any *bonafide* offering of goods and services. Moreover, the Respondent has never in the past used the disputed domain name for any *bonafide* offering of goods or services. Further, the name DEEZER does not have any meaning and was coined by the Complainant so the registration of the disputed domain name by the Respondent cannot be justified as a *bonafide* act and can be only seen as an attempt by the Respondent to capitalize on the popularity of the Complainant's mark DEEZER.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.



The registration of a famous mark that has even garnered reputé in media industry worldwide, and its non-use for any *bonafide* offering of goods or services only further proves the Complainant's contention.

Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii)

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

The Complainant in its complaint contends that the Respondent has never been authorized by the Complainant to use the registered trademark DEEZER, it keeps on using the said trademark without any legitimate right and/or interest.

The sole objective of the Respondent is to earn profit from the windfall of the Complainant's name and to sell it at an exorbitant price later. The disputed domain name was also registered with the objective of directing the network traffic to the Respondent's website and to benefit from the value and renown that is attached to the Complainant's mark and therefore, there is a risk being created by the act of the Respondent.

The Complainant also contends that the disputed domain name always directs the users to a parking page where various commercial links are available and as such it is earning revenue from the mark to which it neither has a legitimate right nor has been authorized by the Complainant.

Moreover, there is a risk being created by the act of the Respondent, that if the Respondent sells the disputed domain name to the Competitor of the Complainant, it would be detrimental to the latter's interest.

Also directing the internet users to a parking page it further shows its bad faith and the same may lead the users to believe that the Respondent is connected with the Complainant.

Another contention made by the Complainant is that a *verbatim* reproduction of the Complainant's trademark while registering the disputed domain name, creates a likelihood of confusion in the mind of the public that the Complainant has endorsed the domain name in dispute.

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It is pertinent to note that while using the disputed domain name the Respondent has listed various links of websites providing online music service and these links are providing illegal music that the Complainant has been fighting against, which further aggravates the violation of the trademark rights of the Complainant by attempting to associate the Complainant with unlawful online music services.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

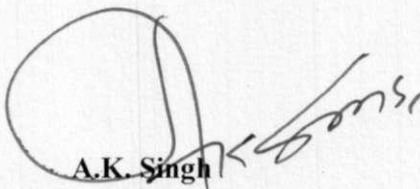
The Arbitrator is of the view that the Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

Thus, the bad faith of the Respondent is clearly evident in registering the disputed domain name.

DECISION

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

The Respondent has got registered and used the disputed domain name in bad faith. .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.deezer.co.in> to the Complainant. The Award is accordingly passed on this 23rd day of July 2013.



Sole Arbitrator

Date: 23rd July, 2013.