INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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सत्यमेव जयते

Certificate No.	:	**IN-DL80574555691704L**
Certificate Issued Date	:	18-Feb-2013 10:00 PM
Account Reference	:	IMPACC (IV)/ dl864903/ DELHI/ DL-DLH
Unique Doc. Reference	:	SUBIN-DLDL86490360795038126877L
Purchased by	:	V SHRIVASTAV
Description of Document	:	Article 12 Award
Property Description	:	NA
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	V SHRIVASTAV
Second Party	:	NA
Stamp Duty Paid By	:	V SHRIVASTAV
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

Please write or type below this line

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR
IN
ARBITRATION PROCEEDINGS OF DOMAIN NAME
"dyneema.in"
between

DSM IP ASSETS B.V. ...COMPLAINANT

AND

YUNLI WANG ...RESPONDENTS

AWARD

1

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 02/02/2013. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier.

2. That compliance of the order was done by the Complainants/ NIXI vide their letter dated 05/02/2013 sent a copy of a courier receipt dated 31/01/2013 of M/s DHL waybill No. 3880973331. On tracking it showed "incomplete address & shipment on hold" by the courier company. Hence, this Tribunal vide order dated 06/02/2013 directed the Respondent to send their correct and complete postal address within 3 days by email.

3. That this Tribunal noticed that the Respondents have not sent any email / communication notifying their new address hence on 12/02/2013 vide its order the Tribunal reserved the order.

4. In view of this, this Tribunal holds that the Respondents are fully aware of the present proceedings and are deliberately not joining the same.

5. In view of these peculiar facts and circumstances of the present matter and also in view of INDRP this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:

A. Complainant i.e. DSM IP Assets B.V. is a Dutch limited liability company of Het Overloon1, Heerlen NL 6411 TE, The Netherlands is a leading Life Sciences and Materials Sciences company which, as claimed, is actively engaged in

providing solutions related to health, nutrition and materials including delivering innovative solutions that nourish, protect and improve performance in global markets such as food and dietary supplements, personal care, animal feed, pharmaceuticals, medical devices, automotive, paints, electrical and electronics, life protection, alternative energy and bio-based materials. Reliance is placed on **Annexure - A**.

B. It is claimed that the Complainant's history traces back to the year 1902, when the Dutch government formed the coal mining 'De Nederlandse Staatsmijnen' (Dutch State Mines), later renamed as DSM and in the 1950s, it started focusing on providing industrial chemicals and raw materials for synthetic fibers and yarns. It is claimed that in the year 1989, the Complainant underwent major reorganization and was privatized and presently, Complainant's activities can be grouped into four divisions *viz.* nutrition (DSM Nutritional Products & DSM Food Specialties); pharmaceutical (DSM

Pharmaceutical Products & DSM Sinochem Pharmaceuticals); performance material (DSM Engineering Plastics, DSM DYNEEMA & DSM Resins) and polymer intermediates (DSM Fiber intermediates).

C. It is claimed that the Complainant's health solutions cover advanced biomedical devices that help people live actively for long. It is further claimed that the Complainant's solutions for nutrition span from vitamins and carotenoids to taste enhancers, texture enhancer and other food processing ingredients. It is stated that the Complainant's provide a number of increasingly green thermoplastics and resins for use in vehicles, paints, sports equipment, fiber optic coatings and claim that they are one of the world's leading supplier of engineering thermoplastic and world's largest producer of glass fiber sizings and binders.

D. The Complainant claim presence in 200 locations worldwide with employee strength of over 22000 and in India, the Complainant is present through its subsidiaries viz. DSM

India Private Limited and DSM Nutritional Products Private Limited since the years 1998 and 2003, respectively.

E. It is claimed that in the year 1985, Complainant developed the world's strongest fiber™, DYNEEMA® which is an ultra high molecular weight polyethylene fiber that offers maximum strength combined with minimum weight and is manufactured and sold in a variety of forms including fiber, tape and uni-disectional sheets, for a wide and ever increasing range of application such as medical sutures, commercial fishing and aqua culture nets, ropes, slings, high performance fabrics such as cut-resistant gloves and apparel and vehicle and personal ballistic protection. Besides the Complainant' corporate social responsibility includes 'SIGHT AND LIFE' which is a humanitarian initiative that contributes towards improved nutrition, poverty alleviation, equity and sustainable development. It is claimed that SIGHT AND LIFE was founded by Complainant in the year 1986 as a philanthropic activity for which the Complainant has won several awards/recognition such as the Helen Keller International

Award which in the year 1991 in recognition of its work toward the eradication of vitamin A deficiency. Further in the year 2003, International Vitamin A Consultive Group Award was presented to Complainant for its contributions for the past 15 years to Global Vitamin A Deficiency Research and Control. Thus owing to the excellent quality products of Complainant, the same command tremendous popularity and have been sold extensively world over including in India and has gained significant market share due to its strong sales success. The complainants rely upon the following table to buttress their statement which is evident from the revenues generated by Complainant through sale of its products. Yearwise sales revenue of Complainant for the past four years are reproduced hereinbelow:

Year	**Sales Revenue (in million Euro)**
2008	9079
2009	6725
2010	8176

2011	9048

F. It is stated that the Complainant's with a view to protect the trade mark DYNEEMA® has obtained registrations/filed applications for the same in numerous countries of the world including India. Reliance is placed on **Annexure –B** and **Annexure – C**, read with **Annexure –D, Annexure – E** and **Annexure –F**.

G. It is claimed that the Complainant/its affiliates have registered several top level domain names comprising the trade mark DYNEEMA® such as 'dyneema.com', 'dsm-dyneema.com', 'dyneema-purity.com', 'dyneema360.com', 'dyneemadiamond.com', 'dyneemadiamondtechnology.com', 'dyneemaexperiences.com', 'dyneemafiber.com', 'dyneemamatters.com', 'dyneemaoffshore.com', 'dyneemapurity.com', 'gloveswithdyneema.com', 'sailingwithdyneema.com', 'dyneema.org', 'dyneema360.net'

etc. Complainant has also obtained numerous country code top-level domain names (ccTLD) such as 'dyneema.nl', 'dyneema.cn', 'dyneema.us', 'dyneema-seil.de' etc. Reliance is placed on **Annexure – G**.

H. The complainants claim that the trade mark DYNEEMA® represents important statutory as well as proprietary rights of Complainant and the said mark is representative of Complainant, its products, brand identity, business reputation and public identification throughout the globe including India for which they have invested years of time, capital, efforts and resources and attained immense goodwill and reputation. Further the Complainant's rights in the trade mark DYNEEMA® has been recognized by dispute resolution service provider in various decisions. Reliance is placed on **Annexure – H (colly.)**

I. The Complainants state that they were desirous of extending its rights on the Internet by registering the domain name

'dyneema.in' in India. However, when Complainant sought to register the said domain name sometime in January 2012, it was shocked to learn that the same was already registered in the name of one Mr. Peter Chang of 8, Fordham Road, Lewes East, Sussex BN8 6FL Great Britain as per the WHOIS records. Reliance is placed on **Annexure - I**.

J. The complainants also learnt that the respondents have parked the domain name in question for sale on a website 'www.sedo.com'. As per complainants 'Sedo', is a well-known site for trading in domains. Reliance is placed on **Annexure – J**. The Counsel addressed a 'cease and desist' notice to the erstwhile Registrant on January 25, 2012. However, no response was received from the erstwhile Registrant to the 'cease and desist' notice. Later on the complainants found that in the WHOIS records and learnt that the same has been updated and reflects one Riguo Ding of No. 189, Fei Long Village Wang Jia Street, Jiaojiang District, Taizhou, Zhejiang 318014, China as the Registrant of the

said domain. Reliance is placed on **Annexure -K**. The complainants again sent a 'cease and desist' notice to Riguo Ding on April 16, 2012. Reliance is placed on **Annexure - L**. However, no response was received. Later on the WHOIS records were reviewed once again and it was found to have been amended to reflect one YunLi Wang of Jiaojiang Xiachen Shabei, Taizhou, Zhejiang – 318014, CN as the subsequent Registrant. Reliance is placed on **Annexure – M**. Further the website is still parked at 'sedo' for sale and the website www.dyneema.in provides links to Complainant's website 'dyneema.com'.

K. It is claimed that the impugned domain name is identical to Complainant's trade mark/domain names comprising DYNEEMA® and has been registered with a view to reap illegal profits.

L. The complainants allege as under:

" (i) Registrant's impugned domain name 'dyneema.in' is identical to Complainant's registered and famous trade

mark DYNEEMA®. Therefore, registration of the impugned domain name is violative of the statutory rights vesting in Complainant's registered trade mark and is tantamount to infringement.

(ii) Registrant's impugned domain name 'dyneema.in' comprises Complainant's trade mark DYNEEMA®, which is proprietary to it. It is submitted that Registrant has registered the impugned domain name 'dyneema.in' with an intention to trade upon the immense goodwill and reputation enjoyed by Complainant in its well-known trade mark/domain name DYNEEMA® and thereby gain undue mileage out of it. This is a clear case of passing off which is violative of the rights enjoyed by Complainant in its famous trade mark.

(iii) Complainant states that the impugned domain name 'dyneema.in' is identical to, *inter alia*, the following domain names registered in the name of Complainant/its affiliates:

S. No.	Domain names	Registrant's domain name
1.	dyneema.com	dyneema.in
2.	dyneema.org	
3.	dyneema.fr	
4.	dyneema.cn	
5.	dyneema.asia	
6.	dyneema.eu	
7.	dyneema.com.ru	
8.	dyneema.cz	
9.	dyneema.nl	
10.	dyneema.pl	
11.	dyneema.uk	
12.	dyneema.de	

(iv) It is further submitted that the impugned domain name was registered on November 24, 2010 in the name of the erstwhile Registrant whereas Complainant's domain 'dyneema.nl' was created on February 21, 2000. Further, the earliest registration for the trade mark DYNEEMA® was obtained on February 21, 1985 in Benelux by Complainant.

In India, the trade mark DYNEEMA® is registered in the name of Complainant in several Classes with the earliest registration dating back to April 9, 1985. Thus, Complainant's adoption of the trade mark DYNEEMA® is much prior to Registrant's registration of the impugned domain name 'dyneema.in'. In view of the same, it is crystal clear that Complainant has prior rights in the trade mark DYNEEMA® *vis-à-vis* Registrant."

M. It is alleged that the Registrant has no legitimate right as he is not offering any goods/services under the domain name 'dyneema.in' thus has registered this domain name in bad faith.

N. It is also alleged that the conduct of Registrant shows its mala fide to attract internet users to its website by creating a likelihood of confusion with Complainant/its affiliates as to the source, sponsorship, affiliation or endorsement of Registrant's website as internet users desirous of accessing

Complainant/its affiliates' website/s may get attracted to the impugned website, thereby creating confusion.

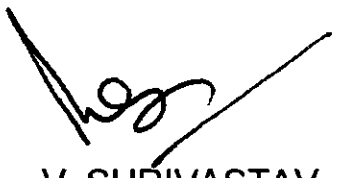
ORDER

7. This Tribunal has considered the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his correct and complete postal address and take further steps in the present proceedings chose not to give any and hence the allegations of the complainants remain un rebutted/ admitted.

8. In view of the undisputed evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <dyneema.in> hence this Tribunal directs the Registry to transfer the domain name <dyneema.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. No order as to the cost. The original copy of the Award is being sent

along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records .

Signed this 18th day of February 2013.



NEW DELHI
18/02/2013

V. SHRIVASTAV
ARBITRATOR