



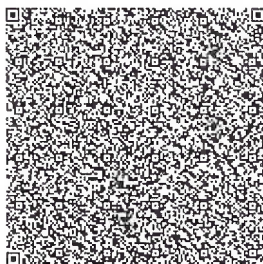
सत्यमेव जयते

INDIA NON JUDICIAL

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e-Stamp

Certificate No.	: IN-DL46843088672936P
Certificate Issued Date	: 10-Feb-2017 02:14 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130394132370201909P
Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
Second Party	: Not Applicable
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:
EH EUROPE GMBH
BAARERSTRASSE 18
6300 ZUG-SWITZERLAND

...Complainant

Vs.

SABARI V
ENERSYS, REGIA TOWER
CHENNAI- 600004
TAMIL NADU, INDIA

... Respondent

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

A. THE PARTIES:

The Complainant in this administrative proceeding is EH EUROPE GMBH, a company incorporated under the Laws of the Switzerland, having its office at Baarerstrasse 18, 6300 Zug-Switzerland, Phone: +41 44 2157410, Email: lisa.hodgen@enersys.com. The Complainant is a subsidiary of Enersys Group, the world's largest manufacturer and distributor of industrial batteries, battery chargers, power equipment, battery accessories and outdoor equipment enclosure solutions.

The Complainant has authorized Kochhar & Co., 17th Floor, Nariman Building, Nariman Point, Mumbai- 400021, Maharashtra, India as its authorized representative.

The Respondent in this proceeding is Enersys, Regia Tower, Chennai- 600004, Tamil Nadu, India, Phone: +91.9940036997, Email: sabari7g@yahoo.com.

B. THE DOMAIN NAME, REGISTRAR AND REGISTRANT:

The disputed domain name is **ENERSYS.CO.IN** and it is registered with GODADDY.COM as per the WHOIS database.

C. PROCEDURAL HISTORY:

The Arbitrator was appointed by the .IN Registry to adjudicate upon the complaint of the Complainant regarding the dispute over the domain name enersys.co.in.

.IN Registry has supplied the copy of the complaint and the annexures to the Arbitrator.

The Complainant has filed various documents as annexures in support of their contentions. A copy of the complaint along with the annexures has been served upon the Respondent via email and courier.

No reply has been filed by the Respondent to the complaint, despite of the fact that several opportunity has been given to it. The Arbitrator has perused the record and annexures/ documents. Apropos of the material on record before the Arbitrator, this award is passed.


D. FACTUAL BACKGROUND:

The following important information is derived from the complaint and supporting evidence as submitted by the Complainant:

COMPLAINANT:

1. The Complainant is a company incorporated under the Laws of the Switzerland, having its office at Baarerstrasse 18, 6300 Zug-Switzerland. The Complainant is a subsidiary of Enersys Group, the world's largest manufacturer and distributor of industrial batteries, battery chargers, power equipment, battery accessories and outdoor equipment enclosure solutions. The Enersys group is headquartered in Reading, Pennsylvania, USA and has reinforced its presence with regional offices in United States of America, South America, Europe, Asia, Australia, Middle East and Africa.
2. The Complainant further submits :-
 - i. that in and around 2000, the Enersys Group incorporated a company for the manufacture of industrial batteries and charges for material handling equipment, of wide variety of battery accessories and of electronic power equipment in Switzerland. The Complainant and Enersys Group since its inception have been openly, continuously and extensively using the mark "ENERSYS" as part of trade name, corporate name, business name, trading style, trademarks worldwide.
 - ii. that it has applied for registration of the trademark "ENERSYS" and various other trademarks in over 120 countries- including India, Spain, Australia, United States of America, United Kingdom, Germany, Mexico, France, Middle East, to name a few. The complainant has also annexed as Annexure-A, the photocopies of registration certificates along with the extract of online status available on www.ipindia.nic.in.
 - iii. that in India, the Complainant entered into a Joint Venture with Energy Leader Batteries India Pvt. Ltd. to manufacture and sell products in India. In March, 2012, Enersys acquired 50.5 per cent stake in Energy Leader Batteries India Pvt. Ltd. and became the sole owner of the Indian entity and changed the name of the Indian entity to "Enersys Batteries India Private Limited". The products and services are offered in India under the trademark "ENERSYS" and various other trademarks and the products sold under the ENERSYS trademarks have garnered immense goodwill and reputation amongst the public in India.

- iv. that the Complainant also the owner of several domain names and websites which are accessible worldwide and are available for users globally including those in India. The Complainant submits that the said websites contain extensive information about the Complainant and its products marketed and sold under the trademark “**ENERSYS**” worldwide. The first domain name of complainant i.e. enersys.com was registered on 07.09.1997.
- v. that the ENERSYS Group has realised a total global retail sales in excess of USD 2.4 billion. It has won many accolades and certificates, and in 2010, the Complainant was awarded “*SILVER Recognition of Excellence Award*” by US Defense Logistics Agency and awarded the “*2016 Most Valuable Supplier*” in 2016.
- vi. that the Complainant’s products under the trademark “**ENERSYS**” have been widely promoted inter alia through print and audio-visual media including advertisements, articles, write-ups appearing in magazines, journals, trade events, newspaper articles, social media websites such as Facebook, Twitter, YouTube, etc. all of which enjoy a wide viewership, circulation and readership all over the world, including India. The Complainant also submits that some of the international magazines, Internet, wherein the Complainant’s products under the trademark “**ENERSYS**” have been advertised or have featured include OSPmag, Yumpu, Mission Critical, Eurobat, Battery power online, Bizjournals, Energy Storage, which are accessible to viewers, users and customers of the Complainant in India. It further submits that its products are also advertised at events and exhibitions such as IMHX which is United Kingdom’s premier meeting place for intralogistics companies, CeMAT ITFM, Prologistics, Cleanexpo, to name a few.
- vii. that as a result of high stringent and non-compromising standards of quality offered by the Complainant, its goods and services have become highly popular and have garnered immense goodwill and reputation amongst consumers across the globe including India. It submits that by virtue of the widespread use, advertisement, publicity, promotion and active marketing by the Complainant, the trademark “**ENERSYS**” and the combination trademarks have come to be associated exclusively with the Complainant alone and no one else.



- viii. it recently became aware of the domain name viz. www.enersys.co.in registered in the name of the Respondent, and upon search of the WHOIS domain name database, the Complainant noticed that the disputed domain name was registered in the name of the Respondent on January 29, 2010 with GoDaddy.com, LLC (R101-AFIN).

RESPONDENT

1. The Respondent in this proceeding is Enersys, Regia Tower, Chennai- 600004, Tamil Nadu, India, Phone: +91.9940036997, Email: sabari7g@yahoo.com.
2. The Respondent has neither filed its say/reply to the complaint of the Complainant within the stipulated time, nor communicated anything on the complaint till the date of this award.

E. PARTIES' CONTENTIONS:

COMPLAINANT

The Complainant contends as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondents has no rights, claims or legitimate interest in respect of the Disputed Domain Name; and
3. The Disputed Domain Name was registered and is being used in bad faith.

RESPONDENT

The Respondent has not filed any response/submissions to the Complaint despite being given an adequate notification and opportunities by the Arbitrator, and thus has not rebutted the contentions of the Complainant.



F. DISCUSSIONS AND FINDINGS:

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"*.

Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the INDRP Rules of Procedure.

As mentioned above, adequate opportunities have been provided to the Respondent to file a reply but no response has been received. Therefore, the Respondent has been proceeded against *ex-parte* and the arbitration proceedings have been conducted in the Respondent's 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 there under, and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence submitted before the Tribunal and inferences drawn from the Respondent's failure to reply.

Having perused the submissions and documentary evidence placed on record, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.:

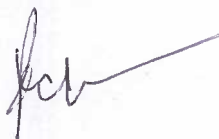
- i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii) the Respondent's domain name has been registered or is being used in bad faith.

G. BASIS OF FINDINGS:

- 1. The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights** (Policy, para 4 (i); Rules, paras 3 (b) (vi) (1)):

In support of its above contention, the complainant has submitted the following under this head. The Complainant submits:-

- i. that the disputed domain name www.enersys.co.in is identical and/or confusingly similar to the Complainant's prior registered, used and well-known trademark **"ENERSYS"** as it incorporates and reproduces the Complainant's trademark **"ENERSYS"** in its entirety and differs only in respect of the country code Top Level Domain (ccTLD) extension **".co.in"** which is insignificant.
- ii. that a mere glance at the disputed domain name gives rise to confusion as to the origin of the domain name and shows the malicious intention of the Respondent in registering the same, and that the Respondent has blatantly copied the Complainant's entire trademark without changing even a single letter which constitutes violation of the Complainant's rights in the trademark **"ENERSYS"**.
- iii. that the trademark **"ENERSYS"** is distinctive and unique trademark. The mere mention of the said trademark establishes an identity and connection with the Complainant alone and none else. The Complainant further submits that the members of the trade and public all over the world are acquainted with the Complainant's well known trademark **"ENERSYS"** and hence any use of an identical /confusingly similar mark/domain name by the Respondent will cause confusion amongst the internet users as to the origin or source of the domain name, and the internet users may believe that the Respondent's impugned website is associated/ affiliated/ connected to the Complainant or licensed/authorized by the Complainant. Under these circumstances, the Respondent's impugned domain name creates an impression of being operated by or associated with the Complainant.
- iv. that such subsequent registration by respondent on 29.01.2010 of the identical/ confusingly similar domain name amounts to violation of the Complainant's rights in the trademark **"ENERSYS"** and also amounts to violation of the INDRP Rules.



- v. that unauthorized use of the Complainant's well known trademark "ENERSYS" by the respondent as part of its Admin and Technical email id enersyschennai@yahoo.com" and in any form whatsoever amounts to infringement of the Complainant's statutory rights in the trademark "ENERSYS".
- vi. that given the immense goodwill enjoyed by the Complainant's trademark "ENERSYS" its use by any other person in respect of any goods or services or in any form whatsoever is bound to create confusion and/or deception among the members of trade and public as to origin of the domain name.

The complainant has also relied upon the various decisions of .IN Registry and WIPO to support its above mentioned contentions, the note of which have been taken by the Tribunal.

None of the submissions of the Complainant have been specifically rebutted by Respondent, as such they are deemed to be admitted by them. Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the well-known trademark of the Complainant.

It is therefore concluded that the disputed domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

2. The Registrant has no rights or legitimate interests in the respect of the domain name (Policy, para 4 (ii); Rules, para 3 (b) (vi) (2)):

According to paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show the Registrant's rights or legitimate interest in the domain name for the purpose of para 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.*

According to the complainant, it has never assigned, licensed or in any way authorised the Respondent to register or use its trademarks in any manner whatsoever.

The Complainant further submits that the Respondent has registered the domain name on January 29, 2010. By this time, the Complainant had already made use of the trademark "ENERSYS" and domain name and the said trademark had gathered considerable goodwill and reputation amongst customers across the world, and that also the said trademark is a part of the Complainant's corporate name. It is further submitted by the Complainant that it is obvious that the Respondent was aware of the Complainant's prior registered and used trademark and domain name "ENERSYS" and its adoption of an identical or confusingly similar domain name and/or business name is in bad faith.

The Complainant has also pointed that the Respondent has not uploaded any website on the disputed domain name <www.enersys.co.in>. The above fact shows that the Respondent's malicious intention in registering the disputed domain name. It seems that the Respondent has registered the disputed domain name with the intention to illegally benefit from the goodwill and reputation of the Complainant's trademarks and websites and also with the intention to divert traffic or to block all attempts of the Complainant from registering the domain name in question for furthering its business interests, thereby creating a dent in the Complainant's business and reputation.

The Complainant further submits that the Respondent is neither commonly/ popularly known in the public nor has applied for any registration of the mark "ENERSYS" or any similar mark in India or registered his business under the said name.

The complainant has also relied upon the various decisions of .IN Registry and WIPO to support its above mentioned contentions, the note of which have been taken by the Tribunal.

The above facts establish that the Respondent has no right or legitimate interest in the domain name www.enersys.co.in as the Respondent is not making a *bona fide* offering of goods or services and is not commonly known by the disputed domain name, and is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii).

In the light of the above facts, it is therefore concluded that the Respondent has no right or legitimate interest in respect of the disputed domain name.

3. The Registrant domain name has been registered or is being used in bad faith (Policy, para 4 (iii), 6; Rules, paras 3 (b) (vi) (3)):

The Complainant submits that the domain name was registered by the Respondent in bad faith for the following reasons:

- i. The Complainant states that the Respondent was aware of the Complainant's registrations as the same are matters of the public record and due to the extensive use and wide publicity of Complainant's registered marks across the world including India.
- ii. The Complainant submits that the Respondent has not uploaded any website on the disputed domain name.
- iii. The Complainant submits that the Respondent has not used the disputed domain name in respect of any goods and services or has made any legitimate or non commercial use. The Complainant alleges that this shows the Respondent's dishonesty and dishonest intention in registering the disputed domain name.
- iv. The Complainant also submits that the Respondent has registered the disputed domain name primarily for the purpose of selling the domain name to the Complainant or to a competitor of the Complainant or any third party for valuable consideration.
- v. The Complainant submits that it fears that the domain name could be used to mislead and divert internet users or to tarnish the trademarks and goodwill of the Complainant. The Respondent could transfer or sell the domain name to a competitor of the Complainant who could damage the goodwill or reputation of the Complainant by inserting material prejudicial to the Complainant.
- vi. The Complainant states that the Respondent's registration of the disputed domain name is in violation of the .IN registry which included the provisions in the .IN Dispute Resolution Policy (INDRP) for the domain name registration, maintenance and renewal.
- vii. The Complainant further states that the Respondent was under an obligation to conduct a trademark search, which would have clearly revealed the trademark

registrations in favour of the Complainant. Breach of the provision of the Policy therefore infringes the legal rights of the Complainant.

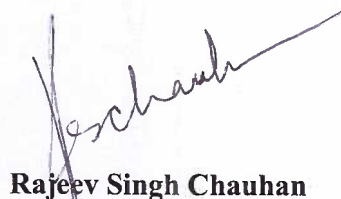
The complainant has also relied upon the various decisions of .IN Registry and WIPO to support its above mentioned contentions, the note of which have been taken by the Tribunal.

The Tribunal agrees with the Complainant submission that it is entitled to protection under the INDRP Policy and the use of the name by the Respondent as a domain name constitutes violation of the Complainant's rights. Further, on the basis of the Complainant submissions and the evidence provided in support of it, the Tribunal has come to the conclusion that the disputed domain name was registered in bad faith. The unrebutted facts and annexures give no reasons to doubt that the Respondent has registered and used the domain name in bad faith.

H. DECISION:

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

The Respondent has 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.enersys.co.in> to the Complainant. The Award is accordingly passed on this day of 14th February, 2017.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 14th February, 2017