

महाराष्ट्र MAHARASHTRA

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PM 974024



श्री. भरत सि. मयेकर

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

EH Europe GMBH

...Complainant

v/s

Ding Riguo

...Respondent

In the matter of Disputed Domain Name 'ENERSYS.IN'.

1 The Parties

The Complainant is EH Europe GMBH, Baarestrasse 18, 6300 Zug - Switzerland, represented by Kochhar & Co., India.

The Respondent is Ding Riguo, 8F, No. 1999 Shifu Road, Taizhou, Zhejiang, China. Post Code 318000.

2 Procedural History

2.1 A Complaint dated July 20, 2016 has been filed with the National Internet Exchange of India (hereinafter referred to as the 'Exchange'). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the 'INDRP') and the Rules framed thereunder.

2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

2.3 On August 1, 2016, the Arbitrator had emailed to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint on or before August 16, 2016. On August 17, 2016, the Arbitrator had emailed the final reminder to the Respondent with direction to file reply on or before August 21, 2016. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed ex-parte.

2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

From the Complaint and its annexures, the Arbitrator has found the following facts:

3.1 EH Europe GMBH, is a subsidiary of Enersys Group, the world's largest manufacturer and distributor of industrial battery chargers, power equipment, battery accessories and outdoor equipment enclosure solutions. The headquarter of the Enersys Group is in Reading, Pennsylvania, United States of America.

3.2 The Complainant adopted the trademark 'Enersys' in 1997 and using it since then continuously. The trademark 'Enersys' is an invented word. The Complainant's trademark 'Enersys' is a registered trademark in India and several other countries around the world.

3.3 The Complainant is the registrant of the domain name <Enersys.com> and other generic and country code top level domain names which, inter alia, includes <Enersys.us>, <Enersys.fr>, <Enersys.uk>, <Enersys.ca>, <Enersys.ch>, <Enersys-hawker.com>, <Enersys-energia.com>, <Enersys-fmp.com> and <Enersysinc.ca>.

3.4 The Complainant has expended a great amount of time, money and effort to promote and advertise the trademark 'Enersys' in offline, online (through its website www.Enersys.com) and social media. Over the years the Complainant has been the recipient of several awards.

3.5 The Disputed Domain Name <Enersys.in> was registered by Respondent on June 22, 2012.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical to its trademark 'Enersys', the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Disputed Domain Name has been registered and is being used in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant is using the trademark 'Enersys' since 1997 and holds worldwide trademark registration for the trademark 'Enersys'. The Complainant is also the registrant of various domain names which, inter alia, includes <Enersys.com>, <Enersys.us>, <Enersys.fr>, <Enersys.uk>, <Enersys.ca>, <Enersys.ch>, <Enersys-hawker.com>, <Enersys-energia.com>, <Enersys-fmp.com> and <Enersysinc.ca>. The Disputed Domain Name <Enersys.in> incorporated the Complainant's trademark 'Enersys' in its entirety

without any other word or letter. It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as '.com', '.us', '.in' etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The '.in' suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Therefore, the Arbitrator finds that the Disputed Domain Name <Energys.in> is identical to the Complainant's trademark 'Energys'.

5.4 **Rights or Legitimate Interests**

The Complainant asserts that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name nor the trademark 'Energys', in which the Complainant has sole and exclusive interest. Based on the evidence adduced by the Complainant, it is concluded that the Respondent chose the Disputed Domain Name to cause confusion as to the source, sponsorship, affiliation, or endorsement. The Respondent has not uploaded any website on the Disputed Domain Name and has parked the same for sale by featuring message "This premium domain is for sale!" on the Disputed Domain Name. Thus, the Respondent is not using, nor demonstrated any preparation to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. In line with the previous UDRP and INDRP decisions, the Arbitrator concludes that the Complainant has made out a *prima facie* case that of the Respondent has no right or legitimate interest in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent. The Respondent chosen not to challenge the Complainant's allegations. There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <Energys.in>.

5.5 **Registered and Used in Bad Faith**

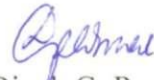
The Disputed Domain Name was registered by the Respondent on June 22, 2012 and incorporated the Complainant's trademark 'Energys', which is being continuously used by the Complainant since 1997. At the time of registration of the Disputed Domain Name, the Complainant's trademark 'Energys' was registered in various territories. The Respondent knew of the Complainant's rights in the trademark 'Energys' at the time of registration. The Respondent registered the Disputed Domain Name with intention to sale the same to the Complainant or to a competitor of the Complainant or any third party for valuable consideration. The Arbitrator found that the Respondent was apparently involved in at least



another three INDRP cases as respondent¹. Such circumstances indicate that the Respondent is a habitual cybersquatter and had registered the disputed domain names in order to prevent the owners of the trademark from reflecting their trademarks in a corresponding domain name and demonstrate that the Respondent is engaged in a pattern of such conduct. Such fact constitutes bad faith under paragraph 6 of the INDRP. Further, the Respondent did not put forward any justification for choosing and using the Complainant's trademark 'Energysys' in the Disputed Domain Name. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. Decision

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <Energysys.in> be transferred to the Complainant.



Dipak G. Parmar
Sole Arbitrator

Date: August 23, 2016

¹ E Remy-Martin v. Ntton Inc., Riguo Ding INDRP/186; Carl Karcher Enterprises v. Ding Riguo INDRP /419; and Google Inc. v. Ding Riguo INDRP /794.