

हरियाणा HARYANA

L 865353

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

In The Matter Between

FINMECCANICA SOCIETA PER AZIONI

Piazza Monte Grappa 4  
00195 Rome  
Italy

**Complainant**

**Versus.**

GAO GOU

Suite 1100 South Tower  
175 Bloor Street East  
Toronto M4W3RB  
Canada

**Respondent**

*Havir Narayansingh*

## **1. The Parties**

The Complainant is Finmeccanica Societa per azioni of Italy represented in these proceedings by Ranjan Narula Associates, India.

The Respondent is Gao Gou of Toronto, Canada.

## **2. The Domain name, Registrar and Policy**

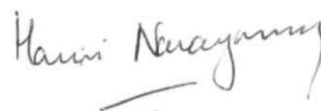
The present Arbitration proceedings pertain to a dispute regarding the domain name <finmeccanica.co.in>. The registrar for the disputed domain name is Indian Domains dba Mitsu.in.

The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

## **3. Procedural History**

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

The Arbitrator received the Complaint from the .IN registry on November 19, 2012 and on November 20, 2012 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the

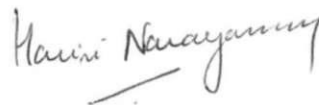


INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent did not file any response in these proceedings. The Arbitrator now proceeds to determine the case on its merits.

### **Factual Background**

The Complainant is an Italian industrial group in the area of high technology dealing with aerospace, defense and security across the world. The Complainant uses the trademark FINMECCANICA in connection with its business and owns registered trademarks for the FINMECCANICA mark. The details of some of these registered marks are: Community trademark registrations: CTM005236617, CTM 002542116, CTM 003038411 and CTM 00312249; International trademark registration 803763, US trademark registration number 2,975,050 registered on July 26,2005, US trademark registration No. 3,602, 590 registered on April 7, 2009, US trademark registration No. 4,166,851 registered on July 3, 2012.

The Complainant owns domain names that incorporate its trademark FINMECCANICA, these include <finmeccanica.it>, <finmeccanica.com>, <finmeccanicaco.uk> and <finmeccanicausa.com>. The Respondent registered the disputed domain name <finmeccanica.co.in> on July 25, 2012.



## **The Parties Contentions**

### **A. Complainant's Submissions**

The Complainant contends it is among the worlds leading suppliers of helicopters, aircraft, aeronautics, defense systems, security and resilience, transportation and power generation solutions. It alleges that it is a European leader in many of these areas and is a multinational and multicultural group with an international reputation for technological excellence and leadership in high tech sectors.

The Complainant states it has its headquarters in Italy and has significant markets in Italy, UK and USA where eighty five percent of the groups staff work. It also has a substantial presence in France, Germany and Poland. The Complainant states it has about 70,000 employees, forty three percent of who work in fifty countries across five continents. The Complainant states that its group's international presence has grown constantly and it has a total of about 350 companies, joint ventures, partnerships and joint industrial projects throughout the world. Some of its notable international projects include SuperJet 100, Eurofighter, B787 Dreamliner, ATR, Joint striker fighter, Galileo and the International Space Station.

The Complainant states that its reputation and goodwill in the FINMECCANICA mark is well earned and is a result of its continuous efforts and immense monetary investment. It has provided evidence of its registered trademarks, copies of articles and news items in the media and the Wikipedia write up about its group. The Complainant has provided a copy of

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its sales report in 2012 that shows its revenues are to the tune of Euro 18.7 billion and that it has orders worth about Euro 22.5 billion. The Complainant alleges that eleven percent of its revenues is ploughed back in research and development. The Complainant states that these documents show that the Complainant has earned extensive goodwill and reputation internationally including India.

The Complainant states the Respondent has registered the disputed domain name that incorporates the Complainant's well-known mark in which it has established prior use. The Complainant states it has not licensed, authorized or given consent to the Respondent to use or exploit its well-known trademark in any manner. The FINMECCANICA mark is well known and has been popularized by the Complainant, therefore the Respondent has no reason to adopt a name that is identical to its distinctive mark except to derive advantage of the goodwill and reputation of the mark and derive illegal profit. The website connected to the disputed domain name contains sponsored listings and has no active content. The Complainant argues that the disputed domain name is identical with Complainant's corporate name and its trade name and is misleading web browsers looking for the Complainant online. Browsers are likely to be redirected to other third party sites some of which are competitors to the Complainant's business. The Complainant argues that the disputed domain name may bring harm to its goodwill and injury to its business and also deceive the public. The Complainant states that where there is copying dishonesty is to be presumed.

The Complainant argues that the Respondent has no rights in the disputed domain name as it was registered much after the Complainant had

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established its rights in the mark. The Respondent is not known by the name and has no business by the name but the website linked to the domain name has sponsored links that shows the Respondent is a cyber squatter.

The Complainant argues that the disputed domain name was registered and is being used in bad faith as its name and trademark and domain name were well known prior to the Respondent's registration of the disputed domain name. Further, as its mark is not an English word it is a distinctive mark particularly in the aerospace business. The Respondent does not carry on any legitimate business but only diverts Internet traffic through the disputed domain name using its well-known and well-established mark. The Complainant therefore requests for the transfer of the disputed domain name.

### **Respondent's Submissions**

The Respondent did not respond in the proceedings.

### **Discussion and Findings**

Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

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- (i) The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, and
- (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.

### **Identical or Confusingly Similar**

The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant has submitted that its mark has acquired international reputation and goodwill and has provided several documents that show third party recognition of its marks. The Complainant has also filed documents that show it is the registered proprietor of the FINMECCANICA trademark. Proprietary rights in a complainant's trademark or service mark can be garnered from prior adoption, use and registration in countries other than India for the purposes of INDRP proceedings. See *McAfee v. Chen Shengulu*, INDRP Case No. 29 dated January 12, 2007. Further, trademark registration is considered *prima facie* evidence of rights in a mark. The documents filed by the Complainant also show that it has business interests in India. All these documents demonstrate the distinctiveness of the Complainant's mark. Based the evidence on record, the Arbitrator is

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convinced that the Complainant has established its rights in the trademark FINMECCANICA in these proceedings.

The disputed domain name clearly incorporates the FINMECCANICA mark in its entirety without any additions or deletions; this is adequate to find that the disputed domain name is identical or confusingly similar to the mark. See *Indian Hotels Company Limited v. Mr. Sanjay Jha*, INDRP case 148 Sept 27, 2010 <gingerhotels.co.in>. (A domain name that entirely incorporates a complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.) Also See *Tenneco Inc. v. Tony Lee* INDRP Case No 130, March 5, 2010.

The top-level domain extensions such as .com, .org or .co.in does not affect the confusing similarity of the domain name with the trademark and can be disregarded in the analysis of confusing similarity in domain name cases. See *Emirates v. Chella Goundappan*, INDRP Case No. 372 dated August 13, 2012. (<emirates.in>)

For the reasons discussed, the Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy, that the disputed domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

### **Rights and Legitimate Interests**

The second element requires the Complainant to show that the Respondent lacks rights and legitimate interests in the disputed domain name. It is

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sufficient for the Complainant to put forward a *prima facie* case regarding the Respondent's lack of rights and legitimate interests.

The burden of proving rights or legitimate interests in the disputed domain name rests with the Respondent. Under paragraph 7 of the INDRP Policy, the Respondent (registrant) can establish his or her rights in the domain name if the Respondent is able to establish any of these circumstances: (i) if before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) the registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

Paragraph 7 (i) of the Policy clearly states that the Respondent's use or demonstrable preparations to use the domain name must be in connection with a *bona fide* offering of goods or services the Respondent. There is nothing on record in the present case to suggest that the Respondent has used the disputed domain name in connection with a *bona fide* offering of goods or services. The Complainant has submitted evidence that the Respondent had used the disputed domain name to post sponsored links to redirect Internet users to other third party sites. Such actions are typically associated with cyber squatting behavior that suggest the Respondent's lack of rights or legitimate interest in the disputed domain name.

The Respondent has not provided any evidence of it being known by the disputed domain name. It has been held in several previous cases that where

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a respondent has not provided any evidence that it is known or recognized by the domain name, and the circumstances clearly indicate that the respondent has not used the disputed domain name for a *bona fide* offering of goods or services such a respondent has no rights or legitimate interests in the disputed domain name. See *L'Oreal v. Jack Sun*, INDRP Case No. 343 dated May 17, 2012. Further given the Respondent's use of the disputed domain name for placing sponsored links; the Respondent has not used the disputed domain name for any legitimate non-commercial fair use purposes.

Accordingly, based on all the evidence on record, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

### **Bad Faith**

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has asserted that the Respondent has registered the disputed domain name in bad faith, as the Respondent ought to have been aware of the Complainant's prior rights in the mark at the time of registration of the disputed domain name. The Complainant has also argued that the Respondent has intentionally registered the disputed domain name with the intention of imitating the FINMECCANICA mark in order to exploit its fame.

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