



हरियाणा HARYANA

L 865354

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

In The Matter Between

GRUNDFOS HOLDING A/S

Poul Due Jesens Vej 7,
DK-8850 Bjerringbro
Denmark

Complainant

Versus.

ANNA BEAULIEU

Oversee Investments Inc.
77 Massachusetts Avenue
02139, Cambridge
Massachusetts
United States of America

Respondent

Harini Narayanan

1. The Parties

The Complainant is Grundfos Holding A/S of Denmark represented in these proceedings by Salman Waris of HSA Advocates, India.

The Respondent is Anna Beaulieu of United States of America.

2. The Domain name, Registrar and Policy

The present Arbitration proceedings pertain to a dispute regarding the domain name <grundfoss.in>. The sponsoring registrar for the disputed domain name is Directi Web Services Pvt. Ltd (R118-AFIN), Mumbai, India.

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 December 15, 2012 and on December 16, 2012 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the

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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 a Danish group manufacturing and marketing pumps under the trademark GRUNDFOS. The Complainant has several registered trademarks for GRUNDFOS and has submitted documents showing it is the owner of the registered marks.

The Complainant owns domain names that incorporate its trademark GRUNDFOS, these include <grundfos.com> and <grundfos.uk>. The Respondent registered the disputed domain name <grundfoss.in> on August 4, 2012.

The Parties Contentions

A. Complainant's Submissions

The Complainant contends that it is part of the Grundfos Group that was established in 1945 by Poul Due Jensen and is presently owned by the Poul Due Jensen Foundation. The Complainant claims it is a leading manufacturer of circular pumps in world, producing millions of pumps per year.

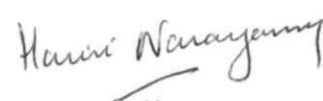
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The Complainant states it has about 17,500 employees and its net turnover in the year 2011 exceeded USD 3.6 billion. The Complainant states its group has more than eighty companies in about fifty-five countries around the world including the United States and India.

The Complainant asserts that its trademark is an extremely valuable asset and that it has obtained numerous trademark registrations in several countries and one of its earliest registrations for the mark GRUNDFOSS for pumps was in the year 1946. The trademark GRUNDFOSS was changed subsequently to GRUNDFOS in the year 1967, adds the Complainant.

The Complainant states that apart from registration of its mark, it has protected its mark by initiating legal proceedings against infringers and cites the following cases: *Grundfos A/S v. Orion Web*, WIPO Cases No. D2005-0618 and *Grundfos A/S v. Jan Svoboda* WIPO Case No. D 2009-0526, where its mark GRUNDFOS has been recognized as a well-known mark all over the world. The Complainant states the name GRUNDFOS is distinctive, unique and an invented mark. The mere mention of the mark establishes an identity and connection with the Complainant and none else and use of the mark in any form constitutes infringement of its rights and misrepresentation to the public asserts the Complainant.

The Complainant states that its group along with its subsidiaries operates several websites from domain names where its mark GRUNDFOS is a distinctive and inseparable part. Its main website is <grundfos.com>, which is a natural extension of its name and it receives more than 140,000 visitors every month. The Complainant states that it expends resources to develop

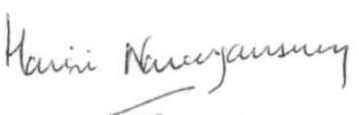
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and maintain its websites as a means of providing a comprehensive guide to its business activities.

The Complainant states the disputed domain name is identical and confusingly similar to its registered trademark. The Complainant further states that a mere glance of disputed domain name gives rise to confusion as not even a single letter differs between the disputed domain name and the Complainant's corporate name. The Complainant cites cases where confusing similarity has been found even where the letters differ and argues that this case is on a higher footing; particularly as its trademark is distinctive, unique and is an invented term.

The Complainant argues that the Respondent has no rights in the disputed domain name as the Respondent is in the business of holding domain names and selling them whereas the Complainant is an established business under the brand GRUNDFOS from 1959. The Respondent has no right or trademarks corresponding to the domain name and is not authorized by the Complainant to use its mark. The Respondent is not running a website or doing any business from the said domain name argues the Complainant.

The Complainant asserts that the disputed domain name was registered and is being used in bad faith as the Complainant has prior rights in the mark due to years of prior use, and the Respondent is only passively holding the disputed domain name and is not running a website. Even if the Respondent were to run a website it would mislead the public and could prove to be detrimental to the Complainant's interests. The Complainant further argues that the Respondent could try to sell the disputed domain or transfer it to a

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third party competitor of the Complainant or use it for inserting prejudicial material that may tarnish its 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:

- (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.

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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 filed documents that show it is the registered proprietor of the trademark and has used the mark for several years. Trademark registration is considered *prima facie* evidence of rights in a mark. The documents filed by the Complainant also show it has established extensive global business interests under the said mark. The documents filed by the Complainant demonstrate the distinctiveness of the mark. Based on the evidence on record, the Arbitrator is convinced that the Complainant has established its rights in the trademark GRUNDFOS in these proceedings.

The disputed domain name clearly incorporates the GRUNDFOS mark in its entirety along with an additional letter 's'. 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. See *Tenneco Inc. v. Tony Lee* INDRP Case No 130, March 5, 2010. Top-level domain extensions such as ".in" or ".co.in" does not affect the analysis confusing similarity of the domain name with the trademark in domain name cases. See *Emirates v. Chella Goundappan*, INDRP Case No. 372 dated August 13, 2012. (<emirates.in>). The disputed domain name is therefore found to be confusingly similar to a mark in which the Complainant has rights. The Complainant has satisfied the first element of paragraph 4 of the Policy.

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Rights and Legitimate Interests

The second element requires the Complainant to make a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name.

Under paragraph 7 of the INDRP Policy, the Respondent can establish his or her rights in the domain name if the Respondent can establish any of the circumstances exist: (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.

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 Respondent is evidently not known by the disputed domain name. It has been held in several previous cases that where 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, the material on record does not indicate that the Respondent has used the disputed domain name for any legitimate purposes or for any non-commercial fair use purposes.

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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

The third element requires the Complainant to establish that the disputed 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 Complainant's trademark and domain name were well known prior to the Respondent's registration of the disputed domain name and therefore ought to have been aware of the Complainant's prior rights at the time of registration of the disputed domain name. By using its well-known and well-established mark, the Complainant argues the Respondent has intentionally registered the disputed domain name for imitating the GRUNDFOS mark in order to exploit its fame.

The Arbitrator finds there is merit in the Complainant's arguments as the evidence on record shows the Complainant has priority in adoption and use and the Complainant has used and popularized the mark GRUNDFOS extensively. Further strengthening the Complainant's arguments is the fact that the term "Grundfos" is a coined one and it has no meaning other than referring to the Complainant.

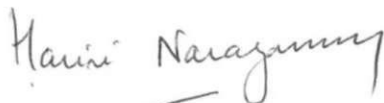
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Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The circumstances in the present suggest that the Respondent has used the Complainant's mark in the manner mentioned under Paragraph 6 (iii) of the Policy, namely to attract Internet traffic to the Respondent's website by creating a likelihood with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website, which is considered bad faith registration and use of the disputed domain name under the Policy. Given the fact that the Respondent is passively holding the disputed domain name under the circumstances described, it is considered evidence of bad faith registration and use under the Policy.

The Arbitrator finds the Complainant has satisfied the third element under paragraph 4 of the Policy, and has established that the Respondent has registered and used the disputed domain name in bad faith.

Decision

For the reasons discussed, it is ordered that the disputed domain name: <grundfoss.in> be transferred to the Complainant.



Harini Narayanswamy (Arbitrator)

Date: February 14, 2013