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COMPAGNIE DE SAINT-GOBAIN, France vs Mahesh Jambagi, Pune, Ind
INDRP Case no. 1885
Arbitrator: Mr. P.K.Agrawal

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AWARD

1. The Parties

The Complainant is COMPAGNIE DE SAINT-GOBAIN, Tour SAINT-GOBAIN, 12 place de l'Iris, 92400 Courbevoie, FRANCE.

The Respondent is Mahesh Jambagi, TRANSPORT, Hinjewadi, near temple, Pune, Maharashtra, 411507, INDIA.

2. The Domain Name and Registrar

The disputed domain name is <saintgobain.net.in>. The said domain name is registered with the Registrar – GoDaddy.com, LLC (IANA ID: 146). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: DCE36A3D6DDBE48DCB642DD4498EBDBF9-IN
- b. Date of creation: Apr 26, 2024.
- c. Expiry date: Apr 26, 2025.

3. Procedural History

- (a) A Complaint dated 2.07.2024 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that 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 (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K. Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 8.08.2024 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures

to the parties through email on 8.08.2024. The Complainant was advised to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator through Notice dated 8.08.2024 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant confirmed through email dated 14.8.2024 that the complaint with annexures was communicated to the Respondent through courier dated 8.8.2024. The Complainant through email dated 14.8.2024 again confirmed that they had served a copy of the Complaint along with the annexures upon the Respondent by e-mail on 14.8.2024.

- (d) In view of the aforesaid, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. Since the Respondent has not responded and presented any grounds in his defence, the present proceedings have to be conducted *ex parte* as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. Factual Background

The Complainant, COMPAGNIE DE SAINT-GOBAIN, Tour SAINT-GOBAIN, 12 place de l'Iris, 92400 Courbevoie, FRANCE, is a French company specialized in the production, processing and distribution of materials for the construction and industrial markets.

The Complainant further states that for 350 years, the Complainant has consistently demonstrated its ability to invent products that improve quality of life. It is now one of the top industrial groups in the world with around 47.9 billion euros in turnover in 2023 and 160,000 employees. The Complainant operates in India since 1996. With 77 manufacturing sites, Saint-Gobain employs over 8,300 employees in India.

The Complainant owns a large portfolio of trademarks including the wording "SAINT-GOBAIN" in several countries such as:

- the Indian trademark SAINT-GOBAIN n°921541 registered since April 28, 2000;
- International trademark SAINT-GOBAIN n°740184 registered on July 26, 2000;
- International trademark SAINT-GOBAIN n°740183 registered on July 26, 2000;

- International trademark SAINT-GOBAIN n°596735 registered on November 2, 1992;
- International trademark SAINT-GOBAIN n°551682 registered on July 21, 1989.

Furthermore, the Complainant owns multiple domain names consisting in the wording "SAINT-GOBAIN", such as <saint-gobain.com> registered since December 29, 1995 and <saint-gobain.in>, registered since February 16, 2005.

The disputed domain name <saintgobain.net.in> was registered on April 26, 2024. It resolves to a parking page with commercial links related to the Complainant. Besides, MX servers are configured. The details of a few such trademark registrations are listed below:

Respondent's Identity and Activities

The identity and activities of the Respondent are not known. The Respondent has neither responded to the Notices served upon him nor submitted any reply to the complaint.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy (INDRP) are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant argues that:

- The Complainant states that the disputed domain name <saintgobain.net.in> is identical to its trademark SAINT-GOBAIN, as it incorporates the trademark in its entirety without addition or deletion.
- Furthermore, the Complainant contends that the addition of the ccTLD ".NET.IN" is not sufficient to escape the finding that the domain is confusingly similar to its trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any right or legitimate interest in < saintgobain.net.in >.

The Complainant submits that:

- i. According to the Case No. INDRP/776, *Amundi v. GaoGou*, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.
- ii. Based on the information regarding the Respondent, provided by the Whois of the disputed domain name, the Respondent is known as **TRANSPORTS**. Past Panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Please see for instance Case No. INDRP/999, *Accenture Global Services Limited v. Vishal Singh*.
- iii. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant.
- iv. Moreover, the disputed domain name < saintgobain.net.in > resolves to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. Please see for instance WIPO Case No. D2007-1695, *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe* ("*Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.*").
- v. The Complainant contends that the Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and therefore is not making a legitimate, fair or bona fide use of the domain name.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the element (iii), the Complainant contends that the Domain Name has been registered and used in bad faith for the following reasons:

- (i) The Complainant states that the disputed domain name <saintgobain.net.in> is identical to its well-known trademark SAINT-GOBAIN. Please see WIPO Case No. D2020-3549, *Compagnie de Saint-Gobain v. On behalf of saint-gobain-recherche.net owner, Whois Privacy Service / Grigore PODAC* (“The Panel is satisfied that the Complainant is a well-established company which operates since decades worldwide under the trademark SAINT-GOBAIN.”).
- (ii) Besides, the Complainant is a worldwide reference in sustainable habitat and construction markets and operates namely in India.
- (iii) Given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.
- (iv) Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith. Please see for instance WIPO Case No. D2018-0497, *StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC* (“In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.”).
- (v) Finally, the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose. Please see for instance CAC Case No. 102827,

JCDECAUX SA v. Handi Hariyono ("There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.").

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has neither responded to the Notice nor submitted his reply.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

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

A. Identical or Confusingly Similar

The disputed domain name <saintgobain.net.in> was registered by the Respondent on Apr 26, 2024.

The Complainant is an owner of the registered trademark SAINT-GOBAIN for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <saintgobain.net.in>. Thus, the disputed domain

name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for SAINT-GOBAIN products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <saintgobain.net.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (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; or
- (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.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

There is no evidence to suggest that the Respondent has been known by

the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not SAINT-GOBAIN as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark SAINT-GOBAIN or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <saintgobain.net.in> under INDRP Policy, Para- 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion

with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <saintgobain.net.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 23rd August, 2024