



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL18822454286562S
Certificate Issued Date : 17-Dec-2020 02:06 PM
Account Reference : IMPACC (IV)/ dl978703/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL97870341708692468882S
Purchased by : R K KASHYAP
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : R K KASHYAP
Second Party : Not Applicable
Stamp Duty Paid By : R K KASHYAP
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

NATIONAL INTERNET EXCHANGE OF INDIA
6C, 6D & 6E, Hansalaya Building,
15, Barakhamba Road,
New Delhi- 110001

HETTICH MARKETING UND VERTRIBES

V/s

MR. ANOOP GOYAL

Pranav An

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.sholestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App 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.

AWARD

1. THE PARTIES

The Complainant is Hettich, Marketing and Vertribes, GMBH & Co. KG, VahremkampstraBe 12-16, Kirchlengern 32278, Germany is a German Company being represented by Mr. Julick Isaiah of M/s DePenning & DePenning, 120 Velchery Main Road, Guindy, Chennai-600032, India.

The Respondent is **Mr. Anoop Goyal**, Home Care Life Style, C-R-274, Lalita park, Laxmi Nagar, Delhi-110092.

2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name [www.hettich.co.in].

The disputed Domain name is <www.hettich.co.in>.

The said domain is Registered with Endurance Domains Technology LLP, Unit 501, 5th Floor, IT Building 3, Nesco IT Park, Nesco Complex, Western Express Highway, Go Regaon East, Mumbai 400063, Maharashtra, India.

Email: compliance@edtpl.in

ROID : D8003345-IN

Date of creation : 31-12-2013

Date of Expiry : 31-12-2020

Registrant Client ID : C-10451393-IN

Email: amit.j.net@gmail.com

Phone: (91)9811604113

Amul Adv

3. PROCEDURAL HISTORY

- (a) Complainant has filed a complaint dated October, 19, 2020 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure-A to H**. The exchange verified 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 Sh. R.K.Kashyap, Advocate as the Sole Arbitrator in this matter vide letter dated 05.11.2020. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted his Statement of acceptance and Declaration of Impartiality and Independence as required by the Exchange.
- (c) The Arbitrator, as per the INDRP Policy and the Rules issued the notice on 06.11.2020 and directed the complainant to serve the Respondent with a copy of the Complaint with annexures on the given e-mail as well as on physical address. In the Notice it has duly been mentioned in the complaint itself and directed the respondent to file the reply/response within 15 days from the receipt of notice. The direction of the arbitrator

Prakash

to serve the respondent has duly been complied with, as the courier receipt dated 11-11-2020 alongwith track report has been placed on record, which establishes that the respondent has been duly served on 13.11.2020.

The Respondent has failed /neglected to file its reply to the specific allegations made in the complaint within the stipulated time despite receipt of copy of the Complaint and Annexures. I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make it a part of the proceedings. Since, no response has been received. Hence, the present proceedings have to be ex-parte.

4. Factual Background:

The following information has been derived from the Complaint and the various supporting annexure to it, the Arbitrator has found the following facts:

Complainant's Activities

The Complainant Hettich is a world renowned manufacturer and marketer of furniture fittings for the modular kitchens, baths, residential and office segments under the trade mark "Hettich". The brand "Hettich" is indisputably one of the world leaders in these categories. The trade mark "Hettich" originated from the surname of Karl Hettich,

Dr. S. S. S.

who had set up a small company in Black Forest, Germany in 1888. The complainant company developed a purpose built machine, so called bending machine. In the year 1888, Karl Hettich mechanised the production of anchor escapements for Black Forest **Cuckoo Clocks**. In 1928, August Hettich developed a production line for piano hinges. With new technique, he had set up the present activities in the furniture industry. In 1930, the Complainant's family set up a new company in east Westphalia, which was the centre for manufacture of furniture and finally, in 1966 the Hettich Group established its headquarters in Kirchlingern and since then the Complainant has witnessed exponential growth.

Hettich Group of companies with over 777 million Euros turnover every year has evolved into a Global Corporate Group and have presence in America, Europe, Australia, Africa and Asia and have network around 100 countries through 36 subsidiaries.

"Hettich" trade mark has acquired trans-border reputation. High standard of quality of the goods associated with its trade mark and its extensive worldwide use, sale and promotional activities thereto, the trade mark "Hettich" has gained phenomenal reputation and goodwill throughout the world including India. A general profile of the Complainant is attached with Complaint as **Annexure "C"**.

R. S. S.
Adh

The Complainant M/s Hettich India Pvt. Ltd, and its subsidiary company are using the trade mark "Hettich", which was incorporated on 29th November, 1999. The Complainant's business operations in India are spread across the country with 3 zonal offices which comprise of six regions and 5 application centres: Mumbai, Kolkata, Delhi, Gurgaon and Bangalore.

Hettich India Pvt. Ltd. also controls business operations in other SAARC countries such as Sri Lanka, Nepal, Bangladesh, Bhutan, Pakistan, Maldives and Afghanistan.

In addition to the retails sales, the Complainant has extensive on-line presence in India wherein the products are sold through their website
<https://www.hettichindiaonline.com/>.

Copy of the Complainant's subsidiary's incorporation information retrieved from the MCA's website and few pages from www.hettichindiaonline.com are attached with Complaint as **Annexure "D"** and **Annexure "E"** respectively.

The Complainant states that by virtue of the fact that the trade mark "Hettich" is extensively and continuously used all over the world including India, the said trade mark has gained valuable international reputation and goodwill. The goods bearing the said trade mark command and garner very

Prashant

large sales throughout the world including India.

As a result of extensive use (International and India), the said trade mark has become synonymous with the Complainant and the goods bearing the said trade mark have come to be recognized and associated with the Complainant alone. Further, the mark "Hettich" is highly distinctive of the said goods originating from the Complainant that if an identical / deceptively mark or a domain name is used by any party in respect of any goods will immediately create an impression in the minds of the consumers that the goods have originated from the Complainant.

The Complainant Production facilities span across North and South America, Europe and Asia with distribution companies in North and South America, Europe, Asia and in Australia. Additionally, the Complainant has local retailer's support worldwide and is having a range of over 10000 components Hettich is a well-known brand. The entire details of the business of the Complainant company are duly available in their website at www.hettich.com.

Publicly available information about the Complainant's business activities in India can be found on the independent media websites. Complainant has provided few links in its complaint.

Praveen

The Complainant has also referred installation of their "Hettich" branded products in the residence and office of Mr. Ratan Tata, a world renowned industrialist, philanthropist and the former chairman of Tata Sons. The appreciation by Mr. Tata, of the Complainant's products is testament to the Complainant's stellar reputation and the impeccable standard of their goods. Copy of the appreciation letter dated 29th December, 2015 and 5th November, 2018 issued by Mr. Ratan Tata are attached as **Annexure "F"**.

Further, Testimonials of the customers in India for the Complainant's products can be found in the following link:

<https://web.hettich.com/en-in/contact-us/customer-testimonials.jsp>

TRADE MARK REGISTRATIONS AND COMPLAINANT:

The Complainant has statutory protection of its trade mark "Hettich" in several jurisdictions including but not limited to Germany, UAE, Argentina, Australia, Brasil, Canada, Chile, China, Colombia, Great Britain, Hong Kong, EU, Indonesia, Japan, Kuwait, Sri-Lanka, Mexico, Malaysia, Norway, New-Zealand, South Africa, Singapore, Thailand, Taiwan and India.

In India, the Complainant holds the following registrations for "Hettich" and its variants are as under:-

PluS

Trade Mark	Regn. No.	Class & Goods	(Advertised) Journal No. & Date	Status
Hettich	1630350	6,20,21	1421 dated 01 Aug 2009	Valid till 12.12.2027
Hettich International	782597	20	1327 Supp 2 dated 10 Jan 2005	Valid till 17.12.2027
Hettich International	782598	6	1373 dated 01 Aug. 2007	Valid till 17.12.2027

Complainant has filed herewith few copies of the Registration abstract /certificate obtained in foreign jurisdictions as **Annexure "G"**.

DOMAIN NAMES AND COMPLAINANT:

The Complainant over the span of time has put time, effort and energy in promoting and advertising the said marks in the print and online media and the said marks are consequently identified solely with the Complainant. The Complainant has on-line retail business in several jurisdictions including India. Given below are the domain registration secured by the Complainant.

S.No.	Domain Name	Country	Date of Registration	Expiry Date
1	Hettich.com	Global	27 th February 1996	11 th January 2021
2	Hettich.in	India	27 th March 2005	27 th March 2021

In addition to the above, the Complainant owns several registrations for domain names

Praveen

incorporating the word "Hettich". Whois records of the aforementioned domain names are annexed as **Annexure "H"**

RESPONDENT'S IDENTITY AND ACTIVITIES:

The Respondent's activities are not known as no response has been received from the Respondent.

5. PARTIES CONTENTIONS:

A: COMPLAINANT:

The Complainant contents that each of the elements specified in the policy are applicable to this dispute.

The Complainant in this administrative proceeding is a leading global business player "Hettich" and its main areas of business covers manufacturer and marketer of furniture fittings for the modular kitchens, baths, residential and office segments. It is also the Registered proprietor of the Trademark "Hettich" in its various variation related to its business.

The Complainant is the prior adopter of the Mark "Hettich" and the owner of The Trademark Mark/Service mark "Hettich" the Complainant is well known all around the World by the name of "Hettich", and has made profits under this name.

Revised

The Complainant further states that its use of the well known Trademark has been Extensive, Exclusive and Continuous all around the World. As a result of the Complainant's Marketing and promotion of its Goods and Services under its Trademark "Hettich", the mark has gained Worldwide Recognition and Goodwill, and has become well known. Moreover the Complainants Trademark has firmly been associated with the Complainant.

The Complainant contents that the disputed Domain name contains the Registered Trademark of the Complainant, that is, Hettich. The addition of the generic words ".co" & ".in" in the Domain name is insignificant. They do not lead to any distinctive or reduce the similarity to the Trademark "Hettich" of the Complainant. They will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the Services offered under the disputed Domain name from the Complainant. Further that they do not help in distinguishing the disputed Domain name from the Complainant's Trademark. On the contrary, the disputed Domain name leads the public to believe that it relates to the Services rendered by the Complainant.

It is critical especially because the Complainant has operations in India and the customers will mistakenly be redirected to the Respondents website which uses the

Revised

identical Domain name "www.hettich.co.in" that it belongs to the Complainant.

Therefore, the Complainant contends that the disputed Domain name is identical and/or confusingly/deceptively similar to their Registered Trademark "Hettich".

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "Hettich". The Respondent does not own any Trademark registration as "Hettich" or a mark that incorporates the expression "Hettich". The Respondent has no license or authorization or permission from the Complainant to either use the designation "Hettich" or to register the disputed Domain name. The Respondent does not have any *bona fide* reasons to adopt the Domain name which is identical to the Trademark of the Complainant.

Further, the Respondent is not making a legitimate or fair 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.

Therefore, the Respondent has no legitimate Justification or interest in the disputed Domain name.

Praveen

Regarding the element at (iii), the Complainant contends that the Respondent has Registered the disputed Domain name in bad faith and for its actual use in bad faith. The main object of registering the Domain name "www.hettich.co.in" by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent has registered the disputed Domain name on December 31, 2013 but has not demonstrated any preparations to use the Domain name or a name corresponding to the Domain name in connection with any bona fide offering of goods or Services.

This clearly demonstrates that the respondent has registered the Domain name solely with an intention to derive undue pecuniary benefit from the Complainant trade name and not for any genuine or legitimate use.

The Complainant has stated that the use of a Domain name that appropriates a well-known Trademark to promote competing or infringing products cannot be considered a "bona fide offering of Goods and Services".

The disputed domain name clearly incorporates the famous trademark "Hettich" of the Complainant in its entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use under the INDRP. In this regard, the Complainant relies on the decision of this Hon'ble NIXI Arbitration and Mediation Centre passed in

(Signature)

the case of **Mozilla Foundation Vs Mr. Chandan INDRP case No. 642 <Mozilla.in>**.

B: RESPONDENT:

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.www.hettich.co.in> or any Trademark right, Domain name right or contractual right.

6. DISCUSSION AND FINDINGS:

The Rules instructs 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.

Prashant

A. Identical or Confusingly Similar:

The disputed Domain name <www.hettich.co.in.> was Registered by the Respondent on **December 31st, 2013**. The registration of the said disputed Domain name is due to expire on December 31, 2020. It is pertinent to note that the Complainant has not taken swift action and filed complaint on October 19, 2020.

The Complainant is an owner of the Registered Trademark <Hettich>. The Complainant is also the owner of a large number of domains with the Trademark <Hettich> as stated above and referred to in the Complaint. Most of 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. The disputed Domain name is Trademark <Hettich>. Thus, the disputed Domain name is very much similar to the name and the Trademark of the Complainant.

The Hon'ble Supreme Court of India has recently held that the Domain name has become a business identifier. A Domain name helps identity 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 <Hettich> products in India or

(Signature)

elsewhere would mistake the disputed Domain name as of the Complainant.

Furthermore, it appears that the impugned domain is owned by Mr. Anoop Goyal of M/s Home care life style, New Delhi. Upon checking the official website of M/s Home care life style, it is evident that they are selling modular kitchen products in India. Therefore, the Respondent, being in the same field of business as the Complainant and cognizant of the reputation and goodwill associated with the trademark / domain "Hettich", registered the domain name www.hettich.co.in to disingenuously exploit the Complainant's stellar reputation and goodwill.

Contention of Complainant is squarely covered in a decided Case No. **INDRP/776, Amundi versus GoaGou** "The disputed Domain name incorporates the trade name "Amundi" in its entirety and this is adequate to prove that the disputed Domain name is either identical or confusingly similar to the mark".

Contention of Complainant is also squarely covered in Case of **Walmart Stores, Inc. v. Richard MacLead**, (WIPO Case No. D2000-0662) wherein it has been held that "When the Domain name includes the Trademark, or a confusingly similar approximation,

Pruthi

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 <www.hettich.co.in> is phonetically, visually and conceptually identical or confusingly/deceptively 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

P. S. S. S.

misleadingly divert consumers or to tarnish the Trademark or Service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed Domain name anywhere in the World. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and as such 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 <Hettich> or to apply for or use the Domain name incorporating said mark. The Domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

Contention of Complainant is squarely covered in a decided Case number **INDRP/776 Amundi versus GoaGou**, the Complainant is required to make out a prima facie case that Respondent lacks right or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating right or legitimate interests in the Domain name. If Respondent fails to do so, the Complainant is

Praveen

deemed to have satisfied para 4(II) of the INDRP policy.

I, therefore, find that the Respondent has no rights or legitimate interests in the Domain name under INDRP Policy, Paragraph 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 corresponding Domain name, provided that the Registrant has engaged in a

Paulson

pattern of such conduct; or

- iii) by using the Domain name the Registrant has intentionally attempted to attract the internet user to the Registrants website or other online 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 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.

Further, as has been mentioned above if there are 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

Quib

Trademark or Service mark or to a competitor of that Complainant for valuable consideration in excess of the Registrant's documented out of pocket cost directly related to the Domain name, it will amount to the registration or use of the main name in bad faith.

The very use of a domain name by someone with no connection with the Complaint suggests opportunistic bad faith as stated **INDRP Case No 934** between **Mozilla Foundation and Mozilla Corporation Vs LINA Double fist Limited .**

The foregoing circumstances lead to the presumption 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/deceptively similar to Complainant's well known brand "hettich" , a mark in which the Complainant has rights, that the Respondent has no claims, rights or legitimate interests in respect of the disputed Domain name, and that the disputed Domain name was Registered in bad faith and is being used in bad faith, in accordance with the policy and the rules,

Praveen

the Arbitrator orders that the Domain name "www.hettich.co.in" be transferred to the Complainant.

This award is passed at New Delhi on this 21st day of December, 2020.

R. K. Kashyap
21/12/2020

R. K. KASHYAP
SOLE ARBITRATOR