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ARBITRATION AWARD

INDRP CASE No. 1409
HANJIN KAL CORP.[Complainant] v YE LI [Respondent]
Disputed Domain Name: KOREANAIR.CO.IN
BEFORE THE SOLE ARBITRATOR: VAKUL SHARMA
DATED: SEPTEMBER 30, 2021



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ARBITRATION AWARD

In the matter of:

**Hanjin Kal Corp.,
(Sogong-dong) 63,
Namdaemun-ro, Jung-gu
Seoul, Korea**

[Complainant]

Disputed Domain Name:

-v-

**Ye Li,
Tianmushan Lu 2800 Hao DS,
Hangzhou, Zhejiang, Chia
Postal Code 32000**

[Respondent]

www.koreanair.co.in

INDRP CASE No. 1409

1. The Complainant

The Complainant, Hanjin Kal Corp. belongs to the Hanjin Group which is one of the largest transportation and logistics company in the world. On March, 1969, the Complainant took over **KOREAN AIR** Lines, a government-run enterprise in the airlines industry. The



Complainant has claimed statutory rights in trade mark KOREAN AIR. It is a registered trade mark under Class 39 in India.

2. The Respondent

Respondent [Ye Li] in this administrative proceeding is identified by the address as given in WHOIS.

3. The Registrar

The Registrar with which the domain name is registered is: Endurance Domains Technology LLP.

4. Disputed Domain Name

<KOREANAIR.CO.IN>

5. Jurisdiction

The Complainant by filing the Complaint under the aforesaid INDRP Rules of Procedure [Rules] has accepted the subject matter jurisdiction of the .IN Domain Dispute Resolution Policy - .INDRP [Policy].

In view of the above, this domain name dispute is properly within the scope of the Policy. The registration agreement, pursuant to which the disputed domain name was registered, incorporates the Policy. Disputes between Registrants, as they relate to domain name registrations, are governed by the Policy.

6. Procedural History

- (i) This Arbitration Proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of



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India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By submitting to the Policy and the Rules, the Complainant agreed to the resolution of the disputes pursuant to the Policy and the Rules.

- (ii) The Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- (iii) I submitted the statement of acceptance on 09/07/2021 and subsequently appointed by NIXI as an Arbitrator in the above matter [INDRP No. 1409] vide email dated July 12, 2021.
- (iv) Complainant submitted a Copy of the Complaint and Annexures to me as well as to the Respondent vide email dated July 14, 2021 from its email ID in accordance with the Rules. Also, delivered a hard copy of the Complaint and Annexures on July 16, 2021.
- (v) Complainant has further placed on record service compliance report vide email dated July 19 2021 confirming that the INDRP complaint and the annexures have been received by the Respondent via email. Complainant has also submitted the proof of mailing [courier receipt no. 6884633475] dated July 15, 2021 of hard (paper) copies to the Respondent, however no proof of delivery was annexed.
- (vi) Complainant vide email dated July 28, 2021 informed that the *"....shipment is lying undelivered at destination due to consignee address Incorrect/Insufficient."*



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- (vii) In view of the completion of procedures related to Service of Complaint as mandated under the Rules, I issued a Notice dated 29/07/2021 to the Respondent to submit its reply to the above said complaint within 15 days from the date of the Notice failing which the Complaint shall be decided on merit.
- (viii) I issued another notice dated 13/08/2021 informing the parties that in the interest of justice a final opportunity being to the Respondent to submit its reply within next five days of the notice failing which the Complaint shall be decided ex-parte on the merits of the complaint.
- (ix) Despite giving a final opportunity, the Respondent has failed to submit any reply and hence vide notice dated 19/08/2021, I informed both the parties that *"the Respondent right to file Reply stands closed and the Complaint shall now be decided ex-parte on the basis of the merits of the Complaint."*
- (x) The Arbitration Award is now pronounced on this day, i.e., September 30, 2021 after considering the contentions of the Complainant and the Policy framework under my signatures. This is an **ex-parte order** as the Respondent has failed to file their Reply despite being given adequate opportunity.

7. Contentions of the Complainant

Complainant submits as follows:

- (i) The Complainant, Hanjin Kal Corp. belongs to the Hanjin Group which is one of the largest transportation and logistics company in the world. On March, 1969, the Complainant took over **KOREAN AIR** Lines, a government-run enterprise in the airlines industry.

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- (ii) The Complainant's services under the trade mark **KOREAN AIR** has garnered a total operating revenue of approx. KRW 12.29 trillion.
- (iii) The Complainant has annexed Internet extracts pertaining to Complainant's business across the world and a list of accolades/recognition under the trade mark **KOREAN AIR** as **Annexure C** and **Annexure D** respectively in the complaint.
- (iv) The Complainant's services under the trade mark **KOREAN AIR** are available on www.koreanair.com registered on June 1, 1995. The said website is accessible by the people all across the world including India. The Complainant has placed reliance on **Annexure E** and **Annexure F** reflecting existence of the trade mark **KOREAN AIR** atleast since 1998.
- (v) The Complainant's **KOREAN AIR** is well-known and enjoys a worldwide reputation and goodwill. Reliance is placed on **Annexure(s) G, H & I**.
- (vi) Use of the word **KOREAN AIR** on any leading search engine automatically reflects the webpage of the Complainant. Reliance is placed on **Annexure J**.
- (vii) The trademark **KOREAN AIR** of the Complainant is a registered trademark in various jurisdictions including India. Hence, any unlawful adoption or use of an identical or confusingly similar mark would amount to infringement of the Complainant's statutory rights in trademark **KOREAN AIR**. Reliance is placed on **Annexure K**.
- (viii) In the context of the above, the Complainant has made assertions to establish presence of each of the three elements required by paragraph 4 of the Policy.



I. Whether the domain name is identical to the trade mark and domain name in which the Complainant has prior rights?

In response to the first element, the Complainant has made following submissions:

- (a) That the Respondent's domain name www.koreanair.co.in is identical to the trade mark **KOREAN AIR** in which the Complainant has prior statutory and common law rights. Furthermore, the Complainant's group company owns the registration in www.koreanair.com since 1995 and the registration of domain name <koreanair.co.in> by the Respondent would cause lead to confusion in the minds of the consumers and the members of trade that the impugned domain name also belongs to the Complainant.
- (b) That the Complainant has spent years building up "search engine trust" in a domain and malicious intention on the part of the Respondent which is evident from the blatant misappropriation of the Complainant's trade mark **KOREAN AIR**. There are high chances that an Indian user searching for the Complainant's business online will be directed to the Respondent's domain name, which enhances the possibility of confusion and/or deception.
- (c) That the Complainant by registering the domain name which is identical to the Complainant's trade mark and also and its domain name: <koreanair.com> thereby diluting the trademark of the Complainant and causing harm to its reputation.
- (d) That the Complainant's domain name <koreanair.com> was registered on June 1, 1995 and is valid and subsisting as on date, whereas the Respondent has



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registered the impugned domain name <koreanair.co.in> after a gap of 16 years in August 9, 2011, i.e., the Complainant is the prior adopter and user of domain name with the mark **KOREAN AIR**.

II. Whether the Respondent's domain name is bound to create confusion amongst members of trade and consuming public?

The Complainant has further made the following submissions:

- (a) That it is apparent that the Respondent's impugned domain name wholly contains the Complainant's trade mark **KOREAN AIR** and is identical to the trademark in which the Complainant has statutory rights as well as common law rights. This unauthorised use of the Complainant's domain name by the Respondent amounts to fraud.
- (b) That any unauthorised use of the Complainant's domain name by the Respondent amounts to damage and is detrimental to the Complainant's goodwill and reputation.
- (c) That the sole purpose of parking the impugned domain name is to cause confusion as to the source, sponsorship, affiliation or endorsement of the activity being carried on through the website.

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A circular blue ink stamp with the text "VAKUL SHARMA" around the top inner edge and "ARBITRATOR" around the bottom inner edge. There are two small stars on either side of the word "ARBITRATOR".

III. Whether The Respondent has no rights or legitimate interests in the domain name?

In response to the second element, the Complainant has made following submissions:

- (a) Since the Complainant has sole and exclusive interests in the trademark **KOREAN AIR**, it is thus evident that the Respondent cannot have any rights or legitimate interests in the domain name.
- (b) The sole purpose of carrying on business through the use of impugned domain name is to cause confusion as to the source, sponsorship, affiliation or endorsement of the activity being carried on through the website.
- (c) The Respondent has parked the impugned domain name "For Sale" in order to illegally benefit from the goodwill and reputation of the Complainant's trademark **KOREAN AIR** and its domain name <koreanair.com>. Reliance is placed on **Annexure L**.
- (d) The Respondent by securing the registration of the impugned domain name is trying to indirectly compel the Complainant to buy the domain name from the Respondent a typical strategy adopted by cyber squatters.
- (e) The Respondent has not been engaged in any such activity to show that it has legitimate rights or interests in the impugned domain name <koreanair.co.in>.



- (f) Reliance has been placed on *Consorzio del Prosciutto di Parma v Jim Muller Zurich* [INDRP/128], and *American Insurance and Company v Administrator, Domain* [WIPO Case No. D 2007-0481].

IV. Whether The Respondent registered and/or is using the domain name in bad faith?

In response to the third element, the Complainant has made following submissions:

- (a) That the disputed domain name <koreanair.co.in> fully incorporates the Complainant's reputed mark **KOREAN AIR** and it is evident that the Respondent can have no rights or legitimate interest in the domain name.
- (b) That the sole purpose of the adoption of the Complainant's trademark in its entirety is to misappropriate the Complainant's reputed trademark **KOREAN AIR**.
- (c) That the Complainant has alleged that the Respondent is seeking illegal commercial gratification through its opportunistic bad faith registration of the disputed domain name.
- (d) That there is a strong likelihood that Respondent's use of domain name will cause third parties incorrectly believe: (i) that the Complainant has licensed the trademark **KOREAN AIR** to the Respondent, or authorised the Respondent to register the domain name, (ii) that the Respondent has some connection with the Complainant in terms of direct nexus or affiliation with the Complainant



- (e) That the Respondent appears to be a seasoned infringer and have past records of wrongfully gaining registration of domain names of reputed entities. Reliance is placed on **Annexure M**.
- (f) That the registration of the impugned domain name is a clear case of trade mark infringement and passing-off.
- (g) That the registration of the impugned domain name is in bad faith since the Respondent is trading on the fame and recognition of the Complainant's reputed trademark in order to cause initial interest confusion and make illegal gains from the sale of the impugned website bearing trade mark **KOREAN AIR** of the Complainant.
- (h) That the trademark **KOREAN AIR** is the main component of the Complainant's domain name <koreanair.com> and is distinctive in nature, i.e., the adoption and use of an identical domain name along with identical trademark by the Respondent cannot be a co-incidence and is thus in "bad faith".

8. Respondent's Contentions

Despite giving adequate opportunity, Respondent has failed to submit any Reply.

9. Discussion and Findings

The Respondent has not filed any Reply to the Complaint. However, the Respondent's default does not automatically result in a decision in favour of the complainant. The Complainant has to still establish each of the three elements required by Paragraph 4 of the Policy:

Under the Paragraph 4 clauses (a) – (c) of the Policy, the Complainant must prove that:



- (a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (c) the Registrant's domain name has been registered or is being used in bad faith.

The Complaint has to be decided on the basis of the provisions of INDRP, pleadings, including documentary evidence presented before me. The Complainant in order to succeed must satisfy the conditions laid down in Paragraph 4, clauses (a) – (c) of the Policy.

I have considered the Complainant's pleadings, documentary evidence and conditions as laid down in the aforesaid Policy. My opinion is as follows:

(a) Whether the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights?

The Complainant has placed on record details of its 'KOREAN AIR' trade mark registrations under various jurisdictions and has submitted web pages and documentary evidence to highlight the fact that KOREAN AIR trademark and the 'KOREAN AIR' name, as a trade name, corporate name, domain name, or all other distinctive sign identifying the company or its products and services. There is no document on record to suggest that the Respondent has ever been given a license, franchise, authorization, affiliation, endorsement or sponsorship to incorporate the 'KOREAN AIR' trademark in the disputed domain name: <KOREANAIR.CO.IN>. However, the Complainant has failed to place on record its portfolio of



domain names having the word 'KOREAN AIR' alongwith copies of trademark registration certificates as a *bonafide* proof that its interest in the disputed domain name is legitimate.

Nevertheless, I consider that there is a force in the arguments of the Complainant that the words 'KOREAN AIR' is legally associated with Complainant's company. Furthermore, the Respondent has failed to observe the legal obligations as laid down in Paragraph 3 [Registrant's Representations] of the INDRP, which provides:

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;*
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and*
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.*

In my opinion, the Respondent has knowingly registered the Complainant's trademark in the form of an identical name <KOREAN AIR>, which is followed by a *suffix*, .CO.IN [ccTLD] to complete the domain name string <KOREANAIR.CO.IN>. In fact the Respondent's registration of an identical domain name <KOREANAIR> is an attempt on the part of the Respondent to take a free ride on the Complainant's reputation and goodwill. However, I found it strange that as per WHOIS details [Annexure A of the Complaint], the disputed domain name was registered on August 9, 2011 and yet it took ten long years to the Complainant to discover the infringing



domain name! The Complainant has failed to offer any explanation for this which I feel is an undoing on the part of the Complainant. Since, I am bound by contours of the Policy, I am inclined to accept the Complainant's argument that the Registrant has registered the domain name with the aim of blocking the Complainant from registering the impugned/disputed domain name, and offering to sell it, most certainly to the Complainant, which is, *a priori*, the most likely to be interested in the said disputed domain name. I am of the opinion that the Complainant by a deliberate design chose to register the disputed domain name <KOREANAIR.CO.IN> which is identical to the Complainant's trademark with the sole purpose of selling. Respondent knew it all along that the disputed domain name being identical to the Complainant's registered trademark would earn him good money. His only motive it seems is to sell and for this reason he has parked the disputed domain name for sale. I must place on record the fact that I am accepting the documentary evidence as submitted by the Complainant in the form of **Annexure L** – screenshot/webpage of <KOREANAIR.CO.IN>, as the Respondent has failed to deny the said evidence relied upon by the Complainant despite being given ample opportunities. I am of the opinion that the benefit under the circumstances lies with the Complainant. It is thus very clear that the Respondent violated the conditions as laid down in the Paragraph 3(b) – (c) of the policy as mentioned above. In view of the above, the requirement of the Policy as stated in Paragraph 4(a) is satisfied.

(b) Whether the Registrant has no rights or legitimate interests in respect of the domain name?

As discussed above, the Respondent has knowingly registered the Complainant's trademark in the form of an identical name <KOREANAIR>, which is followed by a *suffix*, .CO.IN [ccTLD]



to complete the domain name string <KOREANAIR.CO.IN>, this clearly demonstrates lack of legitimate interests on the part of the Respondent.

Also, Paragraph 6 of the INDRP provides:

6. Registrant's Rights and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4 (b) :

(a) 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;

(b) 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

(c) 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.

I have evaluated the evidence on record and came to a conclusion that none of the limbs highlighted in the Paragraph 6 of the Policy above have been present to give the Respondent/Registrant any rights and legitimate interests in the disputed domain name. The screen-shot/webpage [Annexure L] as relied on by the Complainant makes it abundantly clear to every internet user that the domain name <KOREANAIR.CO.IN> is for sale. The said screen-shot/webpage clearly highlights "Buy this domain" and in the fine print mentions: "The domain koreanair.co.in may be for sale by its owner!" It is to be noted that the Respondent has failed to



counter or deny assertion made by the Complainant despite being given opportunities to counter the assertion made by the Complainant. I, therefore, found merit in the Complainant's submission that by offering the impugned domain name for sale, the Respondent has lost his legitimacy to claim rightful ownership. The conduct of the Respondent clearly demonstrates that he has no legitimate purpose to register the disputed domain name, other than to illegally sell it for commercial gain. Screenshot/webpage as placed on record by the Complainant as **Annexure L**, referred above establish the fact that the Respondent actions are neither *bonafide* nor fall in the category of legitimate non-commercial or fair use of domain name. In view of the above, the requirement of the Policy as stated in Paragraph 4(b) is satisfied.

(c) Whether the Registrant's domain name has been registered or is being used in bad faith?

As discussed above, use of the disputed domain name by the Respondent, when it has no legal rights to register the disputed domain name in the absence of any legal arrangement with the Complainant – only proves *malafide* intent on the part of the Respondent.

Further, Paragraph 7 of the policy provides:

7. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(a) 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

(b) 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

(c) by using the domain name, the Registrant has intentionally attempted to attract 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 documentary evidence placed on record by the Complainant clearly shows that the Respondent has indeed taken advantage of the Complainant's goodwill and reputation by registering the disputed domain name <KOREANAIR.CO.IN> primarily for the purpose of selling. The registration and use of a domain name that exploits the goodwill of another's trademark is considered bad faith under INDRP (*Eli Lilly and company v Andrew Yan* – INDRP/195). The *malafide* intent is clear from the fact that the said disputed domain name has been referred to as website and being offered for sale by the Respondent. The evidence in the form of screenshots placed on record, which has not been denied/contested by the Respondent shows reckless behaviour on the part of the Respondent. Further, the Complainant has been able to prove that the Registrant, identified as "Ye Li" is a habitual offender and a "cybersquatter" and has been involved as a Respondent in many domain names disputes wherein he had used the similar *modus operandi* by registering identical/confusingly similar domain names incorporating well-known trademarks, and then offering for sale of such disputed domain name in order to earn money. In all these disputes filed under INDRP, the decisions went against him. Cases referred



by the Complainant *Blogmusik SAS v Ye Li* [INDRP/496, 23/07/2013 – disputed domain name <deezer.co.in>] ; *Giorgio Armani S.P.A. v Ye Li* [INDRP/353, 05/07/2012 – disputed domain name <emporioarmaniwatches.in>] ; *Capital IQ Inc., Standard & Poor Financial Services LLC v Ye Li* [WIPO – D2014-1647 – disputed domain name <capitaliq.asia>] – point out to a distinctive conduct on the part of the Respondent/Registrant, who seems to be a ‘*serial cybersquatter*’ and I am of the opinion that such reckless behaviour/conduct has no space in “domain name ecosystem” and all such actions should never been given any legitimacy.

Accordingly, having regard to the circumstances of this particular case, I hold that the Complainant has been able to prove that the Registrant’s registered the disputed domain name in bad faith. In view of the above, the requirement of the Policy as stated in Paragraph 4(c) is satisfied.

10. Decision

For the foregoing reasons, in accordance with the Policy and Rules, I direct NIXI to transfer the disputed domain name <KOREANAIR.CO.IN> to the Complainant.

There is no order as to costs.

The original copy of the Award is being sent alongwith the records of the proceedings to the National Internet Exchange of India (NIXI) for its record and a copy of the Award are being sent to both the parties thru email for their information and record.

Vakul Sharma

Vakul Sharma
(Sole Arbitrator)



Vakul Sharma
Date: September 30, 2021

