

Serial No: 3375
Purchased By:
DR V GOPINADH
S/O LATE V K CHAINULU
VSP

Denomination: 50
Date: 06/10/2021
For:
SELF

Stamp S. no X 030649

Sub Registrar
Ex. Officio Stamp Vendor
SRO Visakhapatnam(R.O)

**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
IN DOMAIN NAME DISPUTE POLICY (INDRP)**

Dr. Vedula Gopinath, Sole Arbitrator

Arbitration Award in Case No.1451 dated 25th Novmber 2021

In the matter atter of Arbitration

Between:

Société des Produits Nestlé
55 Avenue Nestlé 1800
Vevey Switzerland

(Complainant)

Feifei Doublefist Limited
(Contact email:ymgroup@msn.com)
A3, JiaZhaoYe, JiangBei,
Huicheng District, HuiZhou City,
GuangDong Province, China HuiZhou 516000
Wisconsin US

(Respondent)



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ICA Fellowship No. IL / ICA / 0485
Sole Arbitrator



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Stamp S. no X 030650
Sub Registrar
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SRO Visakhapatnam(R.O)

I. Complainant in this administrative proceeding is Société des Produits Nestlé, a company organized and existing under the Laws of Switzerland, having its principal place of business at 55 Avenue Nestlé 1800 Vevey, Switzerland

1 a. Authorised Representative of Complainant.: Mr. Luca Barbero, c/o Studio Barbero S.p.A. Corso Massimo d'Azeglio 57, 10126 Torino, Italy
E-mail: info@studiobarbero.com

II. DISPUTED DOMAIN NAME & REGISTRY:

a) The following Domain name is the subject of this Complaint
NESPRESSO.CO.IN

b) The Registry is the National Internet Exchange of India (henceforth referred to as NIXI).



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- c) The Sponsoring Registrar of the Impugned Domain name is
The details of the Registrar are given below :

Dynadot LLC; 210 S Ellsworth Ave #345 San Mateo, CA 94401 US

0100 iv. Email Address: abuse@dynadot.com; info@dynadot.com

III. RESPONDENT


All information known to the Complainant regarding Respondent is as follows:

- a. Name: Doublefist Limited b. Address: Wisconsin, USA c. Telephone:
REDACTED FOR PRIVACY d. Fax: REDACTED FOR PRIVACY e. Email:
ymgroup@msn.com Administrative and Technical contact: not
indicated in the Whois.
- b. When Complainant commenced its recovery activities, the contact
details listed in the Whois database, based on the search conducted
on May 08, 2017 (Ref. Annex 1.1 of complaint) were the following:

Registrant Name: Liheng b. Registrant Organization: Just Traffic
Supervision Consulting c. Address: Room 1326, Kexin Building, 999077,
Hong Kong d. Telephone: +852.29618989 e. Email: shahuang@msn.com

Complainant conveyed that the previous named Registrant of the Domain
Name – figuring in the WHOIS database when the reclaim activities were first
commenced by Complainant's representative in 2017- was an alias of the
current Registrant, since, as better detailed in the factual section, in spite of the
different contact details provided in the Whois records, Respondent, in its
correspondence with Complainant's representative signed its communications
with the same name "Zhao" in association to both the email addresses
ymgroup@msn.com and shahuang@msn.com.




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According to historical Whois searches conducted, the Domain Name was subject to a prior registration by


Respondent – dating back to October 10, 2012 and let expire in December 2013- was registered in the name of “Zhaxia” from the organization “Pfister Hotel” and the email address associated to the registrant was already at that time ymgroup@msn.com . Additionally, by conducting additional verifications as to Respondent’s identity, Complainant detected the domain name (not subject to the present complaint) which on July 30, 2017 was registered in the name of “Doublefist Limited” (which is also the current registrant of) and was associated to both the email addresses ymgroup@msn.com and shahuang@msn.com

In view of the aforesaid explanations and possible duplicity of the locations of the Respondent, the Arbitral Tribunal opines those communications to any of the following emails in respect of communicable address of Respondent are valid and taken on record. Thus service of complaints and other notices to any of the two of the said emails are valid and taken as effectual service of notice served on the Respondent.

ymgroup@msn.com shahuang@msn.com

(WHOIS details and other information given in Annexures 1.3 and 1.4 of the Complaint)





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III. PROCEDURAL HISTORY / BACK GROUND :

29-10-2021	The .1N REGISTRY appointed Dr. Vedula Gopinath as Sole Arbitrator from its panel as per paragraph 5 of INDRP Rules of Procedure.
30-10-2021	Consent of the Sole Arbitrator along with declaration was given to the .1N REGISTRY according to the INDRP Rules of Procedure.
29-10-2021	.1N REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to Respondent.
01-11-2021	Notice of Arbitration was sent to all concern by the Sole Arbitrator.
02-11-2021	Notice was sent by Arbitrator to the Respondent by-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .1N Registry.
04-11-2021	Amended complaint submitted by Complainant consequent on the location details of Respondent.
06-11-2021	Additional documents submitted by Complainant including service of complaint by Complainant.

All the pleadings and required correspondence are emanated via electronic mail.




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V. COMPLAINANT'S DETAILS

Société des Produits Nestlé S.A. (SPN). SPN is part of Nestlé company founded in 1866 by Henri Nestlé. SPN is wholly owned by Nestlé S.A Group sells products and services all over the world in various industries, primarily in the food industry. The Group is ranked in the world's 500 largest companies Nestlé Group has more than 270,000 employees and it is present in more than 80 countries with more than 400 production centres worldwide.

A TRADE MARKS -India NESPRESSO

.Complainant is the registered owner of the majority of the trademarks of the Nestlé Group.

Application/ Registration No	Registration date	class	Products
1154950	02 Dec 2002 India	07	electric coffee grinders
1154951	02 Dec 2002 India	09	automatic coffee Mcs
1154952	2 Dec 2002 India	11	coffee machines/pots
1154953	02 Dec 2002 India	21	coffee achines/makers

B. REGISTRATIONS IN OTHER COUNTRIES: Complainant is also the owner of several trademark registrations for "NESPRESSO" in other countries,

Registrations: - International Trademark No. 777873 for "NESPRESSO" word of March 14, 2002 in classes 07, 09, 11, 21, 30 and 38 (Annexes 3.1); -


International Trademark No. 1054554 for "NESPRESSO" figurative of September 13, 2010 in classes 09, 11, 16, 21, 29, 30, 35, 37, 39, 40, 41, 42 and 43 (Ref.Annex 3.2 of Complaint)

; International Trademark No. 499589 for "NESPRESSO" word of December 10, 1985 in class 30 (Annex 3.3); - European Union Trademark No. 2793792 for "NESPRESSO" word of July 31, 2002 in classes 7, 9, 11, 21, 30, 35, 37, 39, 41 and 43 (Ref.Annex 3.4).

C.Complainant is also the owner of many additional registrations consisting of or including the distinctive sign NESPRESSO in other Countries.

Trade marks/signs/marks registration certificates are annexed to the Complaint.




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D. DOMAIN NAME REGISTRATIONS: DOMAIN NAME nespresso.com
REGISTRATION DATE 1999-02-01

VI. CLAIMANTS' CONTENTIONS

A.

- i. The Domain Name entirely reproduces Complainant's trademark NESPRESSO, which has been registered by Complainant in India and several other countries, as mentioned aforesaid.
 - ii. The Domain Name is visually and phonetically identical to Complainant's trademark, since, as stated in a number of prior cases, the mere addition of the ccTLD .in is not a distinguishing feature.
 - iii. It may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark as per the earlier decisions of disputed domain name cases.
- iv. The Complainant contends that the Domain Name is identical to the prior registered trademark in which Complainant has rights pursuant to Paragraph 4(a) of the INDRP.

B. The Respondent has no rights or legitimate interest in respect of the disputed domain name for the following reasons: [Rule 4(b) (vi) (2) of the INDRP Rules of Procedure and Rule 4(b) and 6 of the INDRP Policy]

C. Complainant has legitimate interest in the trademark NESPRESSO as it registered said trademark since 1986 in many jurisdictions, including India, and has been openly, continuously and extensively using it world-wide for several years. Moreover, by virtue of its long and extensive use and advertising, including online via Complainant's website "www.nespresso.com" since 1999, the trademark NESPRESSO has become well-known worldwide




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VI DISCUSSION AND FINDINGS / REASONING:

(I) .IN Domain Name Dispute Resolution Policy (INDRP).

The Arbitral Tribunal after examination of the matter in details arrived the following conclusion of Complainant's Compliance of INDRP Policy. In order to obtain the transfer of the Disputed Domain Name, Complainant should, according, prove all the following three elements to paragraph 4 of the Policy.

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faithful.
- (iv) Further pursuant to paragraph 6 & 7 of INDRP Policy, the Respondent have no legitimate interest and the same have been used in bad faith.

II. The Complainant issued Cease and Desist Notice to the Complainant.. There has been correspondence between the parties for transfer of the disputed name. Since the Respondent is demanding higher amount than the usual cost and out of pocket expenses, the negotiation proved to have been failed.

(III) It has been contended that Respondent is only using the Disputed Domain Name in a way of create a likelihood of confusion in the minds of the public as to the source of the products and services offered on its website, and thus to misleadingly attract users to its website at Complainant's detriment and to benefit from the complainant trademark's goodwill. It is further proved that the respondent is trying to extract unreasonable money for the transfer of the disputed domain name.



Respondent registered the Domain Name on December 16, 2013, well after Complainant's registration of the trademarks cited above.

- (IV) The Complainant made a valid service of complaint to the Respondent. The Respondent did not respond to the notices of the Arbitrator. In case of failure or default of Respondent in sending response or reply to the complaint, the Arbitrator is empowered to announce the judgment as he thinks proper and appropriate as per applicable laws.
- (V) The allegations levelled by Complainant against Respondent appears to have been proved basing on the evidential value of the documents submitted

VII. In view of the foregoing discussion, the Arbitral Tribunal arrives at a Logical conclusion of accepting the prayer of the Complainant.

VIII.DECISION: For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark " NESPRESSO " and also the disputed Domain Name NESPRESSO.CO.IN be transferred to the Complainant by Respondent.

National Internet Exchange of India (NIXI) are advised to take incidental or ancillary action involved in the transfer of the Domain Name as directed..

There is no order as to costs. This is adjudicated and directed.

I have made and signed this Arbitration Award on 25th November 2021 at Visakhapatnam. A.P. India.

Visakhapatnam
November 25, 2021



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Dr. Vedula Gopinath
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