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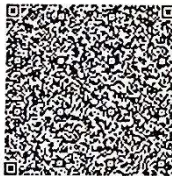
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DEEPALI GUPTA
SOLE ARBITRATOR
IN Registry - National Internet Exchange of India
INDRP Case No: 1453

In the matter of Arbitration Between:

Wärtsilä Technology Oy Ab

Versus

Doublefist Limited

.....Complainant

.....Respondent

Disputed Domain Name : < WARTSILA.CO.IN >

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DEEPALI GUPTA
SOLE ARBITRATOR

Appointed by the .IN Registry - National Internet Exchange of India

INDRP Case No: 1453

In the matter of:

Wärtsilä Technology Oy Ab
Hiililaiturinkuja 2,
Helsinki, 00180,
Finland

Through its Authorized Representative:

Mr Matthew Powders,

Email: matthew.powders@safenames.net / legal@safenames.net

Telephone: +44 (0) 1908 200022

.....Complainant

Versus

Doublefist Limited
Wisconsin, United States
Email: ymggroup@msn.com

Also at:

Feifei,

Doublefist Limited(Contact us:ymgroup@msn.com)

A3, JiaZhaoYe, JiangBei, Huicheng District,

HuiZhou City, GuangDong Province,

China, HuiZhou, 516000.

Email: ymggroup@msn.com

Telephone: (+86).17172121151.

(Registrant)

.....Respondent

Disputed Domain Name : < WARTSILA.CO.IN >

ARBITRATION AWARD

DATED JANUARY 13, 2022.

1) The Parties:

The Complainant in the present arbitration proceedings is 'Wärtsilä Technology Oy Ab' Hiililaiturinkuja 2, Helsinki, 00180, Finland. The



Complainant is represented by it's Authorised Representative Safenames Ltd., Safenames House, Sunrise Parkway, Linford Wood, Milton Keynes, MK14 6LS, United Kingdom.

The Respondent in the present case is Doublefist Limited, Wisconsin, United States, Email: ymgroup@msn.com and also as Feifei, Doublefist Limited(Contact us:ymgroup@msn.com) A3, JiaZhaoYe, JiangBei, Huicheng District, HuiZhou City, GuangDong Province, China, HuiZhou, 516000, as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar and Registrant:

The disputed domain name is < WARTSILA.CO.IN >

The Registrar is Dynadot LLC

The Registrant is Doublefist Limited, Wisconsin, United States. Also as Feifei, Doublefist Limited, A3, JiaZhaoYe, JiangBei, Huicheng District, HuiZhou City, GuangDong Province, China, HuiZhou, 516000.

(Contact us:ymgroup@msn.com)

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole Arbitrator to arbitrate the dispute between parties in accordance with the



Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on 12th November, 2021.
- That the notice was issued to the Respondent on 15th November, 2021, at his e.mail address 'ymgroup@msn.com' communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <WARTSILA.CO.IN_> in its favour. The Respondent was called upon to submit their response within ten (10) days of the receipt of the Arbitrators e.mail i.e. on or before 25th of November 2021.
- The Arbitrator received no response from the respondent within the said timeline and even thereafter till date. Since no response was received from the Respondent, the Respondent is proceeded ex-parte.
- Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) **FACTUAL BACKGROUND:**

The Complainant is a subsidiary of Wärtsilä Corporation, a Finnish corporation which operates in the field of smart technologies and lifecycle solutions for the marine and energy markets. The Complainant was established in 1834 and has since been operating continually. Initially, the Complainant operated as a sawmill and iron works company and thereafter it gradually moved into other fields and in 1959 it began producing commercial engines. In 2001 it expanded into the industry of biopower. The Complainant has more than 200 locations worldwide, in more than 70 countries with a notable presence in India.



The Complainant states to have substantive rights and interests in the WARTSILA mark, developed through exclusive, extensive and consistent use of this term within the global marketplace. The Complainant owns trademarks for the WARTSILA mark across a number of jurisdictions, including India.

5) **Summary of Complainant's contentions:**

The Complainant has contended that each of the element in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. It has thus been contended that the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; that the Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and the Registrant's domain name has been registered or is being used in bad faith. The Complainant has in support of its case has made the following submissions:

- a) The Complainant states that the Complainant is a subsidiary of Wärtsilä Corporation, a Finnish corporation which operates in the field of smart technologies and lifecycle solutions for the marine and energy markets. The complainant submits that Wärtsilä Technology Oy Ab and Wärtsilä Corporation be collectively referred to as the 'Complainant'.
- b) It is submitted that the Complainant's operations place a strong emphasis on sustainable innovation, efficiency and data analytics to maximise the environmental and economic performance of its customers' vessels and power plants. The Complainant relies and refers to <https://www.wartsila.com/media/businesses-in-brief> (Annex 3) for an overview of the Complainant's main business sectors.
- c) Complainant states that the Complainant was established in, and has been operating continually since, 1834. It is stated that in its early years, the Complainant operated as a sawmill and iron works company. It gradually moved into other fields and began producing its first commercial engines in 1959. In 2001 the Complainant expanded into the industry of biopower and was later deemed amongst the 100 most



sustainable corporations in the world. The Complainant has made a number of acquisitions over the course of its history. The Complainant relies on Annexure 4 wherein several screenshots have been given as under <https://www.wartsila.com/about/history/>.

- d) The Complainant further submits that it had net sales of 4.6 billion EUR in 2020 with approximately 18,000 employees. The Complainant has more than 200 locations worldwide, in more than 70 countries. Annex 5 is relied upon. The Complainant submits that it has a notable presence in India and uses a site-specific section of its main website '<https://www.wartsila.com/ind>' to advertise and explain its offerings in this regard. Annexure 6 is relied upon. The Complainant states that it has provided the Indian market with lifecycle power solutions since the early 1980s, and currently has six registered sales and services offices, a factory and workshop. As of May 2021, the Complainant had approximately 550 employees in India.
- e) The Complainant submits further that the Complainant's operations under the WARTSILA/WÄRTSILÄ mark in India are well advertised and discussed in third-party sources online. The complainant relies upon Annexure 7 to the complaint.
- f) The Complainant submits that the Complainant has brought this Complaint on the basis of its substantive rights and interests in the WARTSILA mark, developed through exclusive, extensive and consistent use of this term within the global marketplace. The Complainant states that it owns trademarks for the WARTSILA mark across a number of jurisdictions, including India that are publicly visible at <http://www.wipo.int/branddb/en/>. Several of the Complainant's trademark registrations are listed and referred to in Annexure 8 that give details of the Trademark Registrations for 'WARTSILA' in various countries including India. It is stated that the Complainant principally operates under the domain name 'wartsila.com', registered in 1996, which it uses to advertise its offerings and promote the WARTSILA brand globally. The Complainant holds a portfolio of more than 250 domain names which encompass the WARTSILA Mark, including both gTLD and ccTLD extensions. Annexure 9 is relied upon.



- g) The Complainant submits that it also has an established social media presence under the mark 'wartsila' on various platforms like LinkedIn, Twitter, Facebook, YouTube and Instagram with numerous followers and uses the WARTSILA mark to promote its services under this name (Annex 10 is relied upon)
- h) The Complainant submits that in view of the factual background it is evident that the Complainant has earned the goodwill and recognition that has been attained under the WARTSILA name, which has become a distinctive identifier of its service offerings. It is submitted by the Complainant that the Disputed Domain Name incorporates the Complainant's WARTSILA mark exactly, without addition or alteration and is hence confusingly similar / identical. Complainant further submits that the '.IN' ccTLD extension should be disregarded as it is merely a technical requirement.
- i) Complainant submits that the Respondent lacks a right or legitimate interest in respect of the Disputed Domain Name. The Complainant submits that it has a legal right to the Disputed Domain Name based on its statutory protection of the WARTSILA mark by way of trademark registrations in multiple jurisdictions, including in India. The Complainant also relies on the recognition acquired by the Complainant under the WARTSILA mark, both internationally and in India much prior to the Disputed Domain Name's registration in 2011 by the respondent. The Complainant states that as per his knowledge the Respondent does not own any recognised rights to the WARTSILA term, by way of trademark registrations or any other protected right.
- j) The Complainant further submits that the Respondent has not used, nor prepared to use, the Disputed Domain Name in connection with a bona fide offering of goods or services. The Disputed Domain Name has been used to resolve to a parked page comprising pay-per-click ('PPC') advertising links, some of which clearly compete with the Complainant's offerings and also capitalise on the reputation and goodwill of the complainant's mark, or otherwise mislead Internet users. The Respondent's use of the Disputed Domain Name to display PPC



links, some of which direct users to competing sites of the Complainant, therefore does not constitute a bona fide offering.

- k) It is further submitted by the Complainant that there is a banner across the top of the Disputed Domain Name's site titled as: 'The domain Wartsila.co.in may be for sale. Click here to inquire about this domain' and it directs Internet users to a page which solicits offers for its purchase (Annex 11 is relied upon).
- l) It is submitted by the Complainant that the Respondent, in its reply to cease and desist correspondence sent by the Complainant, also specifically offered the Disputed Domain Name for a sale price of 3,590 USD – a figure clearly in excess of its out-of-pocket costs related to the registration. The said correspondence is annexed in Annexure 14. The Complainant submits that given this response, it is highly likely that the Respondent's reason for registering the Disputed Domain name was to capitalise on the goodwill of the Complainant's distinctive WARTSILA mark in order to make a profit.
- m) It is further submitted that to the best of the Complainant's knowledge, the Respondent does not have any protected rights in the WARTSILA mark. As such, the Respondent cannot claim to be commonly known by this term.
- n) The Complainant thus submitted that it is therefore clear that the Respondent's conduct can neither be considered legitimate non-commercial nor fair, and that the Respondent has no rights or legitimate interest in the Disputed Domain Name.
- o) The Complainant further submits that the Disputed Domain name was registered and used in bad faith by the Respondent.
- p) Firstly, the Complainant submits that it holds prior rights in the 'WARTSILA' trademark. Within India, the Complainant's earliest WARTSILA trademark precedes the Disputed Domain Name's creation by more than 15 years. The Complainant further submits that anyone who has access to the Internet can clearly find the Complainant's protected WARTSILA trademark registrations on public databases, including, but not limited to, WIPO's Global Brand Database (Annex 12). It is further submitted that top Google search results for



'WARTSILA', presently and also prior to 14th June 2011 when the Disputed Domain Name was registered by the Respondent, clearly pertain to the Complainant's offerings (Annex 13). Thus, it is clear that the simplest degree of due diligence would have revealed to the Respondent the Complainant's established rights in the WARTSILA mark. Further, the Complainant submits that the Respondent has clearly attempted to sell the Disputed Domain Name to the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs related to the Disputed Domain Name. It is stated that in the email response to a cease and desist letter sent by the Complainant on 29th November 2019 the Respondent requested the substantial payment of 3,590 USD for the Disputed Domain Name's transfer. Further it is submitted that the fact that the Disputed Domain Name has in previous years resolved to a page advertising that it is for sale illustrates that the Respondent's primary purpose of registering the Disputed Domain Name was to extort a financial benefit from the Complainant. Such conduct amounts to bad faith registration and use.

- q) The Complainant further submits that the Respondent has registered the Disputed Domain Name with a view to preventing the Complainant from reflecting the WARTSILA mark online under the '.IN' extension. The Complainant specifically states that the Respondent has also engaged in a pattern of registering other domain names under this extension which encompass the distinct marks of internationally recognisable brands. The numerous infringing registrations by the Respondent is detailed in Annexure 15. It is also submitted by the Complainant that the Respondent has also been the subject of previous INDRP disputes, for example SNAP-ON INCORPORATED v. FEIFEI DOUBLEFIST LTD, Case No. INDRP/1245 and Mozilla Foundation v. Lina/Doublefist Limited., Case No. INDRP/934. The Respondent has evidently provided false and inconsistent contact details across these various cases while retaining the same fictitious entity name: Doublefist Ltd. It is submitted by the Complainant that the fact that the Respondent has registered domain names clearly corresponding to popular third-party entities further affirms the Complainant's belief that the



Respondent intentionally registered the Disputed Domain Name to profit from the value of the Complainant's protected WARTSILA mark and such use has consistently been held to constitute cybersquatting.

- r) The Complainant thus submits that in view of the facts and evidence placed on record, it is apparent that the Respondent registered the Disputed Domain Name in order to target and commercially capitalise on the renown attached to the Complainant's distinctive and protected WARTSILA mark. The Complainant thus submits that the Respondent both registered and used the Disputed Domain Name in bad faith.
- s) The Claimant thus submits that the Registrant is in breach of Sections 3(a) to (d) of the INDRP.
- t) Thus the Complainant prays for transfer of the Disputed Domain Name <wartsila.co.in > to the Complainant.

6) RESPONDENT:

The Respondent did not respond in these proceedings although notice has been sent to the Respondent under the INDRP Rules.

7) DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or confusingly Similar:

The Disputed Domain Name incorporates the Complainant's WARTSILA mark without addition or alteration. The Complainant has submitted that respondent's



domain name incorporates the Complainant's 'WARTSILA' mark exactly, without addition or alteration. It also comprises the Complainant's 'WÄRTSILÄ' mark.

It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity. Addition of generic terms to a well known trademark does not prevent a finding of confusing similarity between the disputed domain name and mark. It is a well established principal that when a domain name wholly incorporates a complainant's registered mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy. Further it is evident that the disputed domain name "wartsila.co.in" is identical to the Complainant trademark except for the generic term ".in" appended to it. However, such differences can be ignored for the purpose of determining similarity between the disputed domain name and the Complainant's trademark as it is a generic and technical requirement and is non-distinctive and does not prevent a finding of confusing similarity between the disputed domain name and mark.

The Complainant has submitted evidence of its trademark registrations for the "WARTSILA" mark in India as also in other Jurisdictions and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use.

It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark.

The disputed domain name is accordingly found to be confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

Rights and Legitimate Interests:

The second element requires the Complainant to put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, whereafter, the burden of proof on this element shifts to the respondent to come



forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has argued that the Respondent lacks a right or legitimate interest in respect of the Disputed Domain Name.

The Complainant has stated that Complainant has legal rights to the Disputed Domain Name based on its statutory protection of the 'WARTSILA' mark by way of trademark registrations in multiple jurisdictions, including in India. The Complainant also relies on the recognition acquired by the Complainant under the 'WARTSILA' mark, both internationally and in India much prior to the Disputed Domain Name's registration in 2011 by the Respondent. It is evident that the Respondent has registered the disputed domain name after a considerable time of the Complainant having established its rights in the WARTSILA mark. It is found that the Complainant has provided evidence of its prior adoption of the 'WARTSILA' mark.

The Complainant argued that the Respondent has not used the Disputed Domain Name in connection with a bona fide offering of goods or services. The Disputed Domain Name has been used to resolve to a parked page comprising pay-per-click ('PPC') advertising links, some of which clearly compete with the Complainant's offerings e.g., links that relate to power generators. It is a well-established principle that a respondent's use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalise on the reputation and goodwill of the complainant's mark, or otherwise mislead Internet users. The Complainant refers to 'Urban Outfitters, Inc. v. GaoGou / Yerect International Limited', Case No. INDRP/624: 'The fact that the Respondent's website carries nothing but sponsored links of other competitor websites and is merely a PPC parking page further proves that the Respondent is just a cyber squatter.' The Complainant thus argued that the Respondent's use of the Disputed Domain Name to display PPC links, some of which direct users to competing sites of the Complainant, therefore does not constitute a bona fide offering. Further it has been argued by the Complainant that a banner has been placed by the Respondent across the top of the Disputed Domain Name's site titled:



'The domain Wartsila.co.in may be for sale. Click here to inquire about this domain' and the same directs Internet users to a page which solicits offers for its purchase. A printout of the said image has been annexed as Annexure-11 and relied upon..

It is observed that in the email correspondence between parties that has been relied upon in evidence placed on record, that the Respondent, in its reply to cease and desist correspondence sent by the Complainant, also specifically offered the Disputed Domain Name for a sale price of 3,590 USD with an intention to make a profit out of the said domain name. Such behaviour constitutes evidence that the Respondent has no right or legitimate interest in respect of the disputed domain name.

It is a settled position that if the Respondent does not have trade mark right in the word corresponding to the disputed domain name and in the absence of evidence that the respondent was commonly known by the disputed domain name, the Respondent can have no right or legitimate interest.

The Complainant has argued that due to extensive use of the 'WARTSILA' mark globally and in India, the mark is distinctive and enjoys substantial goodwill, reputation and fame. It is found that the Complainant has acquired rights in the 'WARTSILA' mark through use and registration and the Complainant has provided evidence of the mark being distinctive and having a substantial recognition. In the light of these facts and circumstances, it is found that the respondent's use of the 'WARTSILA' mark which is distinctive of the Complainant and its products, does not constitute legitimate use or fair use of the mark by the Respondent.

The Complainant has submitted that the use of the mark by the respondent is likely to mislead people and the respondent lacks rights to use the said trademark in the disputed domain name. The Complainant's submissions that the Respondent's use of mark in the disputed domain name is likely to mislead Internet users is plausible.

Use of a trademark with the intention to derive benefit from the mark and to make improper commercial gains by such use is recognized as infringing use under INDRP Policy. The use of the Complainant's WARTSILA mark by the Respondent, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.



In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4 of the Policy has been met by the Complainant.

Bad faith

The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the WARTSILA mark. The disputed domain name has been registered on 14th June 2011 whereas, within India, the Complainant's earliest WARTSILA trademark precedes the Disputed Domain Name's creation by more than 15 years.

It is evident that anyone who has access to the Internet can clearly find the Complainant's protected WARTSILA trademark registrations on public databases, including, but not limited to, WIPO's Global Brand Database. The Complainant has submitted that top Google search results for 'WARTSILA', both presently and prior to 14th June 2011 when the Disputed Domain Name was registered, clearly pertain to the Complainant's offerings. Hence it can safely be concluded that the Respondent was aware of the Complainant's established rights in the WARTSILA mark prior to registering the disputed domain name.

It is also established on record that the Respondent attempted to sell the Disputed Domain Name to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs related to the Disputed Domain Name. In an email response to a cease and desist letter sent by the Complainant on 29th November 2019 the Respondent requested the substantial payment of 3,590 USD for the Disputed Domain Name's transfer. This along with the fact that the Disputed Domain Name has in previous years resolved to a page advertising that it is for sale illustrates that the Respondent's primary purpose of registering the Disputed Domain Name was to extort a financial benefit from the Complainant. Such conduct amounts to bad faith registration and use. Thus, the submission of the Complainant that the Respondent has registered the Disputed Domain Name with a view to preventing the Complainant from reflecting the 'WARTSILA' mark online under the '.IN' extension is plausible.

The Complainant has further brought on record the evidence that the Respondent has engaged in a pattern of registering other domain names under this extension which encompass the distinct marks of internationally recognisable brands and that the Respondent has also been the subject of previous INDRP disputes.

Thus from the evidence on record, it is noted that the Respondent has registered numerous domain names that use trademarks of third parties. Such conduct exhibits a pattern of registration of domain names to derive undue advantage from the goodwill associated with the trademark of others, which is recognized as indicative of bad faith registration and use under the INDRP Policy.

The facts and the evidence filed by the Complainant establish the Complainant's prior adoption of the 'WARTSILA' mark also establish that it has extensively used the said trademark in commerce for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value. Thus it is concluded that the Respondent registered the Disputed Domain Name in order to target and commercially capitalise on the reputation attached to the Complainant's distinctive and protected 'WARTSILA' mark.

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts circumstances and the evidence indicate that the Respondent has used the 'WARTSILA' Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark. Thus it is concluded that the Respondent has attempted or is attempting to attract Internet users, for commercial gain, to the website of respondent through the likelihood of confusion which may arise with the trademark of Complainant.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Refer to '*Colgate Palmolive Company and Colgate Palmolive (India) Ltd v Zhaxia*,' INDRP Case



No. 887, where bad faith was found when the respondent had registered the disputed domain name to cause confusion with the complainants mark.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

In the light of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.

DECISION

In view of the above findings it is ordered that the disputed domain name <wartsila.co.in> be transferred to the Complainant.



(Deepali Gupta)

Sole Arbitrator

Date: 13th January 2022