



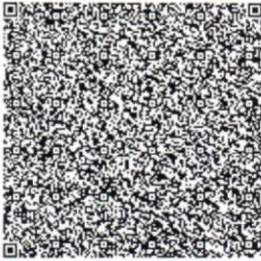
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Certificate No. : IN-DL76694750702720L
Certificate Issued Date : 08-Feb-2013 12:52 PM
Account Reference : IMPACC (IV)/ dl766303/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL76630353037859234314L
Purchased by : SANJAY KUMAR SINGH
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SANJAY KUMAR SINGH
Second Party : Not Applicable
Stamp Duty Paid By : SANJAY KUMAR SINGH
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line.....

BEFORE SANTAY KUMAR SINGH ARBITRATOR.
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)
MEAD JOHNSON & COMPANY LLC - - complainant
VS.
YITAO - - Respondent
Domain Name - "Mead Johnson.co.in".

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR

IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN THE MATTER OF:

MEAD JOHNSON & COMPANY, LLC
2400 WEST LLOYD EXPRESSWAY
EVANSVILLE, IN 47721
UNITED STATES OF AMERICA

THROUGH

Ryan D. Levy
Waddey & Patterson, P.C., 1600 Division Street,
Suite 500, Nashville, TN 37203,
E-Mail: I rdl@iplawgoup.com

..COMPLAINANT

Versus

YITAO
APEX LABORATORIES LIMITED,
76 C.P.RAMA ROAD,
HONG KONG - 999077, HK
E-mail: sunong@live.com

..RESPONDENT

1. THE PARTIES:

The complainant is Mead Johnson & Company, LLC, 2400 West Lloyd Expressway, Evansville, IN 47721, E-Mail: koti.kwarteng@mjn.com .

(Complaint has been filed by authorized representative Ryan D. Levy Waddey & Patterson, P.C., 1600 Division Street, Suite 500, Nashville, TN 37203, E-Mail: rdl@iplawgoup.com .

The Complainant's preferred method for communications directed to the administrative proceeding is: Electronic-Only Material, Method: e-mail: rdl@iplawgoup.com .

The Respondent is Yitao, Apex Laboratories Limited, 76, C. P. Rama Road, Hong Kong - 999077, HK, E-Mail: sunong@live.com

Sanjay Kumar Singh

2. DOMAIN NAME AND TRADEMARK IN DISPUTE:

Domain name of the respondent is "**MEADJOHNSON.CO.IN**"

The trademark of the complainant is "**MEAD JOHNSON**".

3. PROCEDURAL HISTORY:

This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.

The present dispute pertains to the domain name "**MEADJOHNSON.CO.IN**" in favour of the respondent.

The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "**MEADJOHNSON.CO.IN**"

The complainant herein has filed the instant complaint challenging the registration of the domain name "**MEADJOHNSON.CO.IN**" in favour of the respondent.

I was appointed as Sole Arbitrator in the matter by NIXI.

The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).

A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.

On 11-02-2013 I issued notice to the respondent and informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within seven days of receipt of notice.

On 11-03-2013 I again issued notice to the respondent and further directed the respective parties to the complaint, to file their counter/ reply and rejoinder with the supportive document/evidence.

I have perused the records and have gone through the contents of the complaint. Since respondent has not filed any reply hence the complaint is

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being decided ex-parte on the merits of the complaint and as per law of the land.

The complainant has submitted the present complaint for decision in accordance with the .IN Domain Name Dispute Resolution Policy adopted by the .IN Registry and in line with internationally accepted guidelines and with the relevant provisions of the Information Technology Act 2000.

4. TRADEMARK:

The complainant has submitted that the MEAD JOHNSON mark is currently registered as a stand-alone mark with the U.S. Patent and Trademark Office under Registration No. 3, 092, 32 I, registered on May 16, 2006 for use in Class 5 as a house mark in connection with a full line of nutritional supplements, vitamin Preparations, and infant formulae, as well as pharmaceutical preparations for treatment of sleep diseases and disorders. The NIEAD JOHNSON mark is also the dominant element of Reg. Nos. 3,832,632 and 2,269,727 for MEAD JOHNSON NUTRITION and MEAD JOHNSON NUTRITIONALS, respectively. Furthermore, Complainant's holdings include registered trademarks in India under Nos. 245894 since December 7, 1967 (MEAD JOHNSON) and 1580071 since July 18, 2007 (MEAD JOHNSON); and 1171879 since February 4, 2003 in Class 5. The complainant has annexed the copies of the Certificates of Registration or Printouts showing the aforesaid registrations from the online databases of USPTO and Trade Marks Registry, India as Annexure B.

5. FACTUAL AND LEGAL GROUNDS :

The complainant has submitted that complainant's trademarks hold substantial value both as source identifiers for Complainant and as symbols of the goodwill associated with Complainant and its products. Because of their intrinsic value, Complainant's marks are attractive to cyber squatters who purchase domain names incorporating the marks and often collect click-through fees or derive other commercial benefit from the Internet traffic the marks attract. Complainant has been diligent in enforcing its rights, typically under the UDRP as well as the INDRP and has obtained transfer decisions for a number of wrongfully-acquired domain names, including those featuring its MEAD JOHNSON mark. Complainant's transfer decisions to date include those shown in the table below:

Sanjay Singh

Case No.	Domain Name	Decision Date
FA1008001340855	enfamil.mobi	September 23, 2010
DCO2010-0014	meadjohnson.co	October 6, 2010
FA10100013 50256	enfamilcoupons.net	November 11, 2010,
FA1 01 00013 50259	enfamilcoupons.org	November 16, 2010
FAI010001350255	enfamilcoupons.info	November 17, 2010
FA1010001350255	enfamilcouponsprintable.com	November 17, 2010
FA1102001373118	enfamilgentlease.net	March 22, 2011
FA1102001373118	enfamilgentleaseorg	March 22, 2011
FA1102001373118	enfamilformula.net	March 22, 2011
FA1102001373118	enfamilformula.org	March 22, 201 1
FA1102001373118	enfamil-coupons.com	March 22, 2011
FA1102001373374	enfamilcouponsprintable.org	March 30, 2011
FA1102001373374	enfamilcouponsprintable.net	March 30, 2011
FA1102001373 595	enfamilgentlease.com	March 31, 2011
FA1109001409769	enfamil-coupons-printable.com	November 09, 2011
FA1109001409788	enfamil-coupons.net	November 15, 201 1
FA1111001417917	enfamillic.com	January 03, 2012
FA1111001417918	genfamilformula.com	January 12, 2012
FA1111001417920	enfamillic.com	January 12, 2012
FA1111001417912	enfamilstore.com	January 15, 2012
FA1111001417921	enfamilcouponsguide.com	January 17, 2012
FA1111001417919	enfamile.com	January 19, 2012
FA1202001432184	enfamilsite.info	April 11, 2012
FA1202001432183	enfamilac.com	April 17, 2012
FA1203001433010	enfamilcouponsx.com	April 18, 2012
FA1203001433009	enfamilcouponsx.net	April 26, 2012
INDRP/3 62	meadjohnson.in	June 14, 2012

The complainant has submitted the copy of the recent INDRP decision directing transfer of the domain name 'meadjohnson.in' in favour of complainant is provided as Annexure B1.

The complainant has further submitted it is recognized as a worldwide company having expanded into India with expectations that India will in future be a top ten market. The complainant has placed reliance on Amexures C and D.

Sanjay Kr Singh

The complainant has submitted that Mead Johnson has registered and maintains at least the following domain names in the following countries:

<u>Country</u>	<u>Domain Name</u>
Argentina	meadjohnson-arg.com.ar
China	meadjohnson.com.cn
Canada	meadjohnson.ca
Denmark	meadjohnson.dk
France	meadjohnson.fr
Hong Kong	meadjohnson.com.hk
Malaysia	meadjohnsonasia.com.my
Mexico	meadjohnson.com.mx
Netherlands	meadjohnson.nl
Norway	meadjohnson.no
Philippines	meadjohnson.com.ph
Russia	meadjohnson.ru
Spain	meadjohnson.es
Sweden	meadjohnson.se
United States	meadjohnson.com

The complainant has submitted that Yitao, Apex Laboratories Limited of 76 C.P.Rama Road, Hong Kong, Guangdong, China 999077, registered <meadjohnson.co.in> on June 7, 2011. The complainant has annexed Annexure- E in its support. The <meadjohnson.co.in> domain name resolves to a website at www.meadjohnson.co.in dedicated to providing a listing of pay-per-click advertising links generated using the words of the Domain Name as search terms. The site features pay-per-click advertising links including a "Sponsored Listings" list of links. The complainant has annexed Annexure- F in its support. The complainant has further submitted that the listing of links at the site is different for each load of the website, but typically comprises sponsored (i.e., pay-for-placement) links for free formula coupons coupon sources, baby product, or other products relevant to a new parent. The complainant has further submitted that it obviously has no control over the composition of this list, which can easily include links to competitors or to unauthorized sources for Complainant's own products, operating outside the strict quality compliance Complainant requires of its authorized retailers and distributors. The complainant has

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further submitted that the website appears to exist solely for the purpose of attracting Internet traffic looking for Complainant's products in order to capitalize when confused visitors click on the sponsored links and ads imbedded there.

The complainant has submitted that Respondent has registered the Domain Name in this case, which comprises Complainant's MEAD JOHNSON mark, and has used it to create confusion and profit from the goodwill associated with the MEAD JOHNSON mark. The complainant has submitted that in the process Respondent has prevented Complainant from registering the Domain Name. Complainant contended that:

- (1) Respondent has registered Domain Name which comprises to the MEAD JOHNSON mark in which Complainant has rights,
- (2) Respondent has no rights or legitimate interests in the Domain Name, and
- (3) Respondent has registered and is using the Domain Name in bad faith.

6. (A) THE DOMAIN NAME IS IDENTICAL TO A MARK IN WHICH COMPLAINANT HAS RIGHTS:

The complainant has submitted that Complainant Mead Johnson & Company, LLC ("Complainant") is a global leader in infant and children's nutrition, best known for its Enfamil and Enfalac, families of infant formulas.

The complainant has further submitted that Complainant began commercially using MEAD JOHNSON as a trademark at least as early as May 1998 and holds several federal trademark registrations in the United States, including Registration No. 3,092,321, registered on May 16, 2006 for use in Class 5 as a house mark in connection with a full line of nutritional supplements, vitamin preparations, and infant formulae, as well as pharmaceutical preparations for treatment of sleep diseases and disorders. The complainant has placed reliance on Annexure B.

The complainant has further submitted that complainant's holdings include registered trademarks in India under Nos. 245894 since December 7, 1967 (MEAD JOHNSON) and 1580071 since July 18, 2007 (MEAD Mefffyohnson' JOHNSON); and 1171879 since February 4, 2003 in Class 5.

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The complainant has further submitted that complainant Mead Johnson has been using its MEAD JOHNSON trademark in the United States and around the world for several decades and has invested substantially in the trademark associated with the goods marketed under the MEAD JOHNSON brand name. As a result, the MEAD JOHNSON trademark, together with Complainant's name and reputation, has become a synonymous with quality infant nutrition products. The complainant has built up considerable goodwill in the minds of consumers in connection with the MEAD JOHNSON trademark.

The complainant has submitted that, Respondent could not possibly contend that it is commonly known by or identified with the Domain Name. The complainant has further submitted that Respondent's name, Yitao, is not even remotely similar to the domain name, and there is nothing at all to indicate that Respondent is known by or associated with Complainant, its name, or its products.

6 (B) RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DOMAIN NAME:

The complainant has placed reliance on *Morgan Stanley v. Ding Riguo*, INDRP/370 (July 28, 2012) (finding no rights or legitimate interests where Respondent was not commonly known by the disputed domain name nor engaged in any business or commerce under the mark); ICANN Policy 11 4(c) (ii); *Seiko Epson Corp. v. Price-less Inkjet Cartridge Co.*, FA 096849 (Nat. Arb. Forum May 2, 2001), citing, inter alia, *Compagnie de Saint Gobain v. Com- Union Corp.*, D200-0020 (WIPO Mar.14, 2000) wherein it was found that there is no rights or legitimate interest where Respondent was not commonly known by the mark and never applied for a license or for permission from Complainant to use the trademarked name.

The complainant has submitted that it has met its initial burden under the INDRP, having established that Respondent is not commonly known by the name MEAD JOHNSON, is not engaged in a bona fide commercial use or a non-commercial fair use of Complainant's mark, and that Complainant has not in any manner authorized Respondent to use its mark. The complainant has relied on *Amazon Technologies, Inc. vs. Kislav Chaudhary*, INDRP/361 (June 12, 2012); *Citigroup Inc. v. Citilend Mortgage Company*, FA1233601

Sangeeta K. Chaudhary

(Nat. Arb. Forum Dec. 1, 2008). The complainant has submitted that the requirements of the INDRP have been satisfied because the Respondent has no rights or legitimate interests in the Domain Name at issue.

6. (C) RESPONDENT HAS REGISTERED AND IS USING THE DOMAIN NAME IN BAD FAITH:

The complainant has submitted that at the time Respondent registered the Domain Name at issue, Respondent was certainly well aware of Complainant's trademarks. First, the MEAD JOHNSON trademarks are registered under multiple registrations. The complainant has placed reliance on Annexure- B, and there is no trademark or service mark registered or used by third parties that is similar to the MEAD JOHNSON mark. Indeed, Complainant has been using the MEAD JOHNSON marks in the United States and around the world for decades. The complainant has further submitted that the MEAD JOHNSON trademarks have become synonymous with quality infant and children's nutrition products. Complainant has therefore built up considerable goodwill in the minds of consumers with its MEAD JOHNSON marks.

The complainant has submitted that in the circumstances and Respondent's conduct, it can only be inferred that Respondent registered the Domain Name, which is identical to Complainant's MEAD JOHNSON mark, for the purpose of preventing Complainant from itself registering the domain. Complainant has been operating under the MEAD JOHNSON mark worldwide for over fifty years and has been also been using the mark in India. The complainant has placed reliance on Annexure C & D. The complainant has submitted that its reputation for quality infant and children's nutrition products is known worldwide including in Hong Kong and India. There cannot be any doubt that Complainant's marks are well known and that the Respondent intended to capitalize on confusion by bad faith use of Complainant's marks. *Morgan Stanley v. Ding Riguo INDRP/370 (July 28, 2012)* wherein it was found that bad faith registration where Respondent registered a domain name that infringed upon the Intellectual Property rights of another entity, reasoning Respondent must have had actual knowledge of Complainant's marks given the well-established

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reputation of Complainant's marks and use in Respondent's place of residence.

The complainant has submitted that Respondent appropriated Complainant's MEAD JOHNSON mark in the <meadjohnson.co.in> Domain Name and, by all appearances, designed resolving websites around the MEAD JOHNSON mark as a keyword in order to increase traffic to Respondent's websites. Respondent's resolving websites were thus designed to commercially profit Respondent through commissions, affiliate fees, and pay-per-click revenue as a result of Internet users' confusion about Complainant's presence and association with Respondent. Other forums have found that this very conduct-misleading Internet users to attract them to Respondent's own website for commercial gain-indicates bad faith registration and use pursuant to UDRP Policy. The complainant has placed reliance on *Victoria's Secret Stores Brand Management, Inc. v Speedeenames.com* c/o Troy Rushton, FA 1325862 (Nat. Arb. Forum June 25, 2010). The complainant has placed reliance on *Allianz of Am. Corp. vs. Bond*, FA 680624 (Nat. Arb. Forum June 2, 2006) (finding bad faith registration and use under Policy 1] 4(b) (iv) where the respondent was diverting Internet users searching for the complainant to its own website and likely profiting. Likewise, conduct of this sort is similarly considered bad faith use under the INDRP.

The complainant has submitted that INDRP Paragraph 6 "holding use in bad faith existed where respondent had intentionally attempted to attract, for commercial gain, internet users to respondent's web site or other online locations by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of respondent's website". Furthermore, the placement of advertising links under a "Sponsored Listings" header that are likely to resolve to Complainant's competitors or their products, as Respondent has done here, has been specifically held to constitute bad faith under the INDRP. The complainant has placed reliance on *Wells Fargo & Company v. Jessica Frankfurter*, INDRP/392 (September 25, 2012) wherein it was held that "A number of advertising links resolve to the web pages of the companies that are direct competitors of the Complainant. Such usage of a domain name amounts to bad faith."

See also 1001 1011.

The complainant has further submitted that respondent is likely in a pattern of registration that attempts to generate revenue off of other's marks. Through the use of Domain Tools, Complainant has learned that respondent has registered approximately 166 other domains. The complainant has relied on Annexure- E. It is reasonable to infer from the sheer number of registrations that a strong majority of those domains include marks that Respondent was not authorized to use. This is evidence that the Respondent is a typical cyber squatter and its registration of Complainant's mark has been made in bad faith. The complainant has placed reliance on Dell Inc. v. Jack Sun, INDRP/308 (March 16, 2012) wherein it was held that evidence of Respondent as a habitual cyber squatter is evidence of registration in bad faith.) As such Complainant has contended that Respondent has registered and is using the Domain Name in bad faith.

7. FINDING:

As stated above I have perused the records and have gone through the contents of the complaint, legal submissions and cases relied upon by the complainant. Since respondent has not filed any reply hence the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.

The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward inspite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has nor provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify' &

Satyam Infoway

'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. It is held in above case that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Thus the conclusion is that the domain name **"MEADJOHNSON.CO.IN"** is identical and confusingly similar to the trademark of complainant **"MEADJOHNSON"** and the complainant has established that he has right in the trademark and further the respondent has got registered and is using his domain name **"MEADJOHNSON.CO.IN"** in bad faith.


RELIEF:

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent has no right or legitimate interest in the domain name. Respondent has registered and is using the Domain Name in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name **"MEADJOHNSON.CO.IN"** to him, as it has established its bonafide rights in trademark in facts and circumstances and as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

Delhi

Date: 11-04-2013.


(Sanjay Kumar Singh)
Arbitrator