



सत्यमेव जयते

INDIA NON JUDICIAL

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VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
IN
ARBITRATION PROCEEDINGS OF DOMAIN NAME
"merckchemicals.co.in"

MERCK KGaA

Mr. ZENG WEI

between

AND

...COMPLAINANT

...RESPONDENTS

AWARD

1

Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 23/07/2012. However, while checking the records of the proceedings, this Tribunal found that there was nothing on record which showed that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a hard copy of their complaint to the Respondents by Courier.
2. That compliance of the order was done by the Complainants by sending a soft copy of the complaint with all annexures and the hard copy of the same was sent by NIXI vide their email dated 30/07/2012 in which they sent a copy of a courier receipt of M/s FedEx waybill No.8765 5485 8935. However, the tracking records of the FedEx courier sent by NIXI to the Respondents shows "*Incorrect Address*" on 30/07/2012. Hence, this Tribunal



vide order dated 31/07/2012 directed the Respondent to send their Response/ Statement of Defense to the Complaint by sending the soft copy by email and a hard copy by Courier so as to reach this Tribunal latest by 7th August 2012.

3. That this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have tried their level best to serve the Respondents on the address provided by him in WHO IS. The address of the Respondent as provided in the WHOIS is not correct but nevertheless the soft copy of the complaint has been sent by email and received by the Respondent as it has not bounced back. Be it that as it may this Tribunal notes that the copy(s) of the complaint is with the Respondent hence it cannot be said that the Respondents are unaware of the present Arbitration proceedings or is incapacitated in any way from sending his response to the complaint.
4. In view of the above this Tribunal vide order dated 08/08/2012 reserved the award and also gave liberty to the Respondent to



send any communication on any date prior to the publication of the award so that suitable orders can be passed. This Tribunal notes that the Respondent has not filed any Statement of Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.

5. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:
 - A. It is claimed that the Complainant is a company (earlier known as E. Merck) existing under the laws of Germany and having its office at Frankfurter Strasse 250, D-64293 Darmstadt, Germany and is an old, well known, reputed and established



company since over the past 300 years engaged in the manufacture and marketing of a wide range of pharmaceutical preparations, and had been trading ever since with the name MERCK appearing as a trading name. It is further claimed that complainant first adopted in Germany its house trademark MERCK in respect of its preparations some 150 years and which has been used ever since on a continuous basis.

- B. It is also claimed that the complainant is the registered proprietor of the trademark MERCK under registration no. 1045475 in class 9, 1045471 for the trademark MERCK in class 1, 146735 for the trademark MERCK in class 1, 146102 for the mark MERCK in class 5 are duly registered in India. Reliance is placed on **Annexure-3**.
- C. It is also claimed that the Complainant started using the house trade mark MERCK in India through its subsidiary company Merck Ltd. in the year 1967 and has been using the same continuously and uninterruptedly till date. Reliance is placed on **Annexure-4** and **Annexure-5** (collectively).



D. It is further claimed that complainant has related or subsidiaries in as such as in 60 countries, and all such related companies or subsidiaries use the house trademark MERCK. Reliance is placed on **Annexure-6**.

E. It is claimed that the approximate international/worldwide sales of the products of the complainant bearing the house trademark MERCK for the past 3 years are as follows:

Year	Net Sales (worldwide) (Billion EURO)
2008	7,590
2009	7,747
2010	9,291

Reliance is placed on **Annexure-7**.

F. It is claimed that Complainant through its subsidiary company Merck Ltd. is using it's house trademark MERCK in respect of it's products in India. The approximate sale of the goods of subsidiary company of the complainant bearing the house trademark MERCK for past 5 years is as follows:-



Year	Net Sales (worldwide) ('000 EURO)
2006	3294.9
2007	3148.3
2008	3894.6
2009	4731.1
2010	5090.8

Reliance is placed upon **Annexure-8**.

- G. It is claimed that at all material times, the trade mark MERCK when used on or in relation to the aforesaid products has indicated and still indicates to purchasers and intending purchasers as goods of the complainant and none other. Reliance is placed on **Annexure-9**. It is also claimed that the aforesaid products sold and offered for sale by the complainant under the house trade mark MERCK are of excellent quality and thus have acquired reputation and goodwill all over world including India and intending purchasers identify and recognize products of the complainant by the house trade mark MERCK. Thus the complainant is the exclusive proprietor of the house trade mark MERCK.



- H. The complainant relies upon decisions from WIPO, Czech republic, South Korea and Japan legal *qua* the trademark MERCK . Reliance is placed on **Annexure-10**.
- I. It is claimed that the Complainant has about 1087 domain names registered in its name throughout the world, all having component MERCK as a significant part thereof. Reliance is placed on **Annexure-11**.
- J. It is alleged that the Respondent has no right or legitimate interest in respect of the impugned domain name as MERCK is not the personal or surname name, trade/ service mark, trading name, of the Respondent and thus he has no reason whatsoever to adopt the domain name "merckchemicals.co.in", which is a well-known registered trade mark of the Complainant.
- K. It is alleged that the Respondent has adopted the impugned domain name with dishonesty and bad faith with the mala-fide intention to trade upon the goodwill and reputation associated

with the trade mark MERCK of the Complainant, thereby earning undue profits.

- L. It is alleged that the Respondent has registered the impugned domain name for the purpose of selling the domain name to the Complainant or to a competitor of the Complainant as apparent on the website of Subject domain name which reflects that domain is available for sale for consideration of Euro 6,200. Reliance is placed on a printout of website of Subject Domain Name given as **Annexure-12**.
- M. It is claimed that the intention of the respondent in registering the subject domain name having component/trademark MERCK of the complainant is not only malafide but also dishonest in that it was aware that the well known trademark MERCK was/is the trademark of the complainant and he deliberately registered the subject domain name having component/well known trademark MERCK so as to create confusion in trade and general public. Thus he has by using

the impugned domain name has intentionally attempted to attract Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainants' trade name or trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.


ORDER

7. This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his Statement of Defense chose not to give any reply and hence the allegations of the complainants remain un rebutted.
8. In view of the undisputed evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <merckchemicals.co.in> hence this Tribunal

directs the Registry to transfer the domain name <merckchemicals.co.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records .

Signed this 13th day of August 2012.

NEW DELHI
13/08/2012



V. SHRIVASTAV
ARBITRATOR