



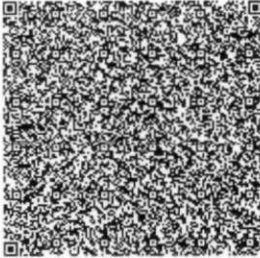
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate Issued Date : 05-Apr-2013 12:38 PM
Account Reference : IMPACC (IV)/ dl737903/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DLDL73790397943165306683L
Purchased by : V K AGARWAL
Description of Document : Article Others
Property Description : 0
Consideration Price (Rs.) : 0
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First Party : V K AGARWAL
Second Party : OTHER
Stamp Duty Paid By : V K AGARWAL
Stamp Duty Amount(Rs.) : 100
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NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6 B, 6th Floor, Uppals M 6 Plaza,
6, Jasola District Centre,
NEW DELHI – 110 025

Shulton Inc., v. Mr. Bhaskar

M. Agarwal

AWARD

1. The Parties

The Complainant is Shulton Inc., One Proctor & Gamble Plaza, Cincinnati, Ohio – 45202, United States of America .

The Respondent is Mr. Mr. Bhaskar, 9, B. T. Road, 18/1 Government Quarters, Belghoria, KOLKATA 700 056, West Bengal

2. The Domain Name and Registrar

The disputed domain name is <www.oldspice.co.in>.

The particulars of registration of the disputed domain name are as follows:

- | | |
|----------------------------|------------------------------|
| (a) Name of the Registrant | : Mr. Bhaskar |
| (b) Domain ID | : D3069731-AFIN |
| (c) Created on | : 30 th July 2008 |
| (d) Expiration date | : 30 th July 2013 |
| (e) Registrar | : Net4India (R7-AFIN) |

3. Procedural History

- (a) An undated Complaint has been filed with the National Internet Exchange of India, New Delhi. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are annexed as Annexure O with the Complaint. It is confirmed that the Respondent is listed as the Registrant of the disputed domain name and provided the contact details for the administrative, billing, and technical contact. The National Internet Exchange of India verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.



- (b) The National Internet Exchange of India appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Rules, the Sole Arbitrator formally notified the Registrant/Respondent of the Complaint through a registered letter dated 23rd April 2013. The Registrant/Respondent was required to submit his defence within 15 days. The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will be proceeded ex-parte.
- (d) The registered letter has been returned by the postal authorities as unserved. In other words, no reply has been received from the Respondent. Accordingly, the Respondent's default has been notified.

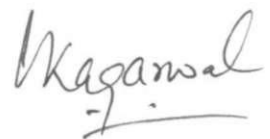
4. Factual Background

From the Complaint and the various annexure to it, the Sole Arbitrator has found the following facts:

Complainant's activities

The Complainant M/s Shulton Inc., One Procter & Gamble Plaza, Cincinnati, Ohio – 45202, United States of America is a wholly owned subsidiary of The Procter & Gamble Company, U.S.A. Further that, the Complainant is a corporation organized and existing under the laws of the State of New Jersey and was incorporated on 11th February 1934. A copy of the Certificate of Incorporation is annexed as Annexure B to the Complaint.

The Complainant carries on, by itself and through its subsidiaries/affiliates, business of manufacturing and selling cosmetics and toiletries under the brand name "OLD SPICE", such as, after-shave lotion, cologne for men, body talc, hair cream, lather shaving cream, brushless shaving cream, and other personal care products. The distinctive trademark "OLD SPICE" was conceived/adopted by the Complainant in the year 1936.



Some of the aforesaid products under the brand name “OLD SPICE” are also very popular in India and are available since 1968.

The Complainant contends that its trademark “OLD SPICE” is an invented mark and is distinctive to the goods of the Complainant. The long and continuous use of the said trademark has led to the exclusive association of the mark with the Complainant. Any use of the trademark/trading style OLD SPICE or any similar sounding and looking mark whether in relation to the same goods or any other goods would invariably result in an association of such mark and its corresponding goods with the Complainant.

Respondent’s Identity and Activities

According to the Complainant, the disputed domain name is owned by Mr. Bhaskar. The Respondent did not file any reply. Hence, the Respondent’s activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that it is a registered owner of the trademark “OLD SPICE” (by itself and along with different devices, such as, sail boat, ship, stylized 58, etc.,) in various countries. For the first time, the said trademark was registered in the year 1936 in the United States of America. An illustrative list of the countries where the trademark “OLD SPICE” is registered is Algeria, Argentina, Australia, Austria, Bangladesh, Brazil, Canada, Chile, China, Cuba, Denmark, Egypt, Finland, France, Germany, Ghana, Hong Kong, Hungary, India, Italy, Israel, Japan, Korea (South), Malaysia, Mexico, New Zealand, Norway, Nigeria, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Russian Federation, Saudi Arabia, Singapore, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, United Arab Emirates, United Kingdom, United States of America, etc.

In most of these countries, the said trademark “OLD SPICE” is registered in various Classes, such as, 3, 5, 18, 21 and 25. The registration of the said

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trademark in Class 3 covers the following products: “perfumes, toilet preparations, cosmetics, dentifrices, depilatory preparations; Preparations for the skin and the scalp, soaps all included in class 3”. Class 5 includes Dermatological Pharmaceutical products.”

The Complainant also owns domain names with the combination of word

“OLDSPICE”. Only to illustrate, they are <www.oldspice.com>; <www.oldspice.ca>; <www.oldspice.ca>; <www.oldspice.co.uk>; <www.oldspiceindia.in>; <www.oldspiceindia.com>; <www.oldspice.us>; etc. Thus, at the time Respondent registered the disputed domain name, the word “OLD SPICE” was well known as trademark and as part of the domain names of the Complainant.

The Complainant has stated that the Respondent/Registrant has registered the disputed domain name “oldspice.co.in” with an intention to trade upon the immense goodwill and reputation enjoyed by the Complainant in the famous trademark “OLD SPICE”.

In relation to element (ii), the Complainant contends that the Registrant/Respondent (as an individual, business, or other organization) has not been commonly known by the mark or name “Old Spice”. Further, the Registrant/Respondent is not making a legitimate non-commercial or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion, sponsorship, affiliation and misleading the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.oldspice.co.in> by the Respondent/Registrant is to mislead the general public and the customers of the Complainant.

The Complainant has stated that the use of a domain name that appropriates a well known name to promote competing or infringing products or for making profit by offering to sell it cannot be considered a “*bona fide offering of goods and services*”.

The Complainant has further contended that a visit to the site indicates that the disputed domain is not in use and is available for sale. Thus, the registrant/Respondent registered the disputed domain name in bad faith and for making profit out of the same by selling it to the Complainant or his competitors.

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B. Registrant/Respondent

The Registrant/Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.oldspice.co.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this Arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the IN Domain Name Dispute Resolution Policy (INDRP), the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

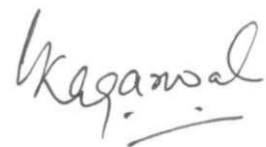
According to paragraph 4 of the said Policy, the Complainant must prove that:

- (i) The Registrant’s domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant’s domain name has been registered and is being used in bad faith;

A. Identical or Confusingly Similar

As per the WHOIS information, the Registrant/Respondent has created the disputed domain name <www.oldspice.co.in> on July 30, 2008. The expiration date is July 30, 2013. In the Complaint, the Complainant has not given any reason as to why the said domain name is now claimed after almost 5 years and why it was not claimed earlier.

The Complainant is the registered owner of the trademark “OLD SPICE” in many countries, as indicated above. Further, the Complainant also owns domain names with the words “old spice”. The Registrant/Respondent has also used the same words. Thus, the Respondent’s domain name is



phonetically, visually and conceptually identical to the trademark of the Complainant.

In the case of *Farouk Systems Inc., v. Yishi*, WIPO Case No. D2010-0006 it has been held that the domain name wholly incorporating a complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the addition or deletion of other words to such marks.

Therefore, I hold that the domain name <www.oldspice.co.in> is confusingly similar to the Complainant's marks.

B. Rights or Legitimate Interests

According to paragraph 7 of the INDRP, the Registrant/Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Respondent'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;
- (ii) 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
- (iii) 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.

The Registrant's response is not available in this case. There is no evidence to suggest that the Registrant/Respondent has become known by the disputed domain name anywhere in the world. There does not exist any relationship between the registrant/Respondent and the words "old spice" used in the disputed domain name. Further that, the Respondent is not operating any activity on the website under the impugned domain "oldspice.co.in. Based on the evidence adduced by the Complainant, it is concluded that the above

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circumstances do not exist in this case and that the Registrant/Respondent has no rights or legitimate interests in the disputed domain name.

The arbitrator is of the view that the Registrant/Respondent registered the disputed domain name mainly for the purpose of misusing it, or transferring it to the Complainant or selling it in the market at a high price or for providing it to the competitor of the Complainant for valuable consideration.

Further, the Complainant has not licensed or otherwise permitted the Registrant/Respondent to use its name or to apply for or use the domain name incorporating the said name. The Registrant/Respondent is not offering any goods or services under the disputed domain name.

Therefore, the Registrant is not using the disputed domain name for bona fide offering of goods or services.

It has been held in the cases of *American Home Products Corporation v. Ben Malgioglio*, WIPO Case No. D2000-1602 and *Vestel Elektronik Sanayi Ve Ticaret As v. Mehmet Kahvect*, WIPO Case No. D2000-1244 that a passive holding of a domain name is an evidence of a lack of legitimate rights and interests in that name.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain name.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) 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 is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or



- (ii) 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 it has engaged in a pattern of such conduct; or
- (iii) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Registrant has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Registrant/Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's name. Further that, The Registrant's/Respondent's registration of the domain name <www.olddspice.co.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

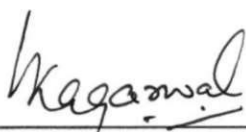
The Complainant has stated that there is evidence that the Registrant/Respondent has offered the disputed domain name for sale. The relevant printouts indicating this fact are annexed as Annexure P to the Complaint. Thus, the registrant/Respondent registered the disputed domain name in bad faith and for making profit out of the same by selling it to the Complainant or his competitors.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Registrant/Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Registrant/Respondent in bad faith.

A handwritten signature in black ink, appearing to read 'Kagan', with a horizontal line underneath it.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the name in which the Complainant has rights, that the Registrant/Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that, as prayed by the Complainant, the disputed domain name <www.oldspice.co.in> may be transferred to the Complainant.



Vinod K. Agarwal,
Date: June 14, 2013