



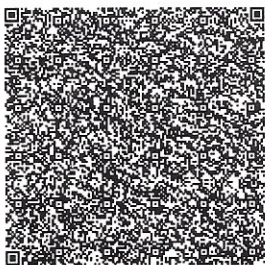
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL490967395061130
Certificate Issued Date : 14-May-2016 12:12 PM
Account Reference : IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP17973166827911920
Purchased by : DIVYA BALASUNDARAM
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : DIVYA BALASUNDARAM
Second Party : Not Applicable
Stamp Duty Paid By : DIVYA BALASUNDARAM
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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

Before the Sole Arbitrator, Divya Balasundaram

. C/O National Internet Exchange Of India

In the matter of:

ONDULINE - Versus - Yang Chaoqun

Divya Balasundaram

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram

Onduline

35 rue Baudin

92300 LEVALLOIS-PERRET

France

... Complainant

Versus

Yang Chaoqun

Dingqun

No.5558 Chuansha RD, Shanghai

201299, China

... Respondent

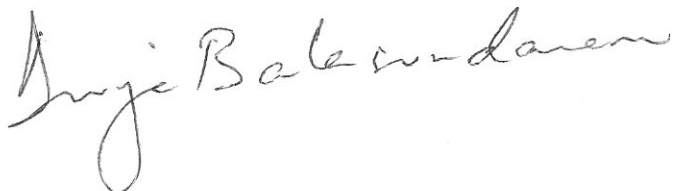
1. The Parties

- 1.1 The Complainant is Onduline, of the address 35 rue Baudin, 92300 LEVALLOIS-PERRET, France, represented by its counsel, D.P. Ahuja & Co., 14/2 Palm Avenue, Kolkata-700 019.
- 1.2 The Respondent is Yang Chaoqun, of Dingqun, No.5558 Chuansha RD, Shanghai, 201299, China.

2. The Domain Name and Registrar

- 2.1 The disputed domain name is <onduline.in> registered with Webiq Domains Solutions Pvt. Ltd.

3. Procedural History



- 3.1 Arbitrator received an email on March 28, 2016 inquiring if NIXI can avail its services as an arbitrator for the dispute pertaining to the domain name <onduline.in>. Arbitrator confirmed availability by email of same date and sent the signed Statement of Acceptance and Declaration of Impartiality and Independence as required by the Rules on March 29, 2016.
- 3.2 The .IN Registry appointed Divya Balasundaram as the Sole Arbitrator on April 04, 2016 and Arbitrator received soft copy of the Complaint along with Annexures on same date. Hard copy was also received by courier.
- 3.3 Arbitral proceedings were commenced by Arbitrator on April 04, 2016 by issuance of a notice by email to the Respondent directing him to file his reply to the Complaint within 15 days. Copy of complaint and annexures were also sent to the Respondent vide email, which is the preferred method of communication in these proceedings. The emails sent to the provided email address of the Respondent have not been returned as undelivered.
- 3.4 The Respondent has not entered appearance nor filed any reply.
- 3.5 Arbitrator sent email on May 10, 2016 to Respondent notifying it of its default.
- 3.6 The language of these proceedings in English.
4. Background of the Complainant and its rights in the trademark ONDULINE as stated in the Complaint:
- 4.1 Complainant was established by Gaston Gromier in 1944 dealing in cellulose-bitumen based roofing and under-roofing materials which were launched initially for the French market. Till 2006, Complainant was 100% family owned and in March 2006, two private equity groups Astorg and Abenex owned the majority shares.
- 4.2 Complainant is the world leader of lightweight building systems, and a recognized international player offering complete solutions for building covering, sealing, insulation and protection (<http://www.onduline.com/>). Complainant has 10 plants and 45 subsidiaries spread over 5 continents. Complainant's products are distributed in over 120 countries and about 90% of its sales is generated abroad. In China, Complainant has been operating through its subsidiary since early 2000's (<http://cn.onduline.com/>). In India, Complainant has been operating through sales subsidiaries since around 2009 (currently, <http://in.onduline.com/en>).

Divya Balasundaram

4.3 The Complaint is based on, inter alia, Complainant's trademark and service mark registrations for ONDULINE as listed below:

Sl. No.	Trademark	Class	Country	Registration No.	Registration Date	Status
1	ONDULINE	3, 6, 9, 19, 25, 28	WIPO	328345	21 July 1949	Registered
2	ONDULINE	3, 6, 9, 17, 19, 25, 28	WIPO	328345	28 November 1966	Registered
3	ONDULINE ANY PLACE ANY WEATHER	19	WIPO with designated country as India	1226973	14 August 2014	Pending
4	ONDULINE	1, 2, 6, 16, 17, 19, 37, 40, 42	WIPO	1247739	9 December 2014	Registered
5	ONDULINE	3, 6, 9, 17, 19, 25, 28	France	1086001	9 February 1979	Registered
6	ONDULINE	3, 6, 9, 17, 19, 25, 28	France	1507757	9 January 1989	Registered
7	ONDULINE	19	India	534684	6 August 1990	Registered
8	ONDULINE	19	China	743073	30 September 1993	Registered
9	ONDULINE IN CHINESE CHARACTERS	19	China	1488900	23 July 1999	Registered

4.4 Complainant owns, inter alia, the following domain names:

- (1) onduline.com
- (2) onduline.eu
- (3) onduline.info
- (4) onduline.net
- (5) onduline-eshop.com

Dr. Je. Balesundar

- (6) onduline-pro.com
- (7) onduline.fr
- (8) ondulineindia.in
- (9) ondulineindia.co.in
- (10) onduline.co.in

5. Respondent and its registration of the disputed domain name

- 5.1 As per .IN Registry whois record, the disputed domain name <onduline.in> is currently registered in the name of Yang Chaoqun of Dingqun, Shanghai, China, the Respondent herein. Accordingly to Whois History, Respondent acquired the disputed domain on 3 April, 2015.
- 5.2 The disputed domain name <onduline.in> was initially registered by Complainant's Indian associate on 12 February, 2009. Thereafter, the domain name was utilized as Complainant's India specific website for a period of time. Complainant being a world leader in its field with a huge reputation in India as well, its India-specific website hosted on the subject domain name catered specifically to its customers and trade partners in India. As a result, members of trade and consumers alike associate the disputed domain name with Complainant and no one else.
- 5.3 Due to unforeseen and unavoidable circumstances, the domain could not be renewed / restored by Complainant's Indian associate, who was bestowed with such responsibility, in time and the domain <onduline.in> expired on 12 February, 2014. After the renewal, redemption and deletion/auto renewal periods, the domain name was deleted from the registry and was made available to public for registration in April 2015, when Complainant was shocked to find that the said domain name was acquired by Respondent.
- 5.4 Complainant also found that the website created at www.onduline.in contained random assortment of news and articles about sale of mining and construction equipments, such as stone crushers etc., and the website appeared to be connected to a company in China by the name of XSM Mining and Construction.
- 5.5 Complainant contacted Respondent a number of times in May, June, September and November 2015 for acquiring the disputed domain. However, no response was received from Respondent. Thereafter Complainant sent cease and desist letters to Respondent and the company XSM Mining and Construction which appeared to be using the disputed domain. Complainant

Dnyes Balasundaram

did not receive any response from either Respondent or the purported user of the domain.

6. Contentions of the Complainant in establishing the 3 elements required under the INDRP

6.1 Element 1 - In support of this element, i.e., the disputed domain name is identical or confusingly similar to Complainant's trademark, the Complainant has submitted that:

6.2 The disputed domain name entirely comprised Complainant's mark ONDULINE with the .in extension.

6.3 The disputed domain name had supported Complainant's India specific website for a considerable time. As a result, Complainant's Indian consumers, trade partners etc., associate the disputed domain name with Complainant. Therefore, any prospective client of Complainant looking for Complainant's India-specific website or information, would continue to assume that the website accessible by the URL <http://www.onduline.in/> either belongs to or is endorsed by Complainant, and will be confused and deceived by the wholly unrelated contents displayed in the domain name.

6.4 Element 2 - In support of this element, i.e., the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name, the Complainant has submitted that:

6.5 The trademark 'ONDULINE' was conceived and coined by the founder of the complainant company, Gaston Gromier in 1944. The expression "ONDULINE" is arbitrary and has no meaning or significance whatsoever. The trademark ONDULINE is a well-known trademark of Complainant whose business operations are spread across the globe, including in India and China. Consumers and members of trade almost exclusively associate the trademark ONDULINE with Complainant and no one else.

6.6 Respondent's name is Yang Chaoqun and the Registrant organization is Dingqun. There is no indication that either the Respondent or the Registrant company is commonly known by a name, or carrying on business under a name, corresponding to the disputed domain name.

6.7 Respondent appears to be in the business of acquisition and sale of domain names. Respondent is a Chinese entity, and does not appear to be dealing

Dwijendra Kumar

with the products and services offered under the ONDULINE marks in any manner. There is absolutely no justification for Respondent to obtain and secure registration of the disputed domain name in its favour, other than to derive profit therefrom through sale. Respondent would be interested in acquiring the unusual domain name only if he was aware of the ONDULINE trademark and brand name and thus the value of the disputed domain name.

- 6.8 Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use the distinctive mark "ONDULINE" or to register the disputed domain name. As mentioned earlier, the disputed domain name was initially registered by Complainant's Indian authorized distributor for Complainant and the domain name supported the India-specific website of Complainant, www.onduline.in which catered to Complainant's Indian customers, trade partners etc. Due to unforeseen circumstances, the domain name could not be renewed in time by Complainant's Indian associate, and as a result the domain name expired, which was thereafter, usurped by Respondent. Thus, the disputed domain name was acquired by respondent with full knowledge and information about Complainant's business activities and with the intention of deriving unlawful gains.
- 6.9 Complainant has defended its ONDULINE trademark all over the world including initiating complaints relating to abuse of its mark through wrongful registration of a domain name; Respondent, on the other hand, does not appear to have registered or applied for registration of "ONDULINE" as a trademark and does not appear to have any legitimate right or interest in the said trademark.
- 6.10 The disputed domain name does not support a legitimate website of Respondent. Thus, Respondent has not made any legitimate offering of goods or services under the domain name <onduline.in>. The contents of the disputed domain name had undergone a number of changes over the past few months. Initially the domain name carried few random and arbitrary collection of articles and news items about sale of stone crusher machines etc., which are completely unrelated to either the Complainant or its trademark ONDULINE. The contents were thereafter changed to 'create' a website for XSM Mining and Construction Company which again was wholly unconnected to ONDULINE products or services in any manner. Assuming but definitely not admitting that that the current website at <http://www.onduline.in/> is a genuine portal of a Chinese concern dealing in mining and construction equipment, it is highly inconceivable that such a

Dr. J. B. Alexander

company would choose a .in domain with a brand name/trademark which is already well known for lightweight building systems.

- 6.11 Element 3 – in support of this element, that the disputed domain name was registered and is being used in bad faith, the Complainant contends that:
- 6.12 Complainant's ONDULINE trademark is highly distinctive, unique and popular over the world. Complainant has extensive operations in China and its ONDULINE products are sold and advertised in China (<http://cn.onduline.com/>). In addition, Complainant has registered its ONDULINE marks in China, which are subsisting at least since 1995. Further, the disputed domain name had been in use as Complainant's India-specific website for a considerable time. Thus Respondent, being a resident of China, cannot but be aware of the ONDULINE brand name at the time of obtaining the disputed domain.
- 6.13 Even if it is assumed, purely for argument's sake, that at the time of acquiring the disputed domain, Respondent was not aware of the Complainant's ONDULINE brand name and the products thereunder, Respondent received due notice of Complainant's trademark rights when Complainant approached him for transfer of the domain.
- 6.14 Respondent is not using the domain name <onduline.in> for any apparent fair and legitimate purpose. The content of the disputed domain name keeps on changing over time. Initially, the domain name hosted content comprising sale of various mining and construction equipments. Thereafter, the domain name appears to have been used to create a fake website for a purported company named XSM Mining and Construction. Subsequently, the contents of the website at www.onduline.in has been changed again as was the name of the website user from XSM Ministry and Construction to Shanghai Xuanshi Machinery Co., Ltd.
- 6.15 In view of the fact that the disputed domain name hosted Complainant's earlier India-specific website, consumers and members of trade already associate the said domain name exclusively with Complainant. Therefore, use of the disputed domain name to create an obviously fake profile page of a purported construction and mining company in China (initially XSM Mining and Construction and thereafter Shanghai Xuanshi Machinery Co., Ltd.) is not only unlawful but will result in confusion and deception among public as to

Durjab Alam dave

the origin and ownership of the domain name which comprises the well-known trademark ONDULINE owned by Complainant. The disputed domain name stands contrary to public interest and has obviously been registered in bad faith.

- 6.16 Respondent has acquired numerous domain names and websites at these domain names display identical contents i.e., about mining equipments such as stone crushers etc. It is therefore obvious that the contents displayed on the website at the disputed domain is fabricated and false, and is a feeble attempt at misleading unwary Internet users into believing that the said domain name is used and operated in a legitimate manner. Complainant also found that Respondent is subsequently putting up these parked websites for sale. That Respondent has not responded to any of Complainant's legitimate requisitions of transfer of the disputed domain name is indicative of Respondent's actual intention of hoarding on the disputed domain name and thereafter selling it for illegal profit.
- 6.17 Since Complainant's mark ONDULINE is distinctive, unique and well-known over the world, Respondent clearly has not acquired the disputed domain by chance. This conclusively establishes Respondent's utter bad faith registration of the disputed domain as also reveals Respondent's questionable business model, that of acquiring domain names with well known or popular trademarks and then selling those domains at an exorbitant price.
- 6.18 It has been widely held that bad faith is found if it is unlikely that the registrant would have selected the domain name without knowing the reputation of the well known trademark in question.
- 6.19 The Rules of Procedure of the INDRP clearly state that, at the time of application for a domain name, the registrant must accurately represent that, to the registrant's knowledge, the registration of the domain will not infringe upon or otherwise violate the rights of any third party. It is inconceivable that Respondent did not know of Complainant and its rights over the mark/name ONDULINE. Respondent is thus guilty of willful misrepresentation and providing inaccurate information to the Registry.
- 6.20 In light of the international fame and wide use of Complainant's mark ONDULINE, Complainant believes that Respondent knew of and knowingly

Dw. Yashal Kumar

exploited Complainant's mark, brand name and its substantial accompanying goodwill. The circumstances indicate that the domain name was registered in bad faith.

- 6.21 The Complainant has referred to case law in support of its various contentions.

7. Discussions

- 7.1 At the outset, it is to be mentioned that the Arbitral Tribunal has been properly constituted. Under paragraph 4 of the INDRP, the Complainant must prove each of the following three elements of its case - the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith. From a detailed reading of the Complaint and supporting annexures, the Arbitrator finds that the Complainant has established all the three elements. The finding is made keeping in mind these specific aspects;
- 7.2 Complainant was established by Gaston Gromier in 1944 dealing in cellulose-bitumen based roofing and under-roofing materials. Complainant is the world leader of lightweight building systems, and a recognized international player offering complete solutions for building covering, sealing, insulation and protection. Complainant has plants and subsidiaries spread over 5 continents and its are distributed in over 120 countries. Complainant operates in China (where Respondent is located) through its subsidiary since early 2000's. In India, Complainant has been operating through sales subsidiaries since around 2009.
- 7.3 Complainant owns several trademark and domain name registrations for ONDULINE and the mark ONDULINE is associated with the Complainant alone.
- 7.4 The disputed domain name <onduline.in> was initially registered by Complainant and utilized as Complainant's India specific website for a period of time. Due to unforeseen circumstances, the domain could not be renewed in time and it expired. The domain name was made available to public for registration in April 2015, when Respondent acquired it.

Dnyesha Balasubramanian

- 7.5 Complainant contacted Respondent a number of times for acquiring the disputed domain but got no response. Thereafter Complainant sent cease and desist letters to Respondent and the company XSM Mining and Construction which appeared to be using the disputed domain but still got no response.
- 7.6 The disputed domain name entirely comprised Complainant's mark ONDULINE with the .in extension.
- 7.7 The Respondent is not commonly known by the name ONDULINE nor does it own any registrations for the said trademark. Respondent does not appear to be dealing with the products and services offered under the ONDULINE marks. Respondent has not made any legitimate offering of goods or services under the domain name <onduline.in>.
- 7.8 Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use the distinctive mark "ONDULINE" or to register the disputed domain name.
- 7.10 The Respondent has adopted the disputed domain name only in reference to and with knowledge of Complainant's rights in the said mark; all the more since it received due notice of Complainant's trademark rights when Complainant approached him for transfer of the domain.
- 7.11 Respondent has acquired numerous domain names and websites and these display identical contents about mining equipments etc. The website contents are false and constantly changing. The Respondent is also putting up these parked websites for sale.
- 7.12 The Respondent was given sufficient time to reply to the Complaint, however, Respondent has chosen not to submit any response.


8. Decision

- 8.1 For all the foregoing reasons, the Complaint is allowed.

Jyoti Balasundaram

8.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <onduline.in> be transferred to the Complainant.

8.3 The Parties shall bear their own costs.


DIVYA BALASUNDARAM
ARBITRATOR

Date: June 10th, 2016

Place: New Delhi, India