



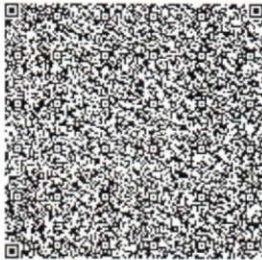
सत्यमेव जयते

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Description of Document : Article 12 Award
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Consideration Price (Rs.) : 0
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Stamp Duty Amount(Rs.) : 100
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BEFORE THE SOLE ARBITRATOR UNDER THE IN DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF
Parmigiani Fleurier SA
11 Rue du Temple
2114 Fleurier
Switzerland

(Complainant)

Versus

Jiaai
EAC International Co. Ltd
Ground Floor, 26 Lee Street
Sydney, New South Wales 2000
Australia

(Respondent)

The Parties

The Complainant in this proceeding is Parmigiani Fleurier SA., a company incorporated under the laws of Switzerland, having its address at 11 Rue du Temple, 2114 Fleurier, Switzerland. The Respondent in this proceeding is Jiaai, EAC International Co. Ltd. Ground Floor, 26 Lee Street, Sydney, New South Wales 2000, Australia.

The Domain Name & Registrant

The disputed domain name www.parmigiani.in is registered with I Indian Domains dba Mitsu.in (R74-AFIN) having its address at 10, Huron Avenue, Apt. 11A, Jersey City, New Jersey, United States of America – 07306 and having its India address at Adarsh Palace, First Floor, 118, Old Hanuman Lane, Kalbadevi Road, Mumbai, Maharashtra, India – 400002. The registrant is Jiaai, EAC International Co. Ltd. having its address at Ground Floor, 26 Lee Street, Sydney, New South Wales 2000, Australia.

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint filed by Lex Orbis Intellectual Property Practice, 709/710, Tolstoy House, 15-17, Tolstoy Marg, New-Delhi – 110001 being the authorized representative of the Complainant in this arbitration proceeding over the domain name www.parmiagini.in.

.In registry has supplied a copy of the complaint and the attached annexure(s) to me.

On January 02, 2013, I sent an email to the complainant informing them about my appointment as an Arbitrator.

In the abovementioned email, the complainant was directed to supply a copy of the complaint along with the annexure(s) to the respondent and if they had already done the needful, then to kindly make available for my perusal the details of the service record confirming the receipt.

In the same email dated January 02, 2013, notice for arbitration was sent to the respondent at the email address as provided to me in the complaint as well as registered with National



Internet Exchange of India (“NIXI”) whereby the Respondent was directed to file his reply within 15 days from the receipt of the said email or the copy of complaint whichever is latter.

On January 16, 2013, I received an email from the counsel/representative of the complainant, informing me about the service of a copy of the complaint upon the respondent. According to this mail a copy of the complaint was duly sent by email to the registered email address and the registered postal address of the respondent.

On 23rd January, 2013, the counsel/representative of the complainant provided me with the courier receipt evidencing dispatch of complete set of complaint to the Respondent, whereas it was also informed to me via an email dated 5th February, 2013, by the Complainant that the copy of complaint has been received by the Respondent.

The Respondent failed/neglected to file his say/reply to the complaint within the stipulated time.

I firmly believe that ample opportunities have been given to the respondent and genuine efforts have been made to make the respondent a part of the proceedings. Since the respondent has failed to join the proceedings by presenting his good case, or by filing any response to the complaint, the present ex-parte award is passed.

I have perused the complaint and the attached annexure(s).

Factual Background

The following information is derived from the complaint and the supporting documents filed by the complainant before the Arbitrator:-

The complainant in this proceeding is Parmigiani Fleurier SA, a company incorporated under the laws of Switzerland, having its address at 11 Rue du Temple, 2114 Fleurier, Switzerland. The complainant is a well known watchmaker Company – Parmigiani Mesure et Art du Temps SA (“the **Company**”), founded by one Mr. Michael Parmigiani in the year 1990 and was renamed Parmigiani Fleurier SA, in the year 2003. The Company carries on the business of manufacturing and selling luxury watches for commercial gain under the brand



“PARMIGIANI”, across the globe in the continents of Europe, Asia, South America, North America, Africa and parts of the Caribbean.

The word Parmigiani forms a bold and integral part of the complainant’s reputation and has become well known among the masses as a symbol of unparallel luxury. The mark Parmigiani has acquired the status of a well known trademark worldwide through its good will among the masses and enviable reputation among its peers.

The complainant is regularly associated with the promotion of the trademark “PARMIGIANI” and is the registered proprietor of the trademark for class 14 and 16 in various jurisdictions worldwide. The complainant is also responsibly hosting website content on www.parmigiani.ch; and www.parmigiani.com domain names and the same are registered in the name of the complainant.

The domain www.parmigiani.in is registered in the name of one M/s. Jiaai, EAC International Co. Ltd. having its address at Ground Floor, 26 Lee Street, Sydney, New South Wales 2000, Australia. The said domain name is deceptively similar to the trademark registered in the name of the complainant and it appears that the defendant has no legitimate interest in the domain name as it has failed to present any case despite adequate notice of the proceedings being in their knowledge.

Parties Contentions

a) Complainant

The complainant contends as follows:

1. The respondent’s domain name is deceptively similar to the trademark Parmigiani of the complainant.
2. The respondent has no rights and legitimate interest in respect of the registered domain name.
3. The respondent has registered and is using his domain name in bad faith.

a) Respondent

The Respondent has failed to file any reply or make any submissions to defend his case despite having adequate knowledge of the institution of the proceedings.



Discussions and Findings:

As mentioned above, the respondent has failed to file any reply to the complaint and has not rebutted any of the submissions or the evidence filed by the complainant.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case"*.

As highlighted above ample opportunities have been given to the respondent to file a reply but no response has been received till date. Therefore, the proceedings have been initiated ex-parte and conducted in the absence of the complainant.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An arbitrator shall decide a complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under or any law that the arbitrator deems to be applicable"*.

In these circumstances, the decision of the arbitrator is based upon the complainant's assertions, and evidence and inference is drawn from the respondent's failure to file a reply.

Having perused the submissions and documentary evidence placed on record, the complainant has proved that it has statutory and common law rights in the trademark "PARMIGIANI".

Further, the arbitrator is of the view that the complainant has satisfied all the three conditions outlined in the paragraph four (4) of .IN Domain Name Dispute Resolution Policy, viz.

- 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; and
- iii) the registrant's domain name has been registered or is being used in bad faith.



- i) **The domain name www.parmigiani.in is identical to, or is deceptively similar to the name, trademark or service mark in which the complainant has rights.**

The complainant has stated in his complaint that the domain name www.parmigiani.in registered in the name of the respondents is confusingly similar and identical to their name/trademark PARMIGIANI.

It is further stated that the complainant is the registered proprietor of the “PARMIGIANI” trademark in numerous countries of the world including India and has gained significant reputation thus its mark can be termed as a well known trademark/brand.

The complainant is also the registered proprietor of similar domain name registrations around the world like www.parmigiani.ch and www.parmigiani.com.

It is also stated by the complainant that it has established prior adoption of the trademark/name PARMIGIANI. The complainant has filed sufficient evidence to show that it has trademark rights in the word PARMIGIANI.

The above submission of the Complainant has not been rebutted by Respondent, as such it is deemed to have been admitted by them.

Even otherwise the above facts and attached annexure(s) establish that the disputed domain name registered in the name of the respondent is identical and confusingly similar to the trademark of the complainant.

- ii) **The respondent(s) have no right or legitimate interest in the domain name www.parmigiani.in.**

According to the paragraph seven (7) of the .IN Dispute Resolution Policy, the following circumstances show the registrants rights or legitimate interest in the domain name for the purpose of paragraph four (4) sub clause (ii)



- i) *before any notice to the registrant of the dispute, the registrant'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 Complainant has submitted in its complaint the following:-

That on November 19, 2012 the complainant learnt that the domain name www.parmigiani.in was registered in the name of the respondent with the .IN registry.

At this time, the complainant was using the trademark PARMIGIANI as its corporate name in several parts of the world including India and was the registered owner of the domain name www.parmigiani.com. Therefore it is obvious that the respondent was aware of the complainant's trademark rights in the word/name PARMIGIANI.

The respondent is not and has never been known by the name PARMIGIANI or by any similar name. The respondent never had/do not have or carry on any business running in India or abroad in the name of PARMIGIANI.

The registration of the disputed domain name by the Respondent is thus a befitting example of "cyber squatting". The fact that the respondent's website is hosting no business content relating to its business or relevant activity, but just sponsored links of other websites further proves that the Respondent is a Cyber Squatter.

The above submission of the complainant has not been rebutted by the respondent, and as such they are deemed to have been admitted by him. The above facts and annexure(s) further establish that the respondent has no legal right or legitimate interest in the disputed domain name www.parmigiani.in under INDRP paragraph four (4) sub clause (ii).



iii) The registered domain name is being used in bad faith by the respondent(s).

The complainant alleges that the respondent has full knowledge of the PARMIGIANI brand and has registered the domain name www.parmigiani.in with the sole intention to create confusion among the buyers and malign the complainant's reputation by directing various bona fide users to its portal and making them believe that there is a relation between the complainant's and the respondents in India.

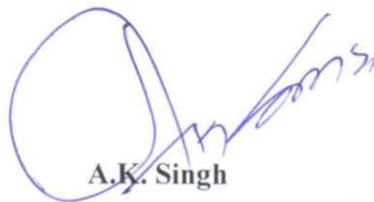
The Tribunal is of the view that the respondent has neither responded nor has put forth or provided any evidence to show that the respondent is engaged in or demonstrably prepared to engage in offering any bona fide service or supply such goods in the name "PARMIGIANI" which is the subject matter of the dispute.

The above submission of the Complainant has not been rebutted by respondent, as such they are deemed to be admitted by him. Even otherwise, the above facts and annexure(s) establish that the respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

.IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.parmigiani.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 10th day of February, 2013.



A.K. Singh

Sole Arbitrator

Date: 10th February, 2013