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ARBITRATION AWARD

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF
INDIA**

**.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure**

IN THE MATTER OF:

SANDVIK INTELLETUAL PROPERTY AB
S - 811 81 Sandviken,
Sweden.

.....COMPLAINANT

VERSUS

YAN WEI
Shining Domains,.Inc.
F0605103, 800 #,
Donghuan Road, Minhang,
Shanghai, 200240, China.

.RESPONDENT

1 The Parties:

The Complainant is Sandvik Intellectual Property AB, S-811 81 Sandviken, Sweden.

The Respondent is Yan Wei, Shining Domains, Inc., F0605103, 800 #, Dongehuan Road, Minhang, Shanghai, 200240, China.

2. The Domain Name and Registrar

The disputed domain name **SANDVIK.IN** is registered with #1 Indian Domains dba Mitsu.in (R74-AFIN).

3. Procedural History

The Complaint was filed with the .In Registry, National Exchange of India (NIXI), against Yan Wei, Shining Domains, Inc., F0605103, 800 #, Dongehuan Road, Minhang, Shanghai, 200240, China. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

- 3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **October 29, 2009**. The parties were notified about the appointment of Arbitrator on October 30, 2009.



- 3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on October 30, 2009. In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.
- 3.3 The Respondent failed and/or neglected and/or omitted to file any response to the Complaint within 10 days as was granted to him by the notice dated October 30, 2009. The Respondent was again granted another opportunity to file its response within 7 days time by the notice dated November 12, 2009. The Respondent was again granted final opportunity to file its response within 3 days by the notice dated November 20, 2009 however, the Respondent did not file any reply to the Complaint filed on behalf of the Complainant.
- 3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.
- 3.5 The present award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the rules.

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4. FACTUAL BACKGROUN

4.1 The Complainant in these administrative proceedings is Sandvik Intellectual Property AB, S-811 81 Sandviken, Sweden.

The Complainant requests arbitration proceedings in accordance with the Arbitration and Conciliation Act, 1996, .In Dispute Resolution Policy and rules framed there under and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be fit and applicable to the proceedings.

4.2 The Complainant, Sandvik Intellectual Property AB, is engaged in providing services relating to licensing, investigation and litigation of intellectual property and law matters.

4.3 The respondent has register the disputed domain name "sandvik.in" on 23rd December 2008 through the sponsoring Registrar, #1 Indian Domains dba Mitsu.in (R74-AFIN). The respondent has not submitted any response to the complaint as has been filed by the complainant in the above proceedings despite being given three opportunities by the panel.

5. Parties Contentions

A Complainant

5A(1) The Complainant submits that the mark SANDVIK has been registered as a trademark in almost all parts of the globe and also provide the list of such registrations and applications as Annexure II to the complaint. The Complainant further submits that the mark SANDVIK



has been used by the Sandvik Intellectual Property AB since 12.10.1996 and the same was registered on 24.04.2005.

5A(2) The Complainant further submits that the he has not licensed or otherwise permitted the respondent to use the mark SANDVIK at any point of time.

5A(3) It is submitted by the Complainant that the disputed domain name has been registered by the respondent in bad faith with a view to confuse the trade and commerce.

B Respondent

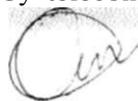
5B(1) The Respondent has been given three opportunities to file its response to the Complainant by the panel by its notice(s) dated October 30, 2009, November 12, 2009 & November 20, 2009.

5B(2) The Respondent has failed and/or neglected and/or omitted to file any response to the Complaint filed by the Complainant.

6 . Discussions and Findings

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference



video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstances, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

6.4 Under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.

The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the reliefs claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.



The Complainant has filed evidence by way of Annexure 1 to 7 with the Complaint.

The Respondent has not filed its reply or any documentary evidence.

- 6.5 The onus of proof is on the Complainant. As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name SANDVIK.IN and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the annexures filed by the Complainant along with the Complaint
- 6.6 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.7 The decision of Hon'ble Supreme Court of India in the matter of Jahuri Sah Vs. Dwarika Prasad -AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof, (see Section 58 of the Indian Evidence Act, 1872).
- 6.8 The Panel therefore accepts case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.9 The Complainant has provided the WHOIS record that of domain name SANDVIK.IN as Annexure 1 to the complaint



The WHOIS record of the domain name SANDVIK.IN is as follows:-

Administrative Contact	YAN WEI
Admin ID	MI_8689379
Admin name	YAN WEI
Admin Organization	N/A
Admin Street 1	F0605103, 800#, DONGCHUAN ROAD, MINHANG
Admin City	SHANGHAI
Admin Postal Code	200240
Admin Country	CN
Admin Phone	+086.136117777305
Admin email	<u>Dot.in.master@gmail.com</u>

- 0 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant
- 1 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:
- (i) the domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
 - (ii) the Respondent has no rights or legitimate interests in respect of the domain names; and
 - (iii) the domain names have been registered and are being used in bad faith.



That being so, the Panel will now proceed to examine if the Complainant has otherwise discharged its onus to prove each of the three elements specified in paragraph 4 of the Policy.

A. Identical or Confusingly Similar

6A.1 The Complainant submits that he has obtain the trademark registrations in respect of the mark SANDVIK in almost all parts of the globe. He has also provided a list of such registrations and applications as Annexure 2 to the Complaint. The complainants further submits that the earliest registration held by the complainant dates back to 12.10.1880 and the complainant being a part of Sandvik Group is an organization of high repute, engaged in high technology, engineering group with advanced products and enjoys a world leading position within selected areas.

The complainant conducts worldwide business activities through representation in 130 countries and was established in the year 1862 and was engaged in the business of tooling, mining and construction, materials technology etc. under the name/trademark "SANDVIK".

6A.2 The Complainant further submits that he has registering the domain name sandvik.com dates back to September 12, 1996 and has been using the same since October, 12, 1996.

The Complainant has also annexed the list of domain names held by Sandvik Group on worldwide basis as Annexure 3 to the complaint.

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The list of trademarks as submitted by the complainant shows that Sandvik has been registered in India in Classes 6 and 7 under Nos. 141520 and 583901. However, no registration certificates of any trademark held by the Sandvik Group has been provided by the Complainant to substantiate that whether such trademarks are valid and are renewed from time to time.

The Complainant submits that he has gathered immense goodwill and reputation for its high quality and accountability.

The Complainant provides list of its major parties as Annexure 4 to the complaint.

The Complainant further submits that he has published and advertised the mark SANDVIK through all possible media and promotion at various places, thereby incurring heavy expenditure on the same and has also annexed the publicity and promotional material as Annexure 5 to the complaint. The Complainant has provided the advertising expenses incurred by them in the last 5 years as follows:-

YEAR	AMOUNT (NR)
2004	1400 000 000
• 2005	1204 000 000
2006	1484 000 000
2007	1645 000 000
2008	1750 000 000

The Complainant submits that the respondent registered the domain name sandvik.in on 23rd December 2008 which is similar to the SANDVIK well known mark. He further submits that sandvik.in is deceptively similar to the registered mark SANDVIK which enjoys wide reputation, goodwill and recognition of high orders.



6A.3 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. Therefore, the Complainant has been successful in proving that the domain name SANDVIK.IN is identical and/or confusingly similar to the trademark SANDVIK of the Complainant.

B. Rights or Legitimate Interests

6B.1 The Respondent has no rights or legitimate interests in respect of the domain name.

6B.2 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the Registrant of the dispute, the Registrant use of, or demonstrate 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) have 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 noncommercial 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.

6B.3 The Complainant submits that the domain name sandvik.in is being illegally and wrongfully adopted by the respondent solely with the intention to deceive the

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viewers of such web site on such consumers or traders looking for the services or products of the complainant.

The panel finds that the domain name sandvik.in is a page parked with SEDO to earn revenue through ads display on the website.

It is thus complainant's contention that the respondent has no right to legitimate interest in the domain name as:

1. It appears that the Respondent who acts under anonymity does not use the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
2. It appears that the Respondent has not been commonly known by the domain name before acquiring the domain.
3. It appears that the Respondent is not making a legitimate and fair use of the domain name as it after it is set up solely to run as advertising service.

6B.6 The Respondent did not dispute any of the contentions raised by the Complainant in its Complaint. The case set up by the Complainant is deemed to be admitted as not disputed by the Respondent.

6B.7 The Panel, therefore holds that the circumstances listed above demonstrate rights or legitimate interests of the Complainant in the domain name SANDVIK.IN and holds that Respondent has infringed the rights of the Complainant by registering the Domain Name.



C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or the Registrant has 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 our 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 you have engaged in a pattern of such conduct; or
- (iii) by using the domain name, the Registrant has intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location".

6C.3 The Complainant submits that the registration of the impugned domain name is in bad faith solely to confuse the trade and commerce. Further submits



that the respondent adopted the mark SANDVIK despite being well aware of the existence of complainant mark SANDVIK and goodwill attached thereto. The complainant has been searched that the conduct of the respondent clearly reflects the dishonest and malafide intention in their course of action. The Complainant point out circumstances of this case which relates to the registration of domain name being used in bad faith.

1. The complainant mark "SANDVIK" has a long reputation and is widely known.

2. Taking into account the aforesaid circumstances, it is conceived that the impugned domain name was adopted with the sole reason of deceiving the relevant trade and commerce.

6C.4 The Complainant further submits that the respondent has no jurisdiction in adopting the name SANDVIK as its domain name other than for wrongful and illegal gains.

6C.5 The Complainant further asserts that there has been no use or demonstrable preparation of use the domain name or the name corresponding to the domain name in connection with the bonafide offering of goods or service by the respondents.

The Complainant further submits that the responde is not commonly known by the domain nae and not acquired any trade / service mark rights to the knowledge of the complainant.

The Complainant further submits that the respondent is not making any legitimate non commercial and fair use of the domain name that intend for commercial



gain to misleading panel consumer or to tarnish the trademark of the complainant.

6C.6 The Respondent does not dispute any of the contentions raised by the Complainant.

6C.7 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. **Decision**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

Transfer of the domain name SANDVIK.IN to the Complainant.

For the foregoing reasons I direct respondent to pay to the Complainant a sum of Rs. 10,000 towards the cost of proceedings.


AMARJIT SINGH
Sole Arbitrator

Dated: 23rd December 2009
New Delhi