



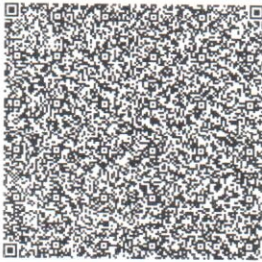
सत्यमेव जयते

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Certificate Issued Date	: 10-Jun-2014 02:11 PM
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Unique Doc. Reference	: SUBIN-DLDL-SHCIL28138859329356M
Purchased by	: RAJEEV SINGH CHAUHAN ADVOCATE
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN ADVOCATE
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Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN ADVOCATE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Sony Kabushiki Kaisha
Also trading as Sony Corporation
1-7-1 Konan, Minato-ku,
Tokyo, 108-0075 Japan

(Complainant)

Versus

Daniele Melchiori
Via F.lli Fontana,
36, Trento 38100 Italy

(Respondent)

Statutory Alert:

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THE PARTIES:

The Complainant in this proceeding is Sony Corporation and is an internationally renowned business enterprise present in various fields related to electronics, media and entertainment.

The Complainant is represented through their authorized representative:

Name : Mr. Rahul Chaudhary
Address : LLS House, Plot No. B-28
Sector 32 (Institutional Area)
Gurgaon-122 001 India
Telephone : (124) 4036821/2, (124) 2382202/3
Fax : (124) 4036823, (124) 2384898
E-mail : domainname@lls.in

The Respondent in this proceeding is Daniele Melchiori, Via F.lli Fontana, 36, Trento 38100 Italy, Tel- +003- 93932643536, email- melchiori@hotmail.com.

THE DOMAIN NAME AND REGISTRAR:

The domain name in dispute is www.sonymusic.in. According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name www.sonymusic.in, with whom the disputed domain name www.sonymusic.in is registered is PDR LTD. D/b/a Publicdomainregistry.com (R145-AFIN).

PROCEDURAL HISTORY:

The Arbitrator was appointed by the .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.sonymusic.in.

.In Registry had supplied the copy of the Complaint and the Annexures to the Arbitrator.

The Complainant has filed various documents as Annexures in support of his contentions.

The Respondent has not filed a Reply.

The Arbitrator has perused the record and annexures / documents provided by the Complainant.

The Arbitrator is passing the award ex-parte due to lack of communication from the Respondent's side.

FACTUAL BACKGROUND:

The following information is derived from the Complaint and supporting evidence as submitted by the Complainant.

The Complainant in this proceeding is Sony Corporation, a multinational company engaged in various fields related to electronics, media and entertainment. It is also the registered proprietor of the trademark "SONY" and its variations in all forms.

The Complainant states that it is the prior adopter of the mark "SONY" and the owner of the trademark/service mark "SONY". The Complainant is well known all around the world by the name SONY, and has made profits under the said name. Additionally, the Complainant is the owner of numerous domain names containing the term "SONY" which has helped the company in gaining international repute.

The Complainant's use of the well-known trademark has been extensive, exclusive and continuous all around the world. As a result of the Complainant's marketing and promotion of its goods and services under its trademark "SONY", the mark has gained worldwide recognition and goodwill, and has become very well-known. Moreover, the Complainant's trade mark has firmly been associated with the Complainant.

The Complainant has spent huge sums of money towards advertisement and promotion of its brand "SONY" globally, and has done so even on the internet, *inter alia*, through its websites www.sonymusic.com, www.sony.net etc., accessible anywhere in the world along with country specific websites.

The Respondent in this proceeding is Daniele Melchiori, who has not filed any response and submissions to the Complaint despite being given an adequate notice and several opportunities by the Arbitrator.

PARTIES CONTENTIONS:**(a) Complainant**

The Complainant contends as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;



2. The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name;
3. The Disputed Domain Name was registered and is being used in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification by the Arbitrator.

DISCUSSIONS AND FINDINGS:

As previously indicated, the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by him.

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 mentioned above enough chances have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been proceeded against *ex-parte* and the Arbitration proceedings have been conducted in its absence.

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 thereunder and 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 drawn from the Respondent's failure to reply.

A perusal of the submissions and evidences placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark "SONY" and its other variations.

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 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.

The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))

The Complainant has stated that its trademark "SONY" was adopted in the year 1958 internationally. In India, the Complainant started its business in the year 1997. The Complainant is also the owner of numerous domain names containing the term "SONY", list of a few of these has been provided to me.

The Complainant submits that it has registered its domain name www.sonymusic.com on 15.05.2007. The Respondent registered the disputed domain name on 28.02.2009, according to the available information. The disputed domain name www.sonymusic.in is identical to the Complainant trademarks and domain name and a very distinctive feature of the disputed domain name is the incorporation of the Complainant's trademark.

The Complainant has further stated that at the time of registration of the disputed domain name www.sonymusic.in, the Complainant had already been using the mark "SONY" as its trademark and domain names with firmly established rights in the same. Also, at the time of registration of the disputed domain name by the Respondent, the Complainant trademark had already acquired the status of a well-known mark.

The Complainant further stated that the Respondent can neither show any rights superior to that of the Complainant in the trademark "SONY" nor can the Respondent state that it was unaware of the Complainant's mark while registering the disputed domain name. The only logic behind getting an identical mark registered in such a case is in the reason that the Respondent got the disputed domain name registered with the intention to trade upon the fame of the Complainant mark in violation of para 4 (b) of the Policy.

The Complainant has further pointed out that if one tries to visit the disputed domain name, it redirects the users to a different domain name



www.melchiori.info and Melchiori is the surname of the Respondent and it further seems that impugned domain name has been specifically designed to redirect users from the domain name of the Respondent to other website by creating confusion as to the origin of the website and of the links being hosted therein.

The above mentioned contentions of the Complainant are not rebutted by the Respondent and therefore are deemed to be admitted by him and therefore Complainant is successful in proving that disputed domain name is identical or confusingly similar to a name, trade mark or service mark in which complainant has rights.

The Registrant has no rights or legitimate interests in respect of the domain name - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(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 that its mark is well known and it has gained rights purely based upon prior use and registration of the mark, that there can be no legitimate use by the Respondent. Therefore, the use of the disputed domain name without any permission from the Complainant is an act done in bad faith, and confers no right or legitimate interest in favour of the Respondent. The Complainant further submitted that moreover, there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Disputed Domain Name which is identical or similar to that of the Complainant. It is also to be noted that the Respondent has neither been using



the said domain name or any name corresponding to the same in relation to any goods or services, to the best of the Complainant's knowledge, nor has he been commonly known by the domain name, which in fact, corresponds and is associated exclusively with the Complainant.

The Complainant has further submitted that the manner in which disputed domain name is being used by the Respondent, it is clear that the use is commercial in nature.

The Complainant has relied upon various case laws to prove its point and which has been noted by the Tribunal.

The Respondent has failed to file a Reply to the Complaint, let alone providing adequate evidence in its favour.

Therefore, the Tribunal is of the view that the Respondent has no right or legitimate interest in the disputed domain name.

The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))

The Complainant has stated that the Respondent's bad faith registration of the domain name is established by the fact that the domain name completely incorporated SONY and SONY MUSIC mark and was required long after the trade mark SONY and SONY MUSIC became well known. The Complainant has further stated various instances to prove that the disputed domain name is registered in bad faith.

The Complainant has further relied upon various case laws to prove its point and note of the same has been taken by the Tribunal.

Since the Respondent has not responded to the Complaint, it can be safely presumed that he has nothing to say, and the activities of the Respondent to get registered the domain name in dispute rise to the level of a bad faith and usurpation of the Complainant's Mark to improperly benefit the Respondent financially, in violation of applicable trademark and laws.

Given the fame of the Complainant's trademark and domain name, it is not possible to conceive of a use of the same by the Respondent except for attracting internet users to its website. Thus, mere registration of a domain



name similar to such a well-known trademark would be an evidence of the Respondent's bad faith.

In the light of the above mentioned facts, the Tribunal agrees with the Complainant's contentions that the registration of the disputed domain name is done in bad faith.

Decision

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

The Respondent has registered and used the disputed domain name in bad faith. IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e., www.sonymusic.in to the Complainant.

The Award is accordingly passed on this 16th day of June, 2014.



Mr. Rajiv Singh Chauhan

Sole Arbitrator

Date: 16th June, 2014