



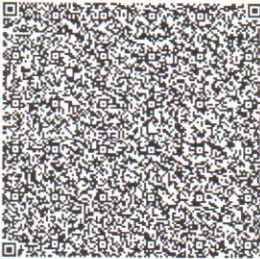
सत्यमेव जयते

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Certificate No.	: IN-DL18158212528225N
Certificate Issued Date	: 20-Jun-2015 12:12 PM
Account Reference	: IMPACC (IV)/ dl856903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL85690333380736551606N
Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
Second Party	: Not Applicable
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN
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
TETRA LAVAL HOLDINGS & FINANCE S.A.,
Avenue General-Guisan 70,
CH-1009 Pully, Switzerland

The Complainant

Vs.

Yitao, Apex Laboratories Limited,
76, C.P Rama Road, 999077,
Hong Kong

The Respondent

Statutory Alert:

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THE PARTIES

The Complainant in this administrative proceeding is TETRA LAVAL HOLDINGS & FINANCE S.A., Avenue General-Guisan 70, CH-1009 Pully, Switzerland.

The complainant's authorized representative in the administrative proceeding is:

Monika Colak

Velea AB Anna Lindhs

Plats 4,211 19 Malmo,

Email: monika.colak@valea.se

The respondent in this proceeding is Yitao, Apex Laboratories Limited, 76, C.P Rama Road, 999077, Hong Kong. Email : sunong@live.com

THE DOMAIN NAME, REGISTRAR AND REGISTRANT

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

The Registrar for the disputed domain name is Webiq Domains Solutions Pvt. Ltd.

The Registrant is Yitao, Apex Laboratories Limited, 76, C.P Rama Road, 999077, Hong Kong.

PROCEDURAL HISTORY:

I was appointed as the Arbitrator by .In Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <www.tetrapak.co.in>.

.In Registry has supplied the copy of the Complaint to me.

On 19.05.2015, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the same email, I requested the complainant to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

On 20.05.2015, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant.

The Respondent has failed to file his say/ reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the complaint till the date of this award and as such the proceedings were conducted exparte.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of this proceedings. Since he has failed to join the proceedings, or to file any response the present ex parte award is passed.

That I have perused the record and Annexure/ documents.

FACTUAL BACKGROUND:

The Complainant has given following important facts while objecting to registration of disputed domain name in the name of the Respondent:-

The Complainant in the proceedings is Tetra Laval Holdings & Finance S.A., is a Swiss Corporation which is part of the Tetra Laval Group. The Tetra Laval Group consist of three independent industry groups: Tetra Pak, DeLaval and Sidel Group.

The Tetra Pak Group is a multinational food processing and packaging company found in Sweden in 1947 by Ruben Rausing. The Tetra Pak Group is now part of Tetra Laval Group. The Tetra Pak Group is world leading within development, production and sale of equipment and processing plants for making, packaging and distribution of foods and accessories. The Tetra Pak Group employs more than 32,000 people and is operative in more than 170 countries worldwide.

Tetra Laval Holdings & Finance S.A. owns all Tetra Pak Group's trademarks throughout the world and licenses these trademarks to the independent market companies within Tetra Pak Group for use in connection with their respective businesses.

Tetra Laval Holdings & Finance S.A. owns the Tetra Pak Trademark, which is registered, both as word marks as well as part of device marks, in more than 160 countries throughout the world with more than 2000 registrations.

List of some of the selected trade mark certificate is annexed as Annexure F.

Tetra Pak is associated exclusively with Complainant and its licensee. The reputation associated with complainant's mark is excellent by virtue of the quality of complainant's goods and services and the Tetra Pak mark is undisputedly considered as well-known trademark within its field of business. Furthermore, the Complainant is the owner of more

than 300 domain names registrations throughout the world containing the Tetra Pak mark distributed among generic Top Level Domains and country Top level Domains. List of domain names containing TETRA PAK mark owned by complainant or its licensee is annexed as Annexure G.

The complainant sent cease and desist letter on 02.12.2014 via email to Registrant and requested cease of use and immediate transfer of the domain name. The Respondent replied by requesting monetary compensation 1890 EURO.

PARTIES CONTENTIONS:

Complainant:

The Complainant contends as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has the rights.
- ii. The respondent has no rights and legitimate interest in respect of the impugned domain name.
- iii. The Respondent has registered and is using his domain name in bad faith.

DISCUSSIONS AND FINDINGS:

As earlier pointed out; the Respondent has failed to file any reply to the Complainant 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 fair opportunity has been given to the Respondent to file the reply but no response has been received from him. Therefore, the Arbitration proceedings have been conducted ex parte.

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 and any law that the Arbitrator deems to be applicable."*

In the present circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

Having perused and the submissions and documentary evidence placed on record, the Arbitrator is convinced that the Complainant has proved that he has statutory and common law rights in the mark "Tetra Pak".

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 trademark or 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.

BASIS OF FINDINGS:

- (i) The Registrant's Domain Name is identical or confusingly similar to a trademark in which the Complaint has rights:**

The Complainant has stated <www.tetrapak.co.in> is confusingly similar and identical to his trademark and trade name "TETRA PAK" as the domain name incorporates the entirety of well-known trademark and trade name Tetra Pak. The ccTLD, here "co.in" must be excluded from consideration as being functional component of the domain name. The Complainant has submitted that his marks "TETRA PAK" are registered and used in many countries including India. Thus the Complainant has the right over the names "TETRA PAK" and Respondents domain is also confusingly similar to it.

Complainant has further submitted that bearing in mind in particular the following factors , (a) the widespread reputation and high degree of recognition of the Complainant's Tetra Pak marks and (b) the lack of distinguishing factors between the disputed domain name and the complainant mark, the disputed domain name should be considered as identical and confusingly similar to the Tetra Pak mark in which the Complainant has rights.

It is further alleged by the Complainant that the disputed domain name is identical to the Complainant's trademark except for the country code top level domain name ".in" identifier. Considering the brand awareness of the trademark Tetra Pak worldwide, an internet user would most probably assume a connection with the complainant when seeking information on a website with the domain name tetrapak.co.in.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.



Even otherwise the above facts and annexures establish that the domain name of the Respondent is similar and identical to the well-known trademark of the Complainant.

(ii) **The Registrant has no rights or legitimate interests in the respect of the domain name:**

The Complainant has made positive assertions and has presented concrete evidences making a prima facie case showing that the Respondent does not possess rights or legitimate interests in the domain name *tetrapak.co.in* based on Complainant's continuous and long prior use of its trademark and trade name Tetra Pak. Hence, the burden shifts on the Respondent to prove that it has rights or legitimate interests in the subject domain name. The Respondent has not responded to any of the allegations raised by the Complainant in its Complaint.

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain 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 contended that Respondent has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it. It is further alleged that the Complainant has not given any authorisation to the Respondent to use the Complainant's trademark and trade name. There is no relationship between the parties which would justify the registration of domains at issue by the Respondent and nothing in the record including WHOIS information, suggests that the Respondent is commonly known by the *tetrapak.co.in* domain name.

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 bonafide goods or services in the name of the disputed domain name.

The Complainant has further stated that Respondent has neither trademark nor trade name corresponding to the disputed domain name. Its registration occurred later than those of vast majority of the Complainant's Tetra Pak marks, at a time when those had already gained international status as, also from a legal point of view, well known marks. The Complainant has further contended that Respondent is not engaged in any business or commerce under the domain name.

The Complainant has contended that Respondent is not making a legitimate non-commercial or fair use of the domain name. According to Complainant, disputed domain name has been only adopted by the Respondent for commercial gain. The sole purpose of the Respondent is to divert Internet users to its web site. It is alleged that the Complainant's mark have been registered in many countries and can be termed as well recognised trademarks, hence there is very less possibility of the fact the Respondent was not aware of the trademarks of the Complainant prior to registration of the disputed domain name.

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 establish that the Respondent has no right or legitimate interest in the domain name *tetrapak.co.in* as the Respondent is not making a bona fide offering of goods or services, is not commonly known by the disputed domain name and is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii).

(iii) The Respondent has registered and is using his domain name in bad faith

The Complainant has contended the Respondent intentionally registered and is using the domain name *tetrapak.co.in* in bad faith.

The Complainant argues that the Respondent like everyone else must have known of Complainant's trademark Tetra Pak, in that case the Respondent could not have chosen or subsequently used the word "tetrapak" in its domain name for any reason other than trade off the Complainant's brand and tried to create a goodwill and reputation of Complainant's trademark or otherwise create a false association, sponsorship or endorsement with or of the Complainant.

The complainant has further submitted that the Respondent knew about the Complainant and prior use of the disputed name when the Respondent registered the domain name. The only reason for this kind of conduct is to hijack the domain name and request monetary compensation, leading to cyber squatting situation.

The above submissions of the Complainant have also not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has registered and using the disputed domain name in bad faith under INDRP paragraph 4(iii).

DECISION:

In the view of the above facts and circumstances it is clear that the Complainant has succeeded in his complaint. The Respondent has infringed upon Complainant's registered trademark Tetra Pak has got registered and used the disputed domain name in bad faith. In light of above mentioned facts .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. < **www.tetrapak.co.in** > to the Complainant. The Award is accordingly passed on this day of 14th July, 2015.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 14th July, 2015