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BEFORE SMT. DEEPA GUPTA, sole ARBITRATOR
OF
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

In the Matter of:

Dated: 01/10/2011

Intesa Sanpaolo S.p.A
Plazza San Carlo 156
10126 Torino (Turin)
Italy

Complainant

VS

Liu Jiapeng
Room 503, Unit 2
Fuxing Lou Shaoshui Dong Road
Shaoyang City, Hunan Province
Shaoyang, China-422000

Respondent

1. The Parties :

Complainants are Intesa Sanpaolo S.p.A, Piazza San Carlo 156, 10126 Torino (Turin), Italy

Respondent is Liu Jiapeng, Room 503, Unit 2, Fuxing Lou Shaoshui Dong Road, Shaoyang City, Hunan Province, Shaoyang, China-422000

2. The Dispute:

The domain name at issue is < **bancaintesa.in** > (the domain name)

The registrar is NIXI at Incube Business Centre, 38 Nehru Place, New Delhi



3. Brief Background :

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of the NIXI on dated 25/04/2011 and the respondent did not submit his reply at all.

Ms. Deepa Gupta has been appointed as Sole Arbitrator in this matter.

It is alleged in the complaint that the complainant has a origination since Year 1823 and is using this name since year 2003. It is also revealed from the field document that the complainant as a group is in the business of providing National & International financial services, Commercial Bank services, Industrial credit, Insurance Services, mutual fund services, retail banking, wealth management, commercial, corporate and Investment Banking, private banking, Asset management, capital market and investment services, financial Advisory, personal financial planning, Mergers and acquisitions. It is also not out of context to mention that ample opportunity has been given to the respondent to represent their case before the tribunal.

Respondent has not submitted any answer in the matter.

4. Parties contentions :

A. Complainant's Contentions:

The complainant alleges-

(a) THAT the domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and

THAT Complainant is the leading Italian banking group and protagonists in the European financial arena. Intesa Sanpaolo is merger between **Banca Intesa S.p.A.** and Sanpaolo IMI S.p.A., and now among the top banking groups in the euro zone, with a market capitalization exceeding 70 billion euros, network of 6,500 branches in Italy. Intesa Sanpaolo Group offers services to approximately 11 million customers. Intesa Sanpaolo has international network in 34 countries, including in the United States, Russia, China and India.

THAT Complainant is the owner of a number of domain names which support the several dedicated and official websites for its consumers and other visitors from different countries and jurisdictions.

THAT Complainant is the owner of several registrations for the trademarks **BANCA INTESA** and **INTESA** worldwide proof of same annexed and marked as **Exhibit B.**



THAT Complainant is the registered proprietor of the **BANCA INTESA** trademark which were applied, on **21 June, 2004**. All registrations are valid and subsisting copies of certificates are annexed and marked collectively as **Exhibit C**. The Complainant's trademark and corporate identity, **BANCA INTESA/ INTESA** is distinctive and globally well known. Copies of articles and news items are annexed to this complaint and marked collectively as **Exhibit D**.

THAT on 24 Nov,2010, the Respondent registered the domain name <bancaintesa.in> which is identical to the trademark and corporate identity **BANCA INTESA** of the Complainant. .IN Registry who is database record of the domain name <banacaintesa. In> is annexed to this and marked **Exhibit E**.

THAT the disputed domain name is identical to the Complainant's registered trademarks that a web browser looking for Intesa services in India would mistake the offending website, www.banacaintesa.in and would be directed to the links on this website in search of service offering of the complainant & the complainant being in the finance and investment business, such confusion poses even greater risks for the existing and potential customers of the complainants.

THAT ownership issue concerning the trademark **BANCA INTESA** has been considered by a number of international arbitration panels, including the WIPO Arbitration & Mediation Panels, and decided in favor of the complainant. A list of cases and decisions annexed and marked **Exhibit F**.

(b) THAT The registrant has no rights or legitimate interests in respect of the domain name and

THAT The disputed domain name resolves to dummy website parked with Sedo's domain Parking and carries the legend "The domain bancaintesa.in may be for sale by its owner!" , print of the web page is annexed **Exhibit G**.

THAT respondent has acquired the subject domain purely to make illegal profit there from and is holding domain name for dishonest purpose and does not use the domain name for any legitimate, non-commercial or fair use.

THAT the Respondent does not use the mark/name **BANCA INTESA** as his business name/corporate name or otherwise in course of trade, and neither does he use the said mark/ name for any legitimate commercial purposes.

THAT Respondent's passive holding fails to demonstrate any use in connection with a bona fide offering of goods or services. Wide recognition and goodwill accrued in the complainant's marks are synonymous to its premium financial products and services which Respondent is attempting to usurp.



THAT Respondent has no legitimate interest and no basis to claim non-commercial fair use or, any kind of use of the complainant's mark **BANCA INTESA**. Respondent never had any intention of providing a legitimate, non-commercial fair use of the disputed domain name.

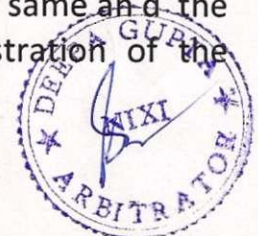
(c) THAT the domain name has been registered and is being used in bad faith and THAT on 4 January, 2011 the complainant's counsel in china received an email from one 'Alice', offering to sell the domain name <bancaintesa.in>. Copy of email dated 4 January, 2011 is annexed and marked **Exhibit J**.

THAT 'Alice' had offered the disputed domain name, not directly to the Complainant, but to the complainant's counsel in China, who could not have any material interest in the said domain name, except that they represented the right holder of the **BANCA INTESA** trademark in China. It is no coincidence that within 40 days of creation and registration of the disputed domain name, the Complainant's counsels in China were approached with a sale offer, not by the registrant himself, but by an apparently unrelated third party.

THAT Complainant has neither authorized nor consented to the respondent's adoption and use of the Complainant's well known and registered **BANCA INTESA** trademark. Respondent is not engaged in financial and investments services and is not operating or otherwise associated with any bank or financial organization. It is inconceivable that the Respondent would adopt the non-English expression 'banca' and 'intesa' for any purpose other than to sell the domain name to the financial organization itself- for a hefty compensation. Respondent is thus just a cyber-squatter, waiting for a windfall out of his wrongful act.

THAT The disputed domain name has already been put up for sale. That the Complainant's trademark is distinctive and is well known around the world: the fact that the Respondent has registered a domain name that is identical to it, indicates that the Respondent had knowledge of the complainant's trademarks at the time of registration of the disputed domain name. Respondent's intention was to take advantage of the reputation and the fame of the Complainant's trademark, to attract internet users for commercial gain, such as, facilitating "pay-per-click" on various unrelated links, while no doubt hoping for substantial compensation from the complainant for release of subject domain name are evidence that the Registrant has registered and used a domain name in bad faith.

THAT The Registration of the disputed domain name by the Respondent is thus a typical example of "cybersquatting". It is clear Respondent has registered the domain name bancaintesa.in in order to sell, resell or rent the same and the registrant should mandatorily plus accurately ensure that registration of the



Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing fully well of the pre existence of the domain name wishing to be registered and even without understanding whether he has rights to register such a name or not and whether similar domain names were legally registered at the various registries of internet by the Complainant much before the respondent started the process of registration, still respondent went in for the registration of the domain name in question, and was purportedly using the name for business purposes though indirectly and illegitimately putting it for sale. It profusely empowers Complainant with the First right to the domain name bancaintesa.in and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant.

This tribunal holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

Complainant has amply demonstrated that he has been is in the business of financial services, banking, insurance etc for a very long time since the year 1823 and is a top tier bank of Italy. That BANCA INTESA has established extensive domestic distribution ,overseas operations and international Representation in various countries. That complainant The BANCA INTESA offers a wide range services over the length and breadth of the Nation and also other countries. That the complainant BANCA INTESA has service marks registered with the Trade mark Office at many international registrations.

That the Respondent has not been commonly known by the domain name. That Respondent has no relationship with or permission from the complainant for use of its marks. That Respondent cannot have ignored the fact that BANCA INTESA is a registered and protected trademark of the Complainant.

Complainant is well-known with its trademark .The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

Respondent's aim is to make a illegitimate, commercial gain, unfair use of the <bancaintesa.in> domain name, with intent to misleadingly divert consumers or to tarnish the BANCA INTESA trade/service mark. It is very clear that the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.



domain name will not infringe upon or otherwise violate the rights of any third party.

THAT Respondent is guilty of misrepresentation and/or providing inaccurate/incorrect information to the Registry. Accordance with the policy, the disputed domain name, <bancaintesa.in> be transferred to the complainant.

B. Respondents Contentions:
Not responded to the Complaint.

5. Opinion:

I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint -

This tribunal is of confirmed opinion that the Complainant has origination since Year 1823 and is using the name BancaIntesa since year 2003 and has made sincere efforts to promote the brand name BancaIntesa by consuming various resources available at his end and word 'BancaIntesa' has certainly acquired a popular Brand name in the process and is a popular brand across the length and breadth of the country and abroad and a prominent place in print and electronic media. That trade mark 'BANCA INTESA' alone and with other symbol or Figure has been registered effectively in different countries of the world and also in India as attached in the Annexure B and C.

On the basis of the records submitted by the complainant it's proved that the domain name 'bancaintesa.in' is related to the age old business of Complainant and is being used for purpose and related to his work.

It is confirmed that Complainant is user of name 'BANCA INTESA'.

The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.



The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the products and services provided by the Complainant make this complaint a plausible case of action.

I. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name and its dummy parking for sale through indirect but related vendors. Further, in support of this the Complainant submitted documents marked as Annexures which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove all the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name bancaintesa.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 50000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of **1st October, 2011.**



Deepa Gupta
Arbitrator