



दिल्ली DELHI BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR P 993293

IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Danisco A S
Langerbrogade I
O Box 17
Copenhagen K
Denmark

COMPLAINANT

VERSUS

Mr. Liu Jiapeng
Room No. 503 Unit 2 Fuxing Lou
Shanshui Dong Road
Sahyog City Human Pro
China.

RESPONDENT

THE PARTIES:

The complainant is Danisco A S, Langerbrogade I, P O Box 17, Copenhagen K Denmark, E-mail: info@danisco.com

(Complaint represented by in the present proceeding by De Penning & De Penning

The Complainant's authorized representative in this administrative proceeding is: De Penning & De Penning, Patents Trademarks Designs Copyright, 120 Velachery Main Road Guindy, Chennai-6000 032, India. E-mail: trademark@depenning.com

The Respondent is, Mr. Liu Jiapeng, Room No. 503 Unit 2 Fuxing Lou, Shanshui Dong Road, Sahyog City Human Pro, China. E-mail: liufer212@gmail.com

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DOMAIN NAME AND TRADEMARK IN DISPUTE:

Domain name of the respondent is "DANISCO.IN"

The trademark of the complainant is "DANISCO".

The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is Electronic- only material

Method: email

The Arbitration pertains to dispute regarding the domain name "DANISCO.IN"

The Registrar for the disputed domain name is Directi WebServices Pvt. Ltd.
Directi Web Services Pvt.

The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current. IN Domain Name Dispute Resolution Policy (the 'INDRP POLICY'), and the INDRP Rules of procedure (the "Rules").

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "DANISCO.IN".
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me on by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.

FACTS, CONTENTIONS AND SUBMISSIONS OF COMPLAINANT:

6. The complainant has submitted that dispute is properly within the scope of the policy and the Administrative panel has Jurisdiction to decide the dispute. The contested domain name is identical to the Complainant's well known registered trademark "DANISCO" under Application Nos. 653141653142, 653143653145, 653146,653147 & 653148 in classes 1, 5, 16, 29 & 30 in India and also registered world wide. The complainant has

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submitted that the contested domain name **DANISCO.IN** was registered without any authorization/approval from the complainant and is highly similar to the complainant's domain names. The contested domain name was created on 8 March 2011. The proof and details of complainant's domain name and trademarks (registered/ pending) upon which the complainant relies is provided as EXHIBIT "B". The complainant has annexed as Exhibit "C" a true and correct copy of the domain names dispute policy that applies to the domain name in question.

The complainant has submitted that trade mark registration for the trade mark **DANISCO** for inter alia, **Danisco** are a world renowned company engaged in the production and sale of various goods under different classes of the International Classification. The complainant has submitted that the complainant company was founded in 1989 and has established an effective global network inter alia, through their group companies and owes their competitive edge from the success in developing new products. The complainant has stated that they have employed around 6800 people in some 80 locations. The mark **DANISCO** has been extensively used in commerce worldwide since 1983. The complainant has stated that it manufacturers and markets (through licensees) various productions and sale of various goods. The websites www.danisco.com proclaim and advertise about the goods manufactured and marketed on behalf of the complainant. The complainant has enclosed Exhibit "D" as the corporate profile about the complainant as also available and downloaded from the complainant's website www.danisco.com.

The complainant is a leading renowned company engaged in the production and sales of various goods under different classes of the International Classification with its headquarter in Denmark and promotes the goods online, using the Internet and worldwide web through their well known Domain names www.danisco.com as well as through various other country level domains (ccTLDs). The complainant has stated that the said Domain names were registered on 20 May 1996 and the associated websites were launched in subsequent years. The website also provides elaborate information about the complainant and their products. The complainant has

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stated that it combines global expertise and operation with knowledge in each of their markets and are marketed world wide.

The complainant has stated that it owns the intellectual property of all the worldwide trademark applications and registrations and domain name registrations of the brand name "Danisco". The complainant is the owner/ proprietor and registrant of the various domain names including www.danisco.com. The complainant has enclosed Exhibit "E" as an overview of the various domain names.

The complainant has submitted that there are a large number of visitors to the complainant's various websites one being www.danisco.com , thus generating business and efficient service, goodwill and repute. Every month the complainant' website www.danisco.com is heavily visited. The complainant has enclosed Exhibit "f" as the extract of webpage to prove the same. The complainant has stated that the **Danisco** products are widely distributed all over the world.

The complainant has submitted that in 2009-2010 the complainant had annual revenue of DKK 13. 7 billion, the complainant has also spent a considerable amount of money promoting its brand **DANISCO** worldwide.

The complainant has also generated a substantial reputation and goodwill in the name of **DANISCO**. This has been possible through extensive promotion of the **Danisco** range of products through widespread advertisement which has appeared in a number of publications, Copies of the same has been attached by complainant as Exhibit G. The international distributors and licensees of the complainant also undertake their own marketing and promotional activities in support of the **Danisco** brand.

The complainant has submitted that it is the first to conceive, adopt, use and promote the mark **DANISCO** in respect of food ingredients and animal nutrition. The complainant is also the fist to conceive, adopt, use and promote www.danisco.com and the details has been attached by the complainant as Exhibit H and various other domain names. On account of

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extensive usage of the mark **DANISCO**, the said mark is identified solely and exclusively only with the complainant and none other. Further, the **DANISCO** brand has gained a huge customer base internationally and is identified, associated and recognized only with the Complainant. Therefore, adoption and/or usage of the mark **DANISCO** by others would amount to not only dilution of the complainant's rights over the distinct mark but also would result in confusion and deception by any unauthorized usages of others. Such unauthorized usages of the complainant's mark **DANISCO** and domain names comprising of **DANISCO** by others would also amount to infringement and passing off actions and is liable to be prevented in Courts of law. Their activity is nothing but cyber squatting.

The complainant has submitted that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights:

A. (policy, Para. 4(i), Rules, Paras 3(b)(v), (b)(vi)(1)

- (i) The complainant is the proprietor of the mark "**DANISCO**" in India as stated herein below for the Classes 1, 5, 16, 29 & 30, the applications whereof dates back to 25th January 1995.

Trademark	Country	Application No	Registration No	Goods/Services
DANISCO	INDIA	653141	653141	Class 1: Agricultural, Chemical, Ethyl Alcohol, Glucose, Horticulture, Chemicals, dispersants, Emulsifiers, Stabilizers, Hydrocolloids (Such as locust bean gum, carrageenan, pectin, alginates) flavours, enzymes, antioxidants, protein of animal or vegetable origin, fats, pharmaceuticals, (barbiturates meprobamates)
DANISCO	INDIA	653142	653142	Class: 5 Algicides, Alcohol, (Medical) Enzymes for medical purposes, enzymes for veterinary purposes, Enzyme preparations for veterinary purposes, pharmaceutical preparations, gelating for medical purposes, yeast for pharmaceutical purposes, cultures, of microorganisms, for medical and veterinary use, nutritive substances for microorganisms pectin for pharmaceutical purposes, confectionery (Medicated)

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DANISCO	INDIA	653143	653143	Class 16: Table mats of paper, packing paper, bottle envelopers of cardboard or paper, plastic cling film (Extensible)
DANISCO	INDIA	653145	653145	Class 29 Alginates, beans, croquettes, crustaceans, frozen fruits, fruit jellies, fruit peel, fruits preserved in alcohol, fruit pulp, fruit salads fruit preserved, fruit stewed, cooled fruits, gelatine, jams, jellies for food, juices marmalade meat jellies, meat extracts, pectin vegetable juices, vegetable salads, vegetables cooked vegetables preserved, frozen vegetables, cooled vegetables, tomato puree, tomato juice, ready made food
DANISCO	INDIA	653146	653146	Class 30: Aromatic preparations for food, binding agents for ice cream, biscuits, bread, buns, cakes, candy for food, essences for foodstuffs, flavouring for food stuffs, ketchup, mayonnaise, mustard, mustard meal pancakes, pasta, pastry, puff pastry, pipes, pizzas, salad dressings, tomato sauce, sugar, sugar confectionery, natural sweeteners relis wine yeast, baker's yeast distillers yeast, brewers yeast, thickening agents for cooking foodstuffs, treacle, honey, baking powder, sauces
DANISCO	INDIA	653147	653147	Class 31 Additives to fodder, beans, fresh fruit, grains, nuts peas, natural plants, dried plants plants seeds, fresh vegetables, malt, yeast for animals, animal food stuffs forages

The complainant has also submitted that it is also the registrant and proprietor of various Domain name registrations at International level and domestic level. The trademark as well as the domain name of the complainant is validly subsisting in the records of the respective Registries in of the Complainant.

The complainant has also submitted that the respondent's domain name "**danisco.in**" is identical to the said mark "**DANISCO**" and highly similar to various other domain names in which the complainant has rights on account of prior registrations and use all over the world.

The complainant has also submitted that the respondent's domain name is nothing but a blatant imitation of the complainant's corporate name, prior and

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registered trade mark. The respondent has made a calculated approach wherein he has not created any content to his website. The complainant has further submitted that act of the respondent is bound to result in conflict and confusion and lead to dilution of the reputation associated with the complainant's business. As a result the complainants search engine ranking would be adversely impacted thereby directly resulting in drop of reputation and revenue.

The complainant has also submitted that the respondent's domain name is phonetically, visually and conceptually identical as that of the complainant. The existence of the respondent's domain name would cause the public to believe that the respondent and their domain name is sponsored by or affiliated to the complainant.

The complainant has also submitted that the respondent's domain name without any due cause is taking or would take unfair advantage of and/or be detrimental to the distinctive character and repute of and repute of the complainant's mark, corporate name and domain names.

The complainant has also submitted that the respondent's domain name is liable to be prevented by courts of law by way of an injunction or appropriate order, thereby protecting the complainant's Intellectual property.

The complainant has also submitted that the respondent has created and registered the disputed domain name subsequent to the complainant's conception, adoption and usage of the trademarks and domain name. Further, the respondent's domain name has been created subsequent to the launch of www.danisco.com by the complainant.

The complainant has also submitted that the respondent is not the bonafide owner, honest adopter or true/ actual user of the disputed domain name "danisco.in" and has created it being fully aware of the complainant's trademark "DANISCO" and their domain names, so as to trade and benefit under the complainant's repute and goodwill.

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The complainant has also submitted that the corporate name, trademarks and domain name of the complainant are highly distinctive on account of their extensive use which has qualified "DANISCO" into a well known mark under Intellectual property Law. The complainant has contended that under the circumstance, if the respondent is allowed to proceed to operate the website under the disputed domain name, the potential customers would be induced to:

- i) Subscribe to the services of the impugned website and deal with respondent believing it to be licensed or authorized by the complainant:
- ii) believe that the Respondent is carrying on activities that has been endorsed by the Complainant

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

(Policy, Para. 4(II), Rules, Para. 3(b) (vi) (2)

The complainant has contended as under:

- (i) The disputed domain name was registered by the respondent on 8 March 2011. At this time, the complainant already had build considerable reputation in the mark **DANISCO** and had been actively using the websites www.danisco.com and which can be accessed from any corner of the world. The complainant also has common law rights in the corporate name, which has **DANISCO** in all prominence and is the only identifiable name of the complainant since the inception of the complainant's predecessor title.
- (ii) The disputed domain name was created by the respondent on 8th March 2011 very much after the launch of the website by the complainant under the name danisco.com on 20th May 1996.
- (iii) The website in respondent's domain name www.danisco.in does not depict any activity. This clearly shows that this is a cyber squatting activity which is a menace to the society as a whole and stringent curbing measures should be adopted to eradicate the same.

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- (v) The complainant believe that the Respondent is not or has never been known by the name **DANISCO** or by any confusingly similar name and assuming but not admitting the even if the respondent has accrued any rights in the domain name "**DANISCO.IN**" since its registration any such rights would be significantly predated by the complainant's rights.
- (vi) The respondent's registrations and use of the disputed domain name is a clear case of cyber squatting whose intention is to take advantage of the Complainant's substantial reputation and its prominence presence on the internet in order to confuse the public by offering similar services and goods as that of the complainant, divert business, tarnish the repute and goodwill of the complainant and the said marks and unduly gain in all aspects to the detriment of the complainant.

C. The domain name was registered and is being used in bad faith

(Policy, paras. 4 (iii), 6: Rules, Para. 3(b) (vi) (3).

The complainant has stated that at the time of creation and registrations of the disputed domain name by the Respondent, the complainant had already a well established business presence globally.

- (i) The Respondents have not been authorized, licensed or otherwise consented by the complainant to use the mark **DANISCO** or to seek any sort of registration incorporating the said marks and domain name of the complainant
- (ii) Being aware of complainants mark, domain names, the repute, recognition and goodwill that the complainant have achieved worldwide, the respondents have subsequently in all malafide intention adopted the disputed domain name incorporating the said marks of the complainant
- (iii) The registrations of the domain name and its subsequent use by the respondent is for the purpose of defrauding the public, The registrations of the domain name and its subsequent use by the

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respondent is a deliberate attempt by the respondent to attract, for commercial gain, Internet users to another online location by creating a likelihood of confusion with the complainant's **DANISCO** mark and domain name such that the public would in all likelihood falsely believe that the Domain Name is sponsored, endorsed or authorized by or in association with the Complainant. The complainant believes that this has been done for fraudulent purposes.

- (iv) The complainant has contended that to the best of complainant's knowledge, Respondent did not use or register the mark or name **DANISCO** or any variation thereof prior to the date upon which the disputed domain name was registered. Neither does it appear that the Respondent is/ was commonly known by the mark or name **DANISCO** or any variation thereof prior to the disputed domain name registration.
7. The complainant prayed that the ownership in "**Danisco.in**" be rightfully transferred to the Complainant herein or any other appropriate favourable orders as deemed fit.
8. A copy of complaint has already been sent to the respondent by the .In Registry through e-mail. Upon receipt of the complaint, the Arbitrator sent a notice dated on 05-06-2011 to the respective parties to the complaint.
9. On 05-06-2011, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I directed the parties to file their counter/ reply and rejoinder with the supportive document/evidence at the e-mail address within 7 (seven) days from receipt of the notice. But the respondent did not file/submit his defence / counter to the complaint.
10. On 13-06-2011 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within further 5 (Five) days positively from receipt of the

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notice. But the respondent has not filed/submitted his defence / counter to the complaint till date despite notice that complaint would be decided on the merits of the complaint. This was also last and final opportunity granted to the respondent.

11. The respondent despite of earlier notices and reminders failed to send his defence / counter to the complaint though the notices were served on Email ID of the respondent.
12. Therefore, this matter is being decided ex-parte and on the merits of the complaint and as per law of the land.

13. OPINION AND FINDINGS ON MERITS:

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Siffynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

Thus taking into consideration the facts and circumstances of the matter and further the decision passed by the Apex court in M/s Satyam Infoway Ltd. Vs. M/s Siffynet Solution (P) Ltd. JT. 2004 (5) SC 541, the conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Hence the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name. The complainant has submitted sufficient evidence in support of its claims. However, the respondent has not submitted any reply / defence / document/evidence to the complaint of the

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complainant in spite of repeated notice and reminder notice from the arbitrator.

Thus the conclusion is that the domain name "**danisco.in**" is identical and confusingly similar to the trademark of complainant "**DANISCO**" and the complainant has established that he has right in the trademark "**DANISCO**."

B) Whether the respondent's domain name has been registered or is being used in bad faith.

Taking in to consideration and keeping in view aforesaid facts and circumstances it is clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has not come forward to file any reply /counter and has further not provided any substantial evidence in its support. The complainant has submitted sufficient evidence in support of the complaint.

Thus the conclusion is that the respondent has got registered his domain name "**danisco.in**" in bad faith.

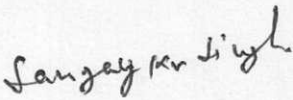
RELIEF

In view of the above mentioned facts and reasons, I hold that the respondent has registered in bad faith. Respondent's domain name "**danisco.in**" is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. The respondent has got it registered in bad faith as such is not entitled to retain the domain name. The complainant is entitled to transfer of domain name "**danisco.in**", as complainant has established the bonafide rights in trademark as per discussion mentioned above. Hence I direct that the Domain name "**danisco.in**" be transferred to the complainant by registry as rules and the procedures.

No order as to costs.

Delhi

Date: 30-08-2011.


(Sanjay Kumar Singh)
Arbitrator