



उत्तर प्रदेश UTTAR PRADESH

BS 505348

Dr. Bodhisatva Acharya

ARBITRATOR

(Appointed by .IN Registry-National Internet Exchange of India)

ARBITRATION AWARD

DISPUTED DOMAIN NAME :< www.deezer.in >

In the matter of:

Blogmusik SAS 12 rue d' Athenes
75009 Paris, France

Filed by its authorized representative attorney -

Adele Zangs,
12 rue d' Athenes
75009 Paris, France

.....Complainant.

Vs.

Ye denrong
Weihai Rd. 55, 1001 DK.
Shanghai 200050,
China

.Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is Blogmusik SAS 12rue d' Athenes, 75009 Paris, France filed by its *authorised* representative attorney Adele Zangs, 12 rue d' Athenes, 75009 Paris, France.

Respondent Ye Genrong, Weihai Rd. 55,1001 DK, Shanghai 200050, China.

2. The Domain Name, Registrar St Registrant:

The disputed domain name is www.deezer.in

3. Procedural History:

The Complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name www.deezer.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed Dr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of *acceptance* and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on May 4th, 2013 and the Arbitrator sent a notice, to the Respondent through his email for *the Arbitration Proceeding* on August 24th, 2013, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on t1(ie October 15*, 2013 as Ex-parte

4. Factual Background:

- (a) Complainant is a French company trading internationally under the name "Deezer", which offers an international online music on demand service, through free and playing services ("Deezer Services"). The Complainant has been operating the Deezer services since 2007 and became a leader in France then internationally of online on demand music services. Complainant has, through the Deezer Services, developed a formidable presence on the Internet and acquired renown in the music industry and among Internet users.
- (b) The Complainant is the owner of the website available at the URL www.deezer.com on which it has been offering its Deezer services. The Complainant only distributes its services through this website, which is not only a display window of its services but the main distribution channel of its services. Creator of the term DEEZER, and willing to insure full protection thereof, the Complainant is also the owner of many intellectual property rights in the term DEEZER. Throughout the years of 2012 and 2013, the Complainant has developed further its Deezer Services on a global worldwide basis by launching them in more than 130 countries at once. As part of this international development, the Complainant decided to register several new domain names among which the disputed domain name.
- (c) On February 5th 2013 however, upon receiving an email from a certain "Cindy" offering to transfer the disputed domain name for 5000USD, the Complainant discovered the Respondent had registered the Disputed Domain Name without the Complainant's authorization and as such in violation of the Complainant's rights in the term DEEZER and same day on February 5th 2013, when Internet users would enter the URL www.deezer.in into an Internet browser they would be directed to a "parking" page including several commercial links and a link to buy the Disputed Domain Name, the web page being operated by the Registrar. On an unknown date, the graphic layout of the page available at the address of the Disputed Domain Name then changed, but it still incorporates, as of the date of drafting this Complaint, commercial links and a link enabling any third party to buy the Disputed Domain Name.
- (d) On February 11th 2013, the Complainant has sent, by email and post, a cease and desist letter to the Respondent informing him that he was violating the Complainant's rights, and as a result he shall stop any use of the Disputed Domain name and the term DEEZER and ordering him to transfer the Disputed Domain Name to the complainant and On February 12th 2013, the Respondent replied back to the Complainant, through an email sent from the email address registered in the whoIs database for the .IN Registry: keepwalking07@gmail.com. Without making any objection to the fact that he



did not have any rights in the term DEEZER, the Respondent's only response was "6000U\$\$". In view of the Respondent's answer via email, and of the fact the cease and desist letter sent by traditional post has been returned back to the Complainant on February 25th 2013 by the Chinese postal services due to "unknown" and "insufficient" address" the Complainant decided to bring this matter to the attention of the .IN Registry.

- (e) Lastly the complainant filed this complaint for Arbitration proceeding and the Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on May 4th, 2013 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on August 24th, 2013, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the October 15th, 2013 as Ex-parte .

5. Parties Contentions:

- (a) Complainant contends that

- (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, and the domain name be transferred to the Complainant.

- (b) Respondent contends that

The respondent gave no response.

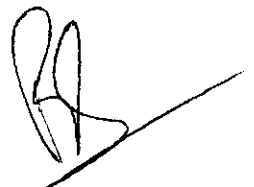
6. Discussion & Findings:

- A. The Complainant is the owner of several trademarks rights in the term DEEZER, which is identically reproduced in the Disputed Domain Name, in violation of the Complainant rights. The Complainant has indeed been using the term DEEZER since 2007 in order to distribute worldwide the Deezer services on the website available at the URL address www.deezer.com. The term DEEZER was created by the Complainant for the launching of the Deezer services and since then the Complainant always had the concern to protect the term DEEZER through numerous trademark registrations. The website available at the URL address www.deezer.com of which the Complainant is the owner and editor, is only a display window of the Deezer



Services but, more importantly, the main distribution channel of the Deezer Services. It is therefore essential for the Complainant to be the owner of the domain names corresponding to its trademark. This is why the Complainant has also registered and is the owner of numerous domain names under the term DEEZER among which deezer.com, deezer.fr, deezer.es, deezer.be, deezer.ch, deezer.dk, deezer.de, deezer.lu, deezer.hu, deezer.me, deezer.pl, deezer.pt, deezer.com.bo, deezer.bo, deezer.com.my, deezer.tw.... The term and the trademark DEEZER have become notorious throughout the world among the Internet users who associate the word "Deezer" to the Complainant's music services. Moreover, in the past year, Complainant has benefited from large worldwide media coverage since it has expanded its Deezer Services across the world. In fact, the Disputed Domain Name identically reproduces the term DEEZER with the mere addition of the suffix <.in>. It has long been decided by .in Registry Arbitrations that the addition of the suffix such as <.in> does not influence the consideration of identity between the trademark and the conflicting Disputed Domain Name *Leso juris A/S v. Robin Martin, INDRP/118 (February 14,2010)*; and *L'oreal v. Corporate Domains (Rimi Sen) INDRP/245*. Since the Respondent has no rights and/or legitimate interests in the Disputed Domain Name, the Registration of the Disputed Domain Name by Respondent is infringing the Complainant's rights on the term DEEZER.

- B. It is obvious that the Respondent has no rights and/or legitimate interest in respect of the Disputed Domain Name and has only registered the Disputed Domain Name to benefit from the Complainant's renown. To the Complainant's opinion that the Respondent does not own any legal rights' this could justify the registration and use of the Disputed Domain Name, within the term DEEZER. Unlike the Complainant, which not only has created the term and has been using it since 2007, has registered several trademarks but also has acquired renown, in the past few months, through large media coverage of its international extension, the Respondent has never been known within his country or worldwide under the term DEEZER. The Disputed Domain Name was always directing users to parking page for the past months. As such, the Respondent cannot legitimately pretend that it has any other interest in the Dispute Domain Name but to make a commercial gain to the detriment of the Complainant. Moreover, there is no evidence that the Respondent has used and/or has been preparing to use the term DEEZER and/or the Disputed Domain Name for a bona fide offering of services and/or goods. The Disputed Domain Name has never in the past few months directed the users to an activate web page offering goods and/or services in direct connection with the term DEEZER which could qualify as a bona fide offering of goods and/or services. The term DEEZER has no specific signification which could legitimate the registration and/or the use by the Respondent of the Disputed Domain Name and it is therefore obvious that the Respondent has only registered and used the Disputed Domain Name to direct the user to a parking page and to sell the Disputed Domain Name in order to capitalize on the notoriety of the Complainant.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

- C. (i) The Complainant opinion is that the Disputed Domain Name has been registered and is being used in bad faith by the Respondent as the Disputed Domain Name was registered not only to prevent the Complainant from registering the Disputed Domain Name but also to prevent the Complainant from registering the Disputed domain name but also to make a commercial gain to the detriment of the Complainant. The respondent, through an address email that had not been registered in the whoIs database, offered the Complainant on February 5th 2013 to transfer to it the Disputed Domain Name for the sum of "5000USD". Willing to protect its interests, the Complainant sent on February 11th 2013 a cease and desist letter ordering the respondent to transfer to it the Disputed Domain Name at no cost, as it had been registered by the Respondent in violation of the complainant's rights. As soon as the Complainant requested the Respondent this transfer of Disputed Domain Name, the Respondent answered via an email "6000U\$\$". This circumstances clearly indicate that the Respondent has registered the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring it for valuable consideration in excess of the its costs related to the Disputed Domain Name, as can be shown by the price at which the domain name was offered by the Respondent.
- (ii) Respondent has never been authorized to use and reproduce the trademark DEEZER, the Respondent has registered and keeps using the Disputed Domain Name without any legitimate rights and/or interests and such even though the Respondent has enjoined him to stop reproducing and using its trademark. It is possible that the Respondent did not have the Complainant's trademark in mind when registering the Disputed Domain Name since the term Deezer was created by the Complainant and is only being used by him. Moreover, at the date of registration of the Disputed Domain name, June 7th, 2012, the Complainant was benefiting from large media coverage since the Deezer services worldwide. This is a sufficient evidence of the bad faith of the Respondent as it cannot be a coincidence. This is a sufficient evidence of the bad faith of the Respondent as it cannot be a coincidence. This Disputed Domain Name has only been registered to take advantage of the renown and the value attached to the trademark DEEZER in order to attract traffic on the Respondent's website and sell the Disputed Domain Name to the Complainant's detriment.
- (iii) Disputed Domain Name is and has always been directing users to a "parking" page where numerous commercial links are available. As a result, the Respondent is receiving commercial revenues from the use of a term on which it does not have any legitimate rights and without the Complainant's authorization. It is obvious that the only intention of the Respondent when using the Disputed Domain Name is to make a commercial gain by attracting users on its website thanks to the reputation of the Complainant. By directing users of the Disputed Domain name to a parking page, the respondent is providing another indication as to his bad faith in the registration and use of the Disputed Domain name. Such use of the Disputed



Domain name can directly affect the Complainant's reputation since it misleads users into thinking that there is a link between the Complainant and the Respondent. Moreover, through the exact reproduction of the Complainant's trademark within the Disputed Domain Name, without any authorization, the respondent is unlawfully creating a likelihood of confusion within the mind of the public as to a possible endorsement of Respondent's website by the complainant. This use of the Disputed Domain name by the Respondent is even more reprehensible since the commercial links included on the website, available from the disputed Domain Name, are links to other online music services and notably illegal music services that the Complainant has been fighting against. As such, the use of the Disputed Domain Name by the Respondent is already affecting the Complainant by directing the users to other online services and by linking the Complainant to unlawful music services.

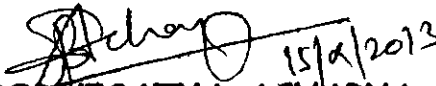
- (iv) By registering the Disputed Domain Name, by refusing to transfer the Disputed Domain Name free of charge and by attempting to sell the Disputed Domain Name to third parties, the respondent is disrupting the business of the Complainant. Indeed, the Respondent's intent is clearly to block the Complainant from registering and using the Disputed Domain Name whereas it is including a term on which the Complainant has exclusive rights and hence the Respondent has registered and is using the Disputed Domain Name in bad faith, whereas it does not benefit from any rights and/or legitimate interests in the term DEEZER on which Complainant beneficieate from trademark rights and on the Disputed Domain Name.

D. The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

7. Decision:

Hence the Arbitrator decides, the Disputed Domain Name www.deezer.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.deezer.in shall be transferred to the Complainant with immediate effect.


Dr. BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI

DATED: October 15th, 2013,
PLACE: NEW DELHI,
INDIA

