



BEFORE THE SOLE ARBITRATOR C.A. BRIJESH
.IN REGISTRY
C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)
NEW DELHI, INDIA

Faber Industrie S.P.A.

Via XIII Luglio, 160,
1-60044 Fabriano
Italy

.... Complainant

Versus

Aditya Narayan

Fl no6 bld- 6 b wing
Mayur nagar
Mumbai
Maharashtra
400065
India

.... Respondent

1. The Parties

The Complainant is **Faber Industrie S.P.A.**, with its principal place of business at Via XIII Luglio, 160, 1-60044 Fabriano, Italy (hereinafter referred to as the **Complainant**).

The Respondent is **Aditya Narayan**, of Fl no6 bld- 6 b wing, Mayur nagar, Mumbai-400065, Maharashtra, India (hereinafter the **Respondent**).

2. The Domain Name and Registrar

The disputed domain name is < FaberIndiaSrviceCenter.in >. The Registrar with which the Domain Name is registered is **GoDaddy.com LLC**

3. Procedural Timeline

January 12, 2018 : The .INRegistry appointed Mr. C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.

January 15, 2018 : Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.

January 24, 2018 : Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover. Further, NIXI forwarded a soft copy of the Complaint along with the annexures to the Respondent with a copy marked to the Complainant's Authorised Representative and Arbitral Tribunal.



- January 30, 2018 :** Arbitral Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorised Representative and NIXI, directing the Respondent to file its response, if any, within 10 days.
- February 12, 2018 :** Arbitral Tribunal, as a last opportunity, and in interest of justice granted the Respondent additional time of 7 days to file its response, if any.
- February 20, 2018 :** The Tribunal addressed an email to the parties intimating that an Award shall be passed on the basis of the material available on record.
- February 23, 2018** NIXI informed the Arbitral Tribunal that the courier agency was unable to deliver the hard copy of Complaint to the Respondent. Since electronic copy of the Complaint along with annexures were forwarded to the Respondent at its email address mentioned in the Whois records on January 24, 2018 and there was no bounce back/delivery failure notification, the said email was considered as deemed service to the Respondent.

The language of the proceedings shall be English.

4. Factual Background



4.1. Complainant's Activities

The Complainant states, *inter alia*, that it is the first company to make kitchen hoods. Founded in the year 1955, with its headquarters in Italy, it secures number one position in quality and quantity to date. The Swiss Franke Group, in August, 2004, became the main shareholder of the Complainant, whereafter, in the year 2005, Faber SpA was fully integrated into the Franke Group. Today, the Franke Group of industries operates in 8 countries and 3 continents. The Complainant further states that, with over 2,000 retail counters for sales and service across India, FABER is India's No. 1 Hoods and Hobs brand. In India, the Complainant's manufacturing plant (operational since 2012) is located in Sansawadi, Pune, having more than 250 employees with production capacity of 1,50,000 hoods, 1,00,000 hobs and 50,000 other kitchen appliances per annum. The Complainant operates through its main website www.faberspa.com and claims to have painstakingly built up good reputation worldwide and invested substantial amounts of resources in advertising its products under the mark FABER in various media, internet, other print and visual media along with fairs and exhibition.


4.2. Complainant's use of 'FABER'

Complainant has been using the mark FABER in connection with its on going business and claims to be the registered proprietor of trademark and domain name comprising FABER in numerous countries all over the world including India.



Complainant through its parent company Franke Technology and Trademark Ltd. has registered a number of domain names under generic Top-Level Domains (“gTLD”) and country code Top-Level Domains (“ccTLD”) containing the term “FABER”, for instance, <faber.online> (created on August 19, 2015), <faberindia.co.in> (created on September 18, 2007), <faberonline.net> (created on December 15, 1999), <faberspa.com> (created on December 14, 1999), <faberindia.com> (created on December 14, 2010),. Complainant uses these domain names to connect to websites through which it informs potential customers about its products and services under the mark FABER. A perusal of **ANNEXURE E** and **ANNEXURE F** substantiates Complainant’s aforesaid claims.

4.3 Complainant’s Trade Mark FABER



Complainant claims to be the owner of the trade mark FABER in various jurisdictions including India, Europe, Asia and the US and has mostly used the trademark FABER in respect of goods and services covered under Classes 6, 11 and 21. Further, the Complainant has International Registration under No. 1343497 for the mark FABER in Classes 11 and 21 since November 30, 2016. Specifically in India, Complainant has four registrations in its name for the mark FABER, with its earliest registration for the mark/logo FABER dating back to June 16, 2006 under No. 723816 in Class 11. A perusal of **Annexure D** confirms Complainant’s aforesaid claims.

4.4 Respondent’s activities and its use of FABER

Domain name <faberindiaservicecenter.in> was registered in the name of Respondent on July 04, 2017. Complainant submits that the domain <faberindiaservicecenter.in>, points to an active site which promotes services relating to kitchen appliances and hoods under the mark FABER. Further, the website mentions 'Welcome to Faber Appliance Repairing', which indicates use of FABER as a trade name. The same is corroborated by screenshot of the impugned website in **ANNEXURE I**.

The Respondent is also associated with hundreds of domain names allegedly infringing well-known third party trade marks under the .IN extension, including but not limited to <aquaguardsales.in>, <aquaguardservices.in>, <videoconservicecenter.in>, <bajajservicecenter.in>, <sonyservicecenter.in>, <whirlpoolservicecenters.in>, <hungrywriter.in>, <ifbservicecenters.in>, <hobchimneyhelpline.in>, <truepenny.in>, <itiaryan.in>, <kaffservicecenter.in>, <kentroservicecenters.in>, <lgservicecenters.in>, <radiclegroup.co.in>, <directsalesindia.in>, <fabercustomercare.in>, <foxeeye.in>, <graphicsstudio.in>, <innovationdot.in>, and <glenservicecenter.in>. Same is corroborated by reverse WHOIS report matching 'ADITYA NARAYAN' filed as **ANNEXURE L**.

Complainant states that, Respondent has registered not only the impugned domain name <faberindiaservicecenter.in> but the domain name <fabercustomercare.in> as well. Complainant claims to have forwarded a 'cease and desist' letter to Respondent by email on November 14, 2017, asserting Complainant's trade mark rights and calling upon Respondent to transfer the Domain Name <fabercustomercare.in> in favour of the Complainant. Reminders


were sent on January 27, 2017 and February 07, 2017, but no response was received. In furtherance of which, Complainant filed a Complaint with NIXI in December 2017. A perusal of the document marked as **ANNEXURE G** clearly affirms the aforesaid. It appears from the website of NIXI that the said domain name was directed to be transferred to the Complainant vide order dated February 14, 2018.

Given that the Respondent has not furnished a response to the extant Complaint, no further information is available on its business activities and/or its use of the domain comprising the mark/name FABER.

5. Contentions of Parties as summarised in the pleadings

5.1 Complainant

a) **The Domain Name is identical or confusingly similar to the Complainant's trade marks (Paragraph 4(i) of the .IN Policy)**

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- i. Complainant submits that it has secured registrations for the trade mark FABER and variants thereof in various countries of the world in different classes and the name/mark FABER is internationally recognised and is inherently distinctive. Copies of extracts of these trade mark registrations, are attached at **ANNEXURE D**.

ii. Complainant submits that the disputed domain name is identical or confusingly similar to the trade mark in which the Complainant has rights. The domain name <faberindiaservicecenter.in> incorporates the term FABER in its entirety. Further, it has been submitted by Complainant that, the disputed domain name is visually and phonetically identical to the trade name of Complainant which is bound to cause confusion and deception in the minds of the public that Respondent has some association or affiliation with Complainant which is not the case.

iii. Complainant by placing reliance on the case *NIKE, Inc. and Nike Innovative C.V. v. Zhaxia and Pfister Hotel (INDRP/804 (<nike.co.in>))*, marked as **ANNEXURE J**, submits that the addition of the “.in” does nothing to materially distinguish the same from the mark/name FABER of the Complainant. It was held in the aforementioned case that, “*the country code ‘.co.in’ is insufficient to render the domain name dissimilar.*” Therefore the Complainant submits that Domain Name is identical to the Complainant’s trade mark in accordance with paragraph 4(i) of the .IN Policy.



b) The Respondent has no rights or legitimate interests in respect of the Domain Name (Paragraph 4 (ii) and Paragraph 7 of the .IN Policy)

i. It is the contention of Complainant that Respondent has no rights or legitimate interests in the disputed domain name.

- ii. Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in Paragraph 7 of the .IN Policy, in order to demonstrate rights or legitimate interests in the Domain Name.
- iii. Complainant submits that it has legitimate interest in the well-known mark 'FABER' in India as the same is registered in India since 2006, and has been openly, continuously and extensively using it in India for more than a decade.
- iv. It is further submitted by the Complainant that the domain names <faberindia.com> and <faberindia.co.in> were registered on December 14, 2010 and September 18, 2007 respectively in the name of Complainant, whereas, the disputed domain name <faberindiaservicecenter.in> was registered in the name of Respondent on July 04, 2017 which is subsequent to the adoption of the aforesaid domains. Hence, Respondent cannot assert that, prior to any notice of this dispute, it was using, or had made demonstrable preparations to use, the domain name <faberindiaservicecenter.in> in connection with a *bona fide* offering of goods or services in accordance with paragraph 7(i) of the .IN Policy or legitimate non-commercial or fair use of the Domain Name in accordance with Paragraph 7(iii) of the .IN Policy.
- v. Complainant contends that as per a search conducted by it, Respondent has neither secured or even sought to secure any trade mark rights in the



mark FABER, nor has registered its business under the said name with the Ministry of Corporate Affairs, India.

- vi. Complainant contends that Respondent cannot conceivably assert that it is commonly known by the term FABER in accordance with Paragraph 7(ii) of the .IN Policy, given the notoriety surrounding that there is no evidence of Respondent having a history of using, or preparing to use, the disputed domain name in connection with a *bona fide* offering of goods and services. It is thus clear that Complainant has become distinctive identifier associated with the term FABER and that the intention of the disputed domain name is to take advantage of an association with the business of Complainant.

c) **The domain name was registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the .IN Policy)**



- i. Complainant asserts that the domain name <faberindiasrviccecenter.in> was registered and is being used in bad faith.
- ii. Complainant contends that its trade mark 'FABER' is highly distinctive and has acquired considerable renown and goodwill worldwide, including in India, in connection with kitchen appliances, hoods and hobs. Therefore, it would be inconceivable for Respondent to argue that it did not have knowledge of Complainant's rights at the time of registration of the domain name <faberindiasrviccecenter.in> in 2017.

Further, it is apparent that the Respondent knowingly and deliberately registered the disputed domain name in bad faith seeking to somehow profit from the Complainant's goodwill and renown.

- iii. Complainant further submits that Respondent registered the disputed domain name, which identically reproduces the Complainant's trade mark without adornment, to prevent Complainant from reflecting its trade mark in the corresponding '.IN' country code extension for India, and has engaged in a pattern of such conduct, in accordance with Paragraph 6(ii) of the .IN Policy.
- iv. It is submitted by Complainant that by using the domain name <faberindiaservicecenter.in>, Respondent is intentionally attempting to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the websites, in accordance with paragraph 6(iii) of the .IN Policy.
- v. Complainant asserts that the registration of various domain names including well-known brands with protected trade marks such as <whirlpoolservicecenters.in>, <lgservicecenters.in> including FABER's <fabercustomercare.in> in the name of Respondent (**ANNEXURE L**) constitutes bad faith. To substantiate the same, Complainant has relied on *Bayer AG of Leverkusen v. Huang Cheng of Shenghai (WIPO/D2015-1932)*, wherein it was stated by the panel that, "The Respondent is

engaged in registering domain names containing famous marks... This is evidence of a pattern in the misappropriation of well-known marks which cannot be regarded as registration and use in good faith."

- vi. Complainant asserts that the disputed domain name was registered and is being used in bad faith in accordance with Paragraph 4(iii) of the .IN Policy.

5.2 Respondent

As per the INDRP Rules of Procedure, NIXI had forwarded a copy of the Complaint along with all annexures to the Respondent on January 24, 2018 with a copy marked to Complainant and this Arbitral Tribunal.

On January 30, 2018, this Tribunal issued a notice to Respondent directing it to file a response within 10 days. However, no response was received from Respondent.



Absent a response from Respondent thereto or any intimation by Respondent of its desire to furnish a response, the matter has proceeded *ex-parte*.

6. Discussion and Findings

As per paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- 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 rights in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

6.1 Identical or confusingly similar trade/service mark



As per the WHOIS records, the disputed domain name <faberindiaservicecenter.in> was registered on July 04, 2017.

Complainant is the proprietor of the registered trade mark FABER in diverse classes and has applications/registrations for the mark FABER in various jurisdictions of the world. To substantiate the same, Complainant has placed on record copies of extracts from the online records of the Trade Marks Registry for the trade mark FABER in India as well as WIPO. Specifically, in India, Complainant's trademark application filed under Nos. 1470366, 723816, 1684284

and 355037 on July 14, 2006, June 17, 2006, June 05, 2008 and November 30, 2016 respectively, stands registered. Further, Complainant also claims to own several the domain names comprising FABER, such as <faberspa.com>, <faber.online>, <faberonline.net> etc., as well as India specific domain name <faberindia.co.in>. It claims to have been substantially and continuously using the mark/name FABER in relation to its business/products/services.

The disputed domain name incorporates the mark FABER in its entirety. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed* (INDRP/278) as well as in *Indian Hotels Company Limited vs. Mr. Sanjay Jha* (INDRP/148) that when a disputed domain name incorporates a mark in entirety, it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. Similarly, in case of *Farouk Systems Inc. v. Yishi*, (WIPO Case No. D2010-006), it has been held that the domain name wholly incorporating a Complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the additions or deletions of other words to such marks.




As can be seen from above, Complainant has registered the domain name <faberspa.com> (created on December 14, 1999), <faberonline.net> (created on December 15, 1999), <faberindia.co.in> (created on September 18, 2007) and <faber.online> (created on August 19, 2015); trade mark/name FABER and is doing/operating business/website under the said domain names. Respondent on the other hand registered the domain <faberindiaservicecenter.in> much subsequent to Complainant i.e. on July 04, 2017.

In the view of the foregoing discussions, Complainant has satisfied this Tribunal that:

- i. The domain name in question <faberindiaservicecenter.in> is phonetically as well as visually identical to Complainant's prior registered trade mark FABER and that the ccTLD ".in" does nothing materially to distinguish the same from Complainant's mark FABER; and
- ii. It has both prior statutory and proprietary rights in respect of the mark FABER.

6.2 Rights and legitimate interests



Complainant has asserted that Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 7 of the INDRP enumerates three circumstances (in particular but without limitation) and if the Arbitrator finds that the Registrant has proved any of the said circumstances, the same shall demonstrate its rights to or legitimate interest in the disputed domain name. The said paragraph is reproduced herein under:

“Registrant's Rights to and Legitimate Interest in the Domain Name - Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall

demonstrate the Registrant's rights to or legitimate interest in the domain name for the purposes 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 with a *bona fide* offering of goods or services;
- ii. The Registrant (as an individual, business, or other organisation) 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 misleading divert consumers or to tarnish the trademark or service mark at issue."



Respondent ought to have been aware of the reputed mark/name FABER of Complainant. There is no documentary evidence to suggest that Respondent has used or made demonstrable preparations to use the disputed domain name or a name corresponding to the domain name in connection with *bona fide* offering of goods/services; or is commonly known by the disputed domain name; or has made fair use of the disputed domain name. On the other hand, Respondent's domain name <faberindiasrviccenter.in>, points to an active site which promotes services relating to kitchen appliances and hoods under the mark FABER. Further, the website mentions 'Welcome to Faber Appliance Repairing', which

indicates use of FABER as a trade name. Screenshots evidencing the same have been filed by Complainant. Further, Complainant has also alleged that such use of the mark FABER in Respondents website is to create confusion in the minds of public, believing Respondent to be associated with the Complainant.

In addition, as observed by the panel in the case of *International Hotels v. Abdul Hameed* (INDRP/278), it is well established, that trade mark registration is recognised as *prima facie* evidence of rights in a mark. Complainant, in the instant case, is the owner of the registered trademark FABER in various jurisdictions in the world; has a '.com' registration for the same since 1999; and has secured registration in India which predates registration of the impugned domain name by Respondent and thus has sufficiently demonstrated its rights in the trade mark FABER.




Further, it is a settled position that if Respondent does not have trade mark right in the word corresponding to the disputed domain name and in the absence of evidence that Respondent was commonly known by the disputed domain name, the Respondent can have no right or legitimate interest [See *Shulton Inc. vs. Mr. Bhaskar*, INDRP/483- <'oldspice.in'>].

In view of the foregoing, it is evident that Respondent has no rights or legitimate interests in the disputed domain name.

6.3 Bad faith


Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith. The said paragraph is reproduced herein under:

"Evidence of Registration and use of Domain Name in Bad Faith: For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

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- i. Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
 - ii. the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
 - iii. by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as

to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

The following clearly establishes bad faith:

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- (i) From the evidence on record, it is clear that such registration of domain name by Respondent is intended at preventing Complainant from reflecting its FABER mark in a corresponding domain name, so as to sell the domain name for valuable consideration in excess of its out-of-pocket costs. See *Volvo Trademark Holding AB v. Mr Sachin*, INDRP/869 (<volvo-bus.in>).
 - (ii) From the records, it also appears that by registering the impugned domain name, the Respondent has attempted to attract internet users thereby creating likelihood of confusion with the Complainant's mark/source of origin. See *Colgate – Palmolive Company and Colgate – Palmolive (India) Ltd. v. Zhaxia*, INDRP/887 (<colgate.in>). The factum of diverting users to a domain comprising Complainant's trade mark (business name without consent constitutes bad faith (see: *DELL Inc. v. Varun Kumar Laptop Service Center* (INDRP/920 (<dellservicescenterghaziabad.in>)
 - (iii) Respondent (either itself or through others) is the registrant of hundreds of domain names infringing third parties well known trade marks. Such abusive domain name registrations, undoubtedly, is a strong indication of bad faith. See *Microsoft Corporation v. Gioacchino Zerbo*, WIPO Case No.

D2005-0644 (<internetexplorer.com>); *Southern Communications Services, Inc. d/b/a Southern LINC v. Henry Chan (WIPO Case No. D2004-0214)-* “Cyberpirates may attempt to warehouse multiple domain names containing other’s marks, sometimes hundreds or even thousands, and this factor permits a court to take such conduct into the consideration of whether a certain domain name was registered in bad faith.”

In view of the foregoing, the panel is of the view that Respondent has registered the domain name <faberindiasrvicenter.in> in bad faith.

7. Award

From the foregoing findings, it is established beyond doubt that (1) the domain name is confusingly similar to the reputed mark FABER which is proprietary to the Complainant, (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name, and (3) the domain name is registered in bad faith.

Thus, in accordance with the Policy and Rules, this Arbitral Tribunal directs the Respondent to immediately transfer the disputed domain name <faberindiasrvicenter.in> to the Complainant.

The parties shall bear their own cost.

Dated: April 4th, 2018



C.A. Brijesh

Sole Arbitrator