



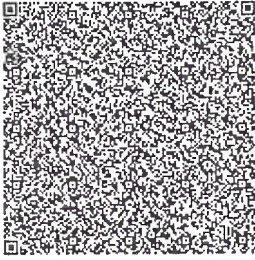
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL02363016727846Q
Certificate Issued Date : 20-Mar-2018 12:30 PM
Account Reference : IMPACC (IV)/ dl948703/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL02363016727846Q
Purchased by : POOJA DODD
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : POOJA DODD
Second Party : Not Applicable
Stamp Duty Paid By : POOJA DODD
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

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IN THE MATTER OF:

Le Creuset

902, Rue Olivier Deguise,
02230, Fresnoy-Le-Grand,
France

...COMPLAINANT

Versus

Yitao, Apex Consulting

75 Bloor Street, East,
Toronto, Ontario-M4W 3R8
Canada

...RESPONDENT

1. **The Parties**

The Complainant in this arbitration proceeding is Le Creuset, a company incorporated the laws of France, with registered office at 902, Rue Olivie Deguise 02230, Fresnoy-Le Grand, France. The Complainant is represented by Saikrishna and Associates, its authorised representative.

The Respondent is Yitao, Apex Consulting, with office at 75 Bloor Street, East, Toronto, Ontario-M4W 3R8, Canada.

2. **Domain Name and Registrar**

The disputed domain name is <lecreuset.co.in> which is registered with 'Netlynx Technologies Private Limited' (R62-AFIN).

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As per the Whois Database, the Registrant is Mr. Yitao, Apex Consulting, with office at 75 Bloor Street, East, Toronto, Ontario-M4W 3R8, Canada. The Email address connected with the Registrant is sunong@live.com

3. **Procedural History**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI) and the INDRP Rules of Procedure (the "Rules"), which were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the INDRP and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:

- 3.1. The Complaint was filed with the .IN Registry, NIXI, against Mr. Yitao. NIXI verified the Complainant and its annexures for conformity with the requirements of the Policy and the Rules.
- 3.2. In accordance with the Rules, Paragraph – 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Pooja Dodd as the Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, the Policy and the Rules.
- 3.3. The Sole Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).

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- 3.4. NIXI notified the Parties of the Arbitrator's appointment via email on February 1, 2018 and served an electronic copy of the Complaint on the Respondent. The Parties were notified by the Arbitrator about the commencement of arbitration proceedings on February 1, 2018 and the Respondent was directed to submit a Response within ten days, i.e. by February 11, 2018.
- 3.5. On February 12, 2018, the Legal Officer of NIXI informed the Arbitrator that the courier containing the Complainant had not been delivered due to incorrect/incomplete delivery address/ incorrect address – zip/postal code and sought the Arbitrator's advice.
- 3.6. On February 12, 2018, the Arbitrator notified the Parties that even though the courier had not been delivered, the electronic service of the Complaint can be safely treated as service of the Complaint on the Respondent. The Respondent did not submit any response within the deadline set. Therefore, the Parties were informed that sufficient opportunity had been granted to the Respondent to file a response and as no formal response has been received from the Respondent, the deadline to file reply or any other documents is being closed and the Award will be passed on merits within the stipulated time.

In these circumstances the Complaint is being decided on merits based on materials submitted by the Complainant and contentions put forth by it.

Grounds for Administrative Proceedings:



- A. The disputed domain name is identical to a name, Trade Mark and Trade Name in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interest in the disputed domain name;
- C. The disputed domain name was registered and is being used in bad faith.

4. Summary of the Complainant's Contentions:

In support of its case, the Complainant, has made the following submissions:

- 4.1. The Complainant is a company incorporated under the laws of France and is a leading manufacturer and distributor of enamelled cast iron cookware. Complainant is the holding company of Le Creuset India trading Private Limited ("Complainant's Indian Subsidiary"), a company duly incorporated on September 1, 2005 in India, which manages its Indian Business. The Complainant is recognized globally for being the market-leader in premium quality ranges of enamelled cast iron cookware, multi-ply stainless steel, toughened non-stick, and stoneware. The Complainant has been in the business of manufacturing and selling world-class cookware for over 90 years since 1925.
- 4.2. The Complainant manufactures over 300 million products to over 70 countries and it is committed to handcrafted quality. To increase the reach and quality of the Complainant's products, the Complainant has invested a significant amount of money to advertise their products in India, to the general public, by way of print and online advertisements. The Complainant's mark LE CREUSET is a distinctive mark meaning crucible, melting pot and describes the manufacturing process of the LE CREUSET products.



- 4.3. The name "Le Creuset" was first registered as a Trade Mark in France on May 24, 1951. The Complainant has Trade Mark registrations in India for LE CREUSET since 1999 and is the bonafide user of the LE CREUSET marks since 2005. The Complainant has 115 Trade Mark registrations for the LE CREUSET Word and Device Marks in foreign jurisdictions. In addition, the Complainant is the registered and bonafide user of the domain name <www.le-cruaset.in> since the year 2015.
- 4.4. The Complainant discovered that the disputed domain name was being used by the Respondent to provide "parking services", which was redirecting users to other third-party websites where the Complainant's products were being sold. In addition, the Complainant alleges that the Respondent hosted malware on the disputed domain. The disputed domain name hosts a message box/informative window which prompts the user to download and anti-virus software which the Complainant reasonably apprehends hosted a virus. The disputed domain name was registered on November 21, 2011.
- 4.5. The Complainant submits that the disputed domain name <www.lecreuset.co.in> is identical to its distinctive LE CREUSET mark and that the Respondent has dishonestly obtained the registration of a deceptively similar domain name.
- 4.6. Upon discovering the disputed domain name, the Complainant, through its enforcement agency issued two cease-and-desist notices dated September 27, 2016 and September 28, 2016, to the Respondent at - sunong@live.com.
- 4.7. On September 28, 2016, the Respondent replied to the cease-and-desist notices by an email admitting to violating the Trade Mark rights of the Complainant and offered to

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sell the disputed domain name to the Complainant for an unreasonably high price- US Dollars 2890.

4.8. Subsequently, the Complainant, vide an email dated December 16, 2016 issued a notice to Google AdSense informing them of the Complainant's rights in and to its Trade Marks and asking them to investigate and discontinue providing parking services. The Complainant also issued a notice to the Web Host vide email on October 11, 2016 informing the Web Host of the Complainant's rights in and to the Trade Marks and requesting them to terminate the hosting of the disputed domain name.

4.9. Further, on Complainant's lack of response to the Respondent's offer to sell the disputed domain name, the Respondent sent another email offering to sell the disputed domain name to the Complainant on October 17, 2016.

4.10. Consequently, the Complainant sent another cease and desist notice to the Respondent vide an email dated March 15, 2017 asserting their rights. On the same day, the Respondent replied to the cease-and desist-notice by again admitting to violating the Trade Mark rights of the Complainant in the LE CREUSET mark and once again made an offer to sell the disputed domain name for US Dollars 2890.

4.11. In addition to the continuous offers to sell the disputed domain name to the Complainant, the disputed domain name has been used illegally by the Respondent since its registration till date.

4.12 The Complainant submits that the Respondent has a pattern of bad faith conduct and is a repeat offender, as far as domain name squatting is concerned. This can be

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evidenced and duly substantiated by the below mentioned INDRP Disputes decided against the Respondent-

4.12.1 In *Georgio Armani S.P.A., Swiss Branch Mendrisio Vs. Yitao/Apex Laboratories (D2013-2060, 2014)*, Georgio Armani filed a Complaint against the Respondent in the WIPO Arbitration and Mediation Centre contending that the Respondent has infringed upon its domain name rights with respect to the domain name <armanijeans.org>. The Respondent was found to be in violation of Georgio Armani's Trade Mark rights in the said domain name and the same was transferred to the Complainant.

4.12.2 In *Ford Motor Company Vs. Yitao/Apex Laboratories Ltd. (INDRP/672-2015)* it was held that the Respondent's act of registering <ford.co.in> primarily for the purpose of selling it for valuable consideration in excess of Registrant's out of pocket cost was in violation of para 6 of INDRP and therefore declared to be a registration done in bad faith.

4.13 The Complainant submits that it is evident that the Respondent in the present Complaint is the same entity i.e. Yitao/Apex Laboratories on account of the fact that both, the Respondent in the present Complaint and the Respondent in the WIPO and INDRP Tribunal cases abovementioned are associated with the same Email ID i.e. sunong@live.com

4.14 In support of the contention the Complainant has furnished copies of the following documentation:

1.	A copy of the Power of Attorney for filing of the INDRP Complaint;
2.	Copy of the WHOIS extract of <www.le-creuset.co.in>;
3.	A copy of the screenshot from the website https://domainbigdata.com/ establishing the association of the email ID sunong@live.com with the



	Respondent, along with a copy of the WIPO and INDRP Tribunal Decisions;
4.	Copy of the excerpt of the Company Registration of the Complainant Company and a copy of the Certificate of Incorporation of the Complainant's Indian Subsidiary;
5.	Copy of Shareholders of Certificate;
6.	Copy of the Registration Certificate of Establishment under the Bombay Shop and Establishment Act 1948;
7.	A screenshot of the Home page of the Complainant's Indian website < www.le-creuset.in >, in along with a screenshot of the 'About Us' page of the Complainant's Indian website;
8.	A brief presentation on the Creation and History of the brand of the Complainant;
9.	A copy of the first Trade Mark registration certificate from France for the mark "Le Creuset" dated May 24, 1951 along with its English translation;
10.	Copies of Indian Trade Mark registration certificates
11.	A complete list of Foreign Trade Mark registrations of the Complainant's Trade Marks;
12.	Index of international trademark registration certificates along with copies of said international Trade Mark registration certificates
13.	A copy of the consignment agreement of the Complainant with Good Earth;
14.	A copy of the sale invoice of Sai Marketing;
15.	A copy of the price list of the Complainant's products for the year 2008;
16.	A copy of the list of Annual Sales Figure from the year 2010 until 2017;
17.	A copy of sales invoices pertaining to "Le Creuset" branded products to their various customers/distributors since 2006 until 2014
18.	A complete list of the Complainant's national and international domain name registrations;
19.	Copies of various magazine articles from 2006 onwards depicting the Complainant's featured products
20.	Copies of the invoices raised pertaining to advertisement arrangements entered into by premier media companies;
21.	Print outs of online article pertaining to the exhibition at ART DE VIVRE A LA FRANCAISE and an international poll conducted by 'L'EXPANSION and NEWSWEEK;
22.	Copies of press reports which profile and corroborate the Complainant's goodwill and reputation received by Complainant;
23.	A copy of screenshots of <le-creuset.co.in> and the parking service on the disputed domain name;
24.	Copies of the emails dated September 27 and 28, 2016 (cease and desist notices and Respondent's reply);
25.	A copy of the emails dated October 11, 2016 and December 16, 2015- Sent to Web Host vide and Google AdSense respectively;
26.	A copy of the email dated October 17, 2016 (Respondent sent email seeking to sell disputed domain name to Complainant);
27.	A copy of the emails dated March 15, 2016 - cease-and-desist notices and Respondents reply;
28.	A copy of the email dated from August 25, 2017 to August 30, 2017 and a screenshot representing the presence of malware on the disputed domain name;

29.	Screenshots of the disputed domain name hosting malware and hosting pay-per-click links which redirect to other third-party websites;
30.	A copy of the Anti-Abuse Policy;
31.	Screenshots of the Respondent's registration details and domain
32.	Index of cases referred to in the Complaint along with their corresponding copies including the WIPO decisions, INDRP decisions and Delhi High Court decision referred to in Section II of the 'FACTUAL AND LEGAL GROUNDS'

5. The Respondent

The Respondent has not filed any response to the Complaint.

6. Discussions and Findings

The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure.

The submissions and documents provided by Complainant lead to the conclusion that Complainant has prior rights in and to the LE CREUSET mark and that the Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the LE CREUSET mark. Moreover, the Complainant has not authorized the Respondent to use the LE CREUSET mark.

It's a well-established principle that that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

6.1. The Respondent's Default

The INDRP Rules of Procedure require under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to present its case.

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Rule 11(a) empowers the Arbitrator to proceed with an *ex parte* decision in case any party does not comply with the time limits or fails to submit a reply against the Complaint.

As previously indicated; the Arbitrator gave the Respondent 10 days to respond to the Complaint, and the Respondent failed to file any reply to the Complaint and has sought not to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present its case.

The Rules in paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint.

In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply despite having been given an opportunity to submit a response. The Arbitrator's decision is also based on the email responses sent by the Respondent to the Complainant in the past offering to sell the disputed domain name for an unreasonably high price.

6.2. The issues involved in the dispute

The Complainant invokes paragraph 4 of the INDRP and paragraph 3(b)(vi) of the Rules in its Complaint. Both paragraphs determine the elements for a domain name

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dispute, which are, whether the domain name in question is identical or confusingly similar to a Trade Mark, why the Respondent cannot claim any legitimate interest in the mark and why it must be considered that the domain name in question is registered in bad faith.

These elements are discussed below in tandem with the facts and circumstances of this case:

Element 1- The Respondent's domain name is identical / confusingly similar to a name, Trade Mark or service in which the Complainant has rights: The Arbitrator is of the view that the Complainant has submitted enough documentary evidence to prove its rights in and to the ownership of the LE CREUSET marks.

The LE CREUSET marks have been extensively used by the Complainant to identify its business and goods. The LE CREUSET marks have been extensively publicized by the Complainant and has earned a considerable reputation in the market.

Paragraph 3 of the INDRP confers the burden on the Respondent to determine whether the Respondent's domain name registration infringes or violates someone else's rights before applying for registration of the domain name, and the Respondent has failed this responsibility. A cursory glance at the disputed domain name <www.lecreuset.co.in> makes it obvious that the disputed domain name is identical to the Complainant's LE CRUSET marks, because the disputed domain name contains the Complainant's LE CREUSET mark in its entirety, hence the first element is satisfied.

Element 2 - The Respondent has no rights or legitimate interests in respect of the

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disputed domain name: The Complainant has, in its submissions established that it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use its LE CREUSET marks. The burden of proof to establish any legitimate interests over the disputed domain name falls on the Respondent, and by not responding to the Complaint, the Respondent has failed to establish this burden.

For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Element 3 - The disputed domain name has been registered or is being used in bad faith: Paragraph 6 of the INDRP determines what constitutes bad faith. It includes circumstances where the Respondent is using the domain name for the purpose of transferring the domain name registration to the owner of the Trade Mark for consideration in excess of the documented costs directly related to the domain name and the Respondent intentionally attempting to attract, for commercial gain, Internet users to its Website by creating a likelihood of confusion with the Complainant's marks.

The Respondent has not contested the Complaint, however, there are emails dated September 28, 2016 and March 15, 2017 on record from the Respondent to the Complainant in which the Respondent acknowledges the Complainant's rights and apologizes for the violation of these rights. The Respondent has also asked for a sum of USD 2890 for which there is no justification. The Respondents unabashed use of the disputed domain name despite being fully aware of the Trade Mark violation and asking for consideration to sell the disputed domain name establishes bad faith registration beyond doubt. Furthermore, Internet users will reasonably

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expect to find Complainant's products at <lecreuset.co.in>; and such Internet users may believe that the website that resolves at the disputed domain name is the official website of the Complainant.

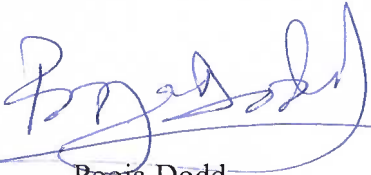
The above leads to the conclusion that adoption by the Respondent of the disputed domain name shows opportunistic bad faith.

7. **Decision:**

In view of the foregoing, I am convinced that the Complainant has a legitimate right to the disputed domain name; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the Respondent's registration and use of the disputed domain name is in bad faith. In accordance with the Policy and Rules, I direct that the disputed domain name be transferred to the Complainant.

In the facts and circumstances as discussed above, the Respondent is also ordered to pay to the Complainant, costs of ₹50,000 (Rs. Fifty Thousand Only).

Dated: March 20, 2018



Pooja Dodd

Sole Arbitrator