



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

S.No. 1461 Date: 11/03/11 Rs. 20/-

Name: Harni Narayana Swamy

S.No: 13 Narayana Swamy Rb Hyd

For Whom: Self

31AA 235135
LAXMI NARAYANA

Stamp Vendor, S.V.L.No:02/08, R.No: 02/08
H.No:0-3-392, Behind Police Station,
Panjagutta, Hyderabad-082.

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD

In The Matter Between

E.Remy Martin (Remy Cointreau)

Complainant

Versus.

Domain Masters/ Juwel Poon

Respondent

Harni Narayana Swamy



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

S.No. 144/2 Date: 11/03/11 Rs. 20/-

Name: Anil Narayana Swamy

S/D/W/o: B. Narayana Swamy a/o thyl

For Whom: self

31AA 235136
S. LAXMI NARAYANA

Stamp Vendor, S.V.L.No:02/06, R.No: 02/09,
H.No:6-3-392, Behind Police Station,
Panjagutta, Hyderabad-082.

1. The Parties

The Complainant is E. Remy Martin of France, represented in these proceedings by Mr. Laurent Becker of Nameshield France.

The Respondent is Domain Masters, Juwel Poon of New Delhi India.

2. The Domain name, Registrar and Policy

This Arbitration pertains to a dispute regarding the domain name <louis-xiii.in>. The registrar for the disputed domain name is A to Z Domain Solutions Pvt. Ltd. Mumbai, India.

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").

Hanji Narayana



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH
 S.No. 144/13 Date: 11/03/11 Rs. 20/-
 Name: Anil Narayana Swamy
 S/D/W/O: B. Narayana Swamy abt/101
 For Whom: self

[Signature]
 31AA 235137
 C. LAXMI NARAYANA
 Stamp Vendor, S.V.L.No:02/06, R.No: 02/06
 H.No. C-3-392, Behind Police Station,
 Panjagutta, Hyderabad-082.

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

The Arbitrator received the Complaint from the .IN registry on January 3, 2011 and on January 4, 2011 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent did not reply to the notification or file any response in these proceedings. Based on the material on record the Arbitrator now proceeds to determine the case on its merits.

[Signature: Harini Narayanswamy]



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

31AA 235138

S.No. 14464 Date: 11/03/11 Rs. 20/-
 Name: Anu Narayana Swamy
 S/D/W/o: B. Narayana Swamy sb hyd
 For Whom: self

S. LAXMI NARAYANA
 Stamp Vendor, S.V.L.No:02/06, R.No: 02/01
 H.No:6-3-392, Behind Police Station,
 Panjagutta, Hyderabad-502.

Factual Background

The Complainant is in the business of producing and marketing alcohol and uses the trademark LOUIS XIII for its cognac. The Complainant bases the present complaint on the following trademarks:

Trademark	Jurisdiction	Registration Number	Date of Registration
LOUIS XIII DE REMY MARTIN	India	641400	28.09.1994
Louis XIII Grand Champagne Remy Martin	International	465058	14.12.1981
LOUIS XIII BRAND	International	623068	19.08.1994

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ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

31AA 235134

S.No. 14460 Date: 11/03/11 Rs. 20/-
 Name: Arni Narayana Swamy
 S/D/W/o: B. Narayana Swamy 260 Hyd
 For Whom: - self -

S. LAXMI NARAYANA
 Stamp Vendor, S.V.L.No:02/08, R.No: 02/08,
 H.No:6-a-392, Behind Police Station,
 Panjagutta, Hyderabad-082.

LOUIS XIII DE REMY MARTIN	International	629594	04.01.1995
LOUIS XIII DE REMY MARTIN CARE CASK	International	10227200	17.12.2009
LOUIS XIII DE REMY MARTIN	International	1030355	30.12.2009

The Respondent registered the disputed domain name <louis-xiii.in> on September 13, 2010.

Arni Narayana Swamy

4. Parties contentions

A. Complainant's Submissions

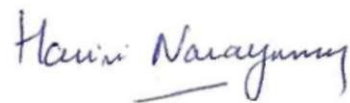
The Complainant states it uses the trademark LOUIS XIII for a cognac produced by a branch of the Complainant's company. CLS REMY CONTREAU, officially registered in France since 1874. The brand LOUIS XIII has three collections that are: Louis XIII. Louis XIII Rare Cask and Louis XIII Black Pearl. The Complainant states it owns numerous trademarks registrations for the term LOUIS XIII in several countries including India. The Complainant states it sells and promotes its products worldwide.

The Complainant contends that it owns numerous domain names bearing the trademark LOUIS XIII that it uses for communication on the Internet through various websites. The Complainant states its primary website is www.louis-xiii.com. and the corresponding domain name was registered on January 21, 2003. The Complainant states the disputed domain name <louis-xiii.in> is identical to its trademark LOUIS XIII except for the addition of the ccTLD ".in". The addition of the ccTLD does not lessen the confusing similarity with its trademark argues the Complainant.

The Complainant states it contacted the Respondent by email regarding the disputed domain name, but the Respondent did not reply to the Complainant's communication. The disputed domain name has been advertised for sale in French, on the SEDO website. The website linked to the disputed domain name is redirected to a parking page that has sponsored links in the French language.

The Complainant argues the Respondent has no rights or legitimate interest in the disputed domain name as the Respondent has no relationship with the Complainant and is not authorized or licensed to use the Complainant's mark. Further, the Respondent is not known by the disputed domain name and the webpage linked to the disputed domain name is not used for a *bona fide* offering of goods or services but is used for placing sponsored links.

The Complainant asserts the disputed domain name was registered and is used in bad faith, as the Respondent had knowledge of the Complainant's prior rights in the trademark. Due to the distinctiveness of the Complainant's mark, the Complainant contends that the Respondent registered the disputed domain name in bad faith to divert Internet traffic. The disputed domain name is connected to a content advertising website that has links in French. The advertisement for sale of the disputed domain name is also in French and the amount of EUR 800 that the Respondent demands for the disputed domain name is far in excess of out of pocket expenses of registration of the domain name. For all these reasons the Complainant requests for transfer of the disputed domain name.



Discussion and Findings

Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

- (i) The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

Identical or Confusingly Similar

The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which it has rights.

The Arbitrator finds that the Complainant has submitted documents showing registered rights in the trademark LOUIS XIII. In particular, the Complainant has submitted the details of its Indian trademark registration, bearing number 641400 in class 33 for alcoholic beverages and details of its international trademark registrations that establish its statutory rights in the LOUIS XIII marks. The Complainant has clearly adopted and used the mark LOUIS XIII extensively for a considerable period and the Arbitrator is satisfied that the LOUIS XIII mark is distinctive of the Complainant and its products.

The disputed domain name incorporates the Complainant's trademark LOUIS XIII in its entirety. If a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that the domain name is identical or confusingly similar to a Complainant's registered mark. See *Allied DOMEQ Spirits and Wine Limited v Roberto Ferrari*, INDRP Case 070, dated September 27, 2008 (<ballantines.in>).

A domain name that incorporates a well-known trademark is considered confusingly similar to the trademark. Accordingly, the Arbitrator finds that the disputed domain name is confusingly similar to the Complainant's trademark in the present case. The country code top level domain (cc TLD) ".in" suffix, does not lessen the confusing similarity of the domain name with the trademark. See for instance *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 dated October 27, 2010 (<morganstandleybank.co.in>), where it was found that the country code top level domain (cc TLD) did not lessen the confusing similarity of the domain name with the trademark in question.

Lor the reasons discussed, the Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

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Rights and Legitimate Interests

The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

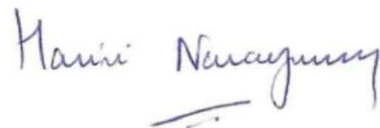
The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name, as he has not been given any authorization to use the Complainant's mark. Further, the Respondent is not known by the disputed domain name and has no trademark rights in the name.

Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

The Arbitrator finds there is no evidence on record to show that the Respondent, who is the registrant of the domain name has made preparations to use the disputed domain name for a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes legitimate non-commercial fair use of the website linked to the disputed domain name.

It is evident that the Respondent who is not connected with the Complainant or its business nevertheless uses the Complainant's trademark in the disputed domain name. In the Arbitrator's view, the use of the Complainant's mark in the disputed domain name is likely to mislead the public and Internet users that the disputed domain name refers to the Complainant. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant. Misleading users by incorporating others trademarks in the domain name gives a false impression to users and does not constitute a *bonafide* offering of goods and services under the INDRP Policy. A website and a domain name that gives a false impression to users and misleads users does not confer legitimate rights. See for instance, *Pfizer Inc. v. Schreiner /Schreiner & Co.*, WIPO Case No.D2004-0731.

The Complainant has made a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.



Bad Faith

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has put forward the following arguments that the Respondent has registered and uses the disputed domain name in bad faith. First, the Complainant has prior rights in the trademark LOUIS XIII that is a well-known mark. Second, the Respondent has parked the disputed domain name on the SHDO parking portal and has advertised its sale. Third, the Respondent uses the disputed domain name to mislead Internet users by using a name identical to its trademark and has displayed sponsored links in French.

Based on the documents on record and the facts and circumstance in the present case, the Arbitrator finds the arguments of the Complainant are persuasive. The Complainant has filed documents that establish it has adopted and used the LOUIS XIII mark prior to the registration of the disputed domain name. The Complainant's Indian trademark registration number 641400 in class 33 shows that the said trademark application was made in the year 1994. Given the long and extensive use of the mark by the Complainant, it is highly unlikely that the Respondent was unaware of the Complainant's mark, and indeed it can be reasonably inferred that the Respondent must have known of the mark and had the Complainant's mark in mind while registering the disputed domain name.

Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. Exploiting the fame of a trademark with an intention of attracting Internet users constitutes bad faith registration; See for instance *Ferrari S.p.A v. American Entertainment Group, Inc.*, WIPO Case No.D2004-0673.

The Complainant has submitted evidence that the Respondent's website has featured links and the website associated with the disputed domain name is a link farm. The use of sponsored links suggests that the Respondent has registered the disputed domain name with the intention of attracting Internet users to its website based on the fame of the Complainant's mark. Using the domain name for displaying links for commercial gain under the circumstances discussed is evidence of bad faith use. See *Microsoft Corporation vs. Van Wei*, INDRP Case No. 145, dated July 12, 2010 where the use of pay per click links on the website by the registrant was found to be bad faith registration and use of the domain name <microsoftstore.in>, due to the use of the trademark MICROSOFT in the domain name which was being exploited by the registrant although he had no rights in the trademark.

Given the fame of the Complainant's mark and the material on record the Arbitrator is of the view that there is merit in the Complainant's arguments that the Respondent has registered the disputed domain name for its trademark value, to generate Internet traffic and to derive commercial gain by using the trademark. As the Respondent has no

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legitimate rights in the trademark, the registration and use of a domain name that exploits the goodwill of a trademark is found to be bad faith. Also See *Eli Lilly and Company v Andrew Yan*, INDRP Case 195, dated February 16, 2011.

Further, the Respondent has parked the disputed domain name on the SEDO parking site with an advertisement for its sale. Registration of a domain name that uses a well-known trademark and then parking it on a site such as SEDO and advertising its sale constitutes bad faith registration and use. Under the circumstances of the case, it implies the disputed domain name was registered for the purpose of selling. The registration of a well-known mark itself is evidence of bad faith registration. See *Genpact Limited v. Manish Gupta*, INDRP/056, further exploiting the fame of a well-known mark constitutes bad faith registration. See *Lego Juris v. Robert Martin*, INDRP / 125, February 14, 2010. The registration of a domain name where circumstances show that the sole purpose of such registration was to exploit it by selling demonstrates bad faith registration and use under the Policy. See *Advance Magazines Publishers Inc. v. JF Limited, England*, (<voguc.co.in>), INDRP Case 184, January 27, 2011.

For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

Decision

For all the reasons mentioned above the Arbitrator orders that the Complainant is granted the remedy of transfer of the disputed domain name <louis-xiii.in> .



Harini Narayanswamy (Arbitrator)

Date: March 1, 2011