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Manshi Bharti

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श्री. सोमनाथ बाणरजे

ARBITRATION PANEL DECISION

Riso Kagaku Corporation v. Bolaishi

Domain Name : riso.in

1. The Parties

The Complainant in this Arbitration proceeding is Riso Kagaku Corporation ("the Complainant") having a place of business in Tamachi Center Building, 5-34-7, Shiba, Minato-ku, Tokyo - 108 8385, Japan. Represented before the Arbitration Panel by Mr. Somnath Banerjee, Advocate of M/s S.Majumdar & Co., Calcutta, India.

The Respondent in this Arbitration proceeding is Bolaishi ("the Respondent"), with a postal mailing address listed as Xiamen, Fujian - 361006, China.

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The Domain Name and Registrar

The disputed domain name is <riso.in>, The Registrar of the domain name is OnlineNIC ("the Registrar"),

Procedural History

This is a mandatory administrative proceeding submitted for decision in accordance with the INDRP (.IN Domain Name Dispute Resolution Policy) for Domain Name Dispute Resolution, adopted by the National Internet Exchange of India ("NIXI") on 25th June, 2005, (the "Policy"), INDRP Rules of Procedure, approved by Nixi on 28th June, 2005, (the "Rules") and The Indian Arbitration and Conciliation Act, 1996, any bye-laws, rules and guidelines framed there under and any law by Indian Government.

By registering the disputed domain name with the Registrar, the Respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

According to the information provided by the National Internet Exchange of India (the ".IN Registry"), the history of this proceeding is as follows:

The Complainant filed its Complaint with the .IN Registry by email and hardcopy along with annexure.

The .IN Registry requested and obtained from OnlineNIC, the registrar of the disputed domain name, verification that the domain name is registered with OnlineNIC and the Respondent is the registrar of the domain name.

The .IN Registry having verified that the Complaint satisfied the formal requirements of the Policy and the Rules, the .IN Registry formally commenced this proceeding and delivered to the Respondent notice of the Complaint and commencement of this proceeding.

The .IN Registry sent an electronic copy of the Complaint to the Respondent by email (using the email addresses infotasweepink.com) and hard copy along with all annexures at the registrant address provided in whois record.

The Arbitrator with .IN Registry, Mr. Manoj Bhatt (the Arbitrator), agreed to act as Arbitrator in this proceeding and filed the necessary Statement Of Acceptance and Declaration Of Impartiality And Independence.

The Respondent failed to file a reply within the prescribed time limits or at all, and the Arbitrator given last chance to the Respondent to file the reply, but the Respondent filed no response. The Arbitrator delivered a Notification of Respondent default to the Respondent.

The Arbitrator finds that he was appointed in accordance with the Rules.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

The Complainant is Japan based manufacturer and marketer of printers, stencils, stencil makers and allied products since 1946 with branches across many countries around the globe including India and China.

The Complainant holds a trademark for "RISO" in various countries. The complainant also holds "RISO" as registered trademark in India and China in various classes since 1993. The mark "RISO" with wide reorganisation fails within the preview of "well known mark" under the Article 6 bis of the Paris Convention and also featured in "Famous Trademarks in Japan" by AIPPI of Japan report.

The Complainant in the case is also holding the "riso.com" domain since October 1995.

The only information about Respondent comes from the Complaint, His registration includes Fujian, China address.

Respondent registered the Disputed Domain Name on 4th March 2005, currently the Respondent is using the website to redirect it to the website called "sweepink.com" , which is engaged in selling of similar kind of product in which the Complainant deals.

Parties' Contentions

(a) Complainant

The Complainant contends as follows;

- (i) The Complainant is the owner of the widely known "RISO" trademark in the India and other countries, and the disputed domain name is identical/deceptively similar to the Complainant's mark.
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. As the Respondent is not commonly known by "riso" name and the Complainant never permitted the Respondent in any manner to use the said mark,
- (iii) The Respondent registered and is using the disputed domain name in bad faith and 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, and also engaged in a pattern of such conduct

(b) Respondent

As previously indicated, the Respondent has not filed any response to the Complaint and has not answered the Complainant's contentions in any other manner.

Discussion and Findings

The application of the Policy is limited to situations in which a complainant asserts the following: (i) the registered domain name is identical or confusingly similar to a 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 domain name has been registered and is being used in bad faith.

According to the Policy, it is not the responsibility of the Complainant to prove the non-compliance of the Respondent, but rather the responsibility of the Respondent to prove that they are complied with.

the Policy, specifically Paragraph 3. As a reference below

" *The Policy 3. The Registrant's Representations* ,

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:

(a) the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;

(b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;

(c) the Registrant is not registering the domain name for an unlawful purpose; and

(d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.

It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."

The above quoted Paragraph 3 of the Policy specifically lays out the **Responsibility of a Registrant** when registering a .IN Domain Name. The lines in the above Paragraph 3 of the Policy clearly states the following -

(i) Point One - *"It is the Registrant's responsibility to determine whether the domain name infringes or violates someone else's rights".* In this case, the Respondent, at the time of registering the domain name, should have ensured that they are not infringing the rights of any 3rd party or give some kind of proof that the Respondent has reasonably tried to check that they are not violating any 3rd party right, Since the domain name was being registered in the .IN Registry, a simple search by the Respondent in the Indian Trademark Registry, can established that whether they were violating the trademark rights of any 3rd party or not ?. OR even the search of Trademark database of his own country where the Respondent has address can establish that the Respondent has done some efforts to determine that he is not violating any 3rd party right.

(ii) Point Two - *"to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;"*. Once again it is important to note here that the onus is on the Registrant to ensure that they are not infringing on any 3rd party rights.

(iii) Point Three - by quoting the Policy and the Rules, The entire document does not state anything with regards to the Complainant being responsible for any evidence. It explicitly states the responsibility of the Registrant, thus reinforcing that the Policy puts the burden of proof on the Registrant and not the Complainant.

(a) The Respondent's Default

The Rules 8(b) requires that the Arbitrator ensure that each party is given a fair Opportunity to present its case. The Rules 11(a) reads as follows:

11. Default

(a) In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law.

The Respondent was given notice of this proceeding in accordance with the Rules, The .IN Registry discharged its responsibility under the Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

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As previously indicated, the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any other manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present its case, and the Arbitrator will proceed to a decision on the Complaint.

The Respondent's default does not automatically result in a decision in favour of the Complainant. Although proof of burden lies on the Respondent and in absence of the Respondent's reply, the Complainant still have to provide details that all three elements required by the Policy paragraph 4 (i), (ii) and (iii) is in favour of the complainant,

The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, The Arbitration and Conciliation Act, 1996, any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be applicable. In accordance with Rules paragraph 12, 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.

(b) The Complainant's Trademark Rights

The Complainant Is the owner of the "RISO" trademark registered in several countries including India, the Complainant also provided copies of some of the marks registered in India where the word "RISO" features prominently into that. The Complainant also given copies of the trademark certificates that shows that "RISO" is registered trademark in China too, where the Respondent has registration address.

"RISO" is well know trademark in several countries including India and China, the Policy Paragraph 3 clearly states that Respondent should determine that domain name registration should not infringe or violates someone else's right. Since the "RISO" is famous and widely known mark and has presence in the Chinese market, it is unlikely that the Respondent does not know about the Complainant's rights in the domain name is very less.

In the absence of any response from the Respondent and in the circumstances, the Arbitrator finds that the disputed domain name is identical/deceptively similar to the Complainant's "RISO" trademark, Accordingly, the Arbitrator finds that the Complainant has satisfied the first element required by the Policy.

(c) The Respondent's Rights and Legitimate Interests

The second element required by the Policy paragraph 4(ii) - the registrant has no legitimate right or interest in the domain name.

Even though the Respondent has not filed any reply to the Complaint and has not contested the Complainant's assertions, it is incumbent upon the Arbitrator to consider whether the Respondent's use of the disputed domain name demonstrates rights or legitimate interests in the domain name. According to the Policy paragraph 7, the following circumstances, if proved, demonstrate a registrant's rights or legitimate interests in a domain name:

- (i) *the registrant used or demonstrably prepared to use the domain name or a corresponding name in connection with a bona fide offering of goods or services prior to notice of the dispute;*

- (if) the registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if it has not acquired trademark rights; or*
- (Hi) the registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the complainant's mark.*

To satisfy the requirements of the Policy paragraph 7(i), the Respondent's use of the disputed domain name must be in connection with a "bona fide" offering of goods or services. In the circumstances of this case, however, the Respondent has using the said domain name to redirect its traffic to the website called "sweepink.com", the Respondent not hosted its own web page and using just redirection on another website which is engaged In competitive activity of the Complainants business. So Respondent not shown any use of the domain name and also not shown that the Respondent demonstrably prepared to use the domain name in future or a corresponding name in connection with a bona fide offering of goods or services.

The Policy paragraph 7(ii) is not applicable. The Respondent does not contend, and there is no evidence that, the Respondent has been commonly known by the disputed domain name or that the disputed domain name is derived from one of Respondent's trademarks or trade names.

The Policy paragraph 7(iii) is clearly applicable to this case, The Respondent is using the domain name for commercial gain and misleading the consumers of the Complainant mark "RISO" to another website.

The Respondent in this case not at all filed any response which clearly shows that the Respondent is not **in** the interest of protecting his own right and interest **in** the domain name which means that the Respondent don't have any legitimate interest in the said domain name,

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

(d) Bad Faith Registration and Use

The Policy paragraph 4(iii) requires the Complainant to prove that the Respondent registered and has used the disputed domain name In bad faith.

The Policy paragraph 6 provides that the following circumstances are deemed to be evidence that a registrant has registered and used a domain name in bad faith:

- (i) circumstances indicating that the registrant has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its 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*
- (Hi) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location.*

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The Complainant relies upon the Policy paragraph 6 (i) but any evidence of this effect was not provided, to prove the point the Complainant should show material evidence that the Respondent has acquired the said domain name for the purpose of selling, renting and transferring the same names to others. Thus the complainant's argument failed in this regard.

The Complainant relies upon the Policy paragraph 6 (ii), arguing that the Respondent's registration of the disputed domain name prevents the Complainant from business name and trademark in a corresponding domain name But the Complainant does not show any material evidence that the Respondent also engaged in similar conduct of registering domains. However, the burden of proving again goes to the Respondent that he is not engaged in a pattern of such conduct and In the absence of any response and evidence of the required pattern of similar conduct by the Respondent, this ground of the complaint succeeds in favour of the Complainant.

The Complainant heavily relies upon the Policy paragraph 6 (iii) to prove the bad faith use of the said domain name, from the Complainant's argument and use of said domain name clearly shows that the Respondent has Intentionally attempted to attract, for commercial gain, Internet users to other on-line location called "sweepink.com", by creating a likelihood of confusion with the complainant's product or service on the said Website. And in absence of any argument from the Respondent, this ground of the complaint succeeds in favour of the Complainant,

Accordingly, the Arbitrator finds that the Complainant has established that the Respondent registered and is using the disputed domain name in bad faith pursuant to the Policy paragraph 6 (ii) and (iii).

7. *Other*

The Respondent in this case clearly failed in:

- (i) submission to a mandatory Arbitration proceeding as per the Policy Para 4.
- (ii) fulfilling representation and warrants as per the Policy Para 3. and
- (iii) proving the Policy Para 4.

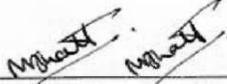
Above actions of the Respondent shows that he merely blocked the disputed domain name,

8. **Decision**

The Respondent failed in his responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights and also failed in proving that each of the three requirements set forth in the Policy paragraph 4 (i), (ii) and (iii).

The Arbitrator therefore directs that the registration of the disputed domain name be **transferred** from the Respondent to the Complainant.

As per the Policy paragraph 11 copy of this decision or any part thereof can be published unedited on the .IN Registry website and in media.



Manoj Bhatt, Advocate
Arbitrator.
Dated: 26/05/ 2006.