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**BEFORE THE SOLE ARBITRATOR UNDER THE
.INDISPUTE RESOLUTION POLICY**

IN THE MATTER OF

Seko Worldwide LLC,
1100 Arlington Heights Road,
Suite 600, Itasca, IL-60143
United States of America

Complainant

Versus

Karan
Mumbai, Maharashtra
India
e-mail: sproose@gmail.com

Respondent

Karan Limited
Mumbai, Maharashtra, India
e-mail- sproose@gmail.com

Respondent 2

Sproose

The Parties

The Complainant in the present proceeding is Seko Worldwide LLC, a Corporation organised and existing under the laws of Delaware, United States Of America having its registered address at 1100 Arlington Heights Road, Suite 600, Itasca, IL-60143, United States of America. The Complainant in these proceedings is represented through its authorised representative, AZB & Partners, Plot No. A8, Sector 04, Noida-201301, U.P., India through Mr. Akhilesh Kumar Rai.

The Respondent 1 in this proceeding is Karan having its registered address at Mumbai, Maharashtra, India (according to Whois database).

The Respondent 2 is Karan Limited having its registered address at Mumbai, Maharashtra, India (according to whois database).

The Domain Name and Registrar

The Domain Name in dispute is www.seko.co.in. The said domain name is registered with #1 Indian Domains dba Mitsu.in.

Procedural History

I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <www.seko.co.in>.

.In Registry has supplied the copy of the Complaint and Annexures to me.

On August 10 2011, I sent an email to the parties informing them about my appointment as an Arbitrator. In the same mail I requested the Complainant to supply the copy of the complaint with annexure via email and courier to the Respondents and in case if they have already served it, then to provide me with the details of service record. Further I also requested the Respondent to file the reply of the Complaint within 15 days of the receipt of the copy of the complaint.

On August 10 2011, I received an email from the authorized representative of the Complainant, informing me that they are not in a position to serve a copy of the complaint by courier as there is no address provided on the whois look for this domain. Further, I was told that the information provided by the Respondent on the whois lookup is wrong and untraceable. Therefore, authorized representative for the Complainant requested me to waive my direction for service of the documents by courier. On the request of the Arbitrator



authorized representative of Complainant forwarded the copy of complaint with annexures to the Respondent through email dated August 10 2011..

On August 11, 2011, I sent an email to the parties specifically informing the Respondents to furnish his correct address to all the concerned parties in two days, failing which the complaint served upon the Respondent via email will be treated as sufficient service.

On August 25, 2011, I received an email from authorized representative of the Complainant, requesting me to proceed the matter ex-parte and decide the matter based on the information and documents provided in the Complaint as the 15 days period provided to the Respondents to file its reply had relapsed.

Thereafter in the interest of justice and fairness, on August 30 2011, a reminder was sent to the Respondent to submit his say, if any, on the complaint by allowing extension of further two days (01.09.2011).

The Respondent failed to file his say / reply to the complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the complaint till the date of this award and as such he has been proceeded ex-parte and the Arbitration proceeding have been conducted in his absence.

That I have perused the record and Annexures / document.

Factual Background:

The Complainant has raised, *inter-alia*, important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

The Complainant commenced its business activities in and around 1962 and adopted "SEKO" as its trade mark in the year 1962.

The Complainant is a registered proprietor of various trademarks with the term "SEKO" in various countries, a list of which is provided by the Complainant.

The Complainant has acquired worldwide public recognition and goodwill in connection with providing services, to many sectors such as aerospace, pharmaceutical, retail, fashion etc. The Complainant is widely recognized as an IT company providing logistic services.

The complainant is a provider of global supply chains solution with 48 offices in the United States of America and locations in more than 40 countries. Accordingly it claims that it has tied up with various companies in India in order to provide logistic solutions to its various clients.



The Complainant has also claimed that the websites of "Seko Logistics" are very popular amongst the users.

In order to protect its proprietary rights in and to the trade mark SEKO, the Complaint has registered the same in many and countries including but not limited to U.S.A, Canada, China, Chile, Hong Kong, Mexico etc. The Complainant also has an application for registration pending in India.

The disputed domain name <www.seko.co.in> was registered in 2010 by one Mr. James and in March 2011 this domain name was transferred to Respondent no. 1, who claims to be employee in the Respondent no.2.

Parties Contentions:

Complainant

The Complainant contends as follows:

- The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
- The Respondent has no rights and legitimate interest in respect of the domain name.
- The Respondent has registered and is using his domain name in bad faith.

Respondent

The Respondent has not filed any response to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As earlier pointed out; the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions and the evidence put forth by the Complainant.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.



As mentioned above fair opportunity has been given to the Respondent to file the reply but no response has been received from his side. Therefore, the Arbitration proceedings have been conducted ex parte.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable "*

In the present circumstances, the decision of the Arbitrator is based upon the Complainant contentions and evidence and conclusion drawn from the Respondent's failure to reply.

Further, the Arbitrator is of the view that the Complainant has prima facie satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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
- (Hi) the Registrant's domain name has been registered or is being used in bad faith.

Basis of Findings:

1. The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant contends in the Complaint that the disputed domain i.e. <seko.co.in> is identical and confusingly similar to the Complainant's name and trademark "SEKO".

The Complainant also contended that the word SEKO is not a common word in India, the fact that the Respondent was using this word for his website without offering any goods/services proves his mala fide without shadow of doubt.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Arbitrator has come to the conclusion from the above facts a that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.



2. The Registrant has no rights or legitimate interests in the respect of the domain name

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose 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 in connection with a bona fide offering of goods or services";*

Complainant contends that Registrant is not offering any goods or services under the domain name "seko.co.in" and the website is being used as an interface for links to websites that are competitors of the Complainant. The trademark of the complainant is being used as bait for internet users who are then guided to different websites.

The Complainant also contends that there is no information of the respondents on the websites and that the respondent is using the complainant domain name mala fide.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Moreover Respondents had not filed any reply and documents to show that they were involved in the bonafide offering of goods and services.

Arbitrator has relied upon the following award:

Accorv. Tans Wei, INDRP/127 (February 24, 2010)

In this case it was found out that Respondent has not offered any plausible reason or justification for registering or using the domain name. Also the Respondent's domain name resolved to a parked page which contained sponsored links to the third party hotels which provide services that are directly competing with the Complainant's and therefore such use cannot be termed as a bona fide offering of goods and services.

Arbitrator has come to the conclusion from the above facts and annexures that no bonafide goods or services are being offered by the respondent under the domain name 'www.seko.co.in'.

- ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*



Respondent has failed to file any documents or evidence to show that they have been commonly known by the domain name , even if they had not acquired no trademark or service mark rights.

The Complainant has contended that Respondent was aware of the trademark of the the complainant has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Arbitrator has come to the conclusion from the above facts and annexures that respondent was not commonly known by the domain name.

- iii) *"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 trademark or service mark at issue. "*

Respondent has failed to file any documents or evidence to show that they have been making legitimate or non commercial use of the domain name.

The Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name. According to Complainant, disputed domain name has been only adopted by the Respondent for commercial gain from goodwill and reputation of Complainant.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Arbitrator has come to the conclusion from the above facts and annexures that the Respondent no. 1 is not making legitimate or fair use of the domain name and hence concludes that he has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

3. The Registrant domain name has been registered or is being used in bad faith

According to the paragraph 6 of the .IN Dispute Resolution Policy, for the purpose of paragraph 4 (iii), the following circumstances shall be evidence of registration of doman name in bad faith



- (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";*

The Complainant has alleged that in late 2010 they became aware of the registration of disputed domain name by one Mr. James of Shocer International and when they were deliberating on the best way forward in the dispute, the domain name was transferred to the Respondent no. 1.

The Complainant has further alleged that the Respondent has registered the domain name only with the intention to confuse the public as they will be lured into thinking that the name seko.co.in is a website of the Complainant which is absolutely false.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

- 2) *"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."*

The Complainant has contended that the registration of domain name "www.seko.co.in" by the Respondent has resulted in the Complainant being prevented from reflecting the trademark "SEKO" in a corresponding domain name with the .IN registry.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

In the case of Luxottica Holding Corp. V. Lokesh Morade, INDRP/139 (April 28, 2010) it was held that the Respondent has no previous connection with the disputed domain name and has held it in order to prevent the Complainant who is the owner of the said trademark from using the said trademark in the domain name.

In the present case there is no previous connection of Respondent with the disputed domain name.

- 3) *" by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line connection, 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 a product or service on the Registrant's website or location. "

The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to attract users to its website by creating likelihood of confusion with Complainant's SEKO mark. The Complainant has further stated that Respondent has no connection with the disputed domain name; the whole purpose of registering the domain name is to create confusion and deception among the consumers, who would assume a connection or association between the Complainant and Respondents website.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

From the circumstances of the case and from the evidences put before, Arbitrator has come to the conclusion that the domain name www.seko.co.in has been registered in the bad faith.

Decision

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint. Moreover, Respondents have failed to show their legitimate interest in the domain name.

In the facts and circumstances of the case it can be presumed that only purpose for the registration of the disputed domain name was to capitalized on the fame and reputation of Complainant and to make monetary benefit.

.IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. www.seko.co.in to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 10th day of October, 2011.


Rajeev Singh Chauhan
Sole Arbitrator
Date: 10th October, 2011