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BEFORE THE INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD

ARBITRATOR: S. SRIDHARAN

Dated: 16th January 2011

Dant Industries Inc - Complainant
-Vs-

Lokesh Morada - Respondent

Indians

BEFORE THE INTERNET EXCHANGE OF INDIA

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DATED: 16th January 2011

Dart Industries Inc

Complainant

Versus

Lokesh Morada

Respondent

1. The Parties

1.1 The complainant is Dart Industries Inc., is a wholly owned subsidiary of Tupperware Brands Corporation, an entity organized and existing under the laws of United States of America with its principal place of business at 14901 S. Orange Blossom Trail Orlando, Florida 32837, U.S.A represented by Madhu Rewari of Anand & Anand, Counsel at First Channel, Plot No.17A, Sector 16A, Film City, Noida.

1.2 Respondent is Lokesh Morada at 112 Azzuro Drive, Palm Desert, California, 92211, USA.

The Domain Name and Registrar

1.3 The disputed domain name **<tupperware.in>** is registered with Name.com LLC (R65-AFIN 125) at Rampart Way, Suite 300, Denver, Colorado, 80230, USA

2. Procedural History

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- 2.1 On 3rd December 2010, NIXI asked me about my availability and consent to take up the Complaint for arbitration. I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 4th December 2010, I received hardcopy of the Complaint along with Annexures.
- 2.3 On 6th December 2010, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 15th December 2010, I received a soft copy of the Complaint from the Complainant.
- 2.5 Respondent did not file his response within the stipulated time. On 4th January 2011, one Mr.Tarun Chopra on behalf of the Respondent asked me what needed to be done to retain the disputed domain name <tupperware.in>. Though the Respondent approached me beyond the time allotted to him, as a matter of natural justice, I granted him a further period of ten days and asked him to file his response to the complaint filed by the Complainant within the extended time of ten days. He was further advised that no further extension of time would be granted to him. In case he failed to send his response, if any, within this extended time of

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ten days, an award would be passed on the basis of merits of the complaint.

2.6 The Respondent has not filed any reply to the Complaint of the Complainant.

2.7 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

3.1 Complainant, Dart Industries Inc is the owner and registered proprietor of the mark TUPPERWARE in India in respect of food storage, and serving and preparation products.

3.2 The Complainant under its trademark TUPPERWARE develops, manufactures, and internationally distributes its products by its parent company, Tupperware Brands Corporation, and related subsidiaries, and it is marketed by means of direct sales through an independent sales force of more than 1 million consultants worldwide.

3.3 The Complainant adopted the mark TUPPERWARE as early as 1948 in the United States, internationally in 1950's, and started its operations in India in 1996. The Complainant has filed its product catalogue of the year 1948 and 1949 evidencing use of the trademark TUPPERWARE in United States, and the product catalogue evidencing use of the trademark

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TUPPERWARE in India in the year 1997, 2000 and 2010. It is a famous household brand around the world today.

3.4 Over the years, the Complainant has extended its line of business under the mark TUPPERWARE to include kitchen tools, cutlery, cookware, microwave products and children's educational toys. The products are designed and manufactured with high quality standards and carry with them a lifetime warranty. The Complainant is known worldwide for its ingenious, high quality food storage, serving and preparation solutions.

3.5 In 2009, net sales of TUPPERWARE® brand products were in excess of \$1 billion USD, and the figures are ever expanding.

3.6 The Complainant has positioned itself as a market leader throughout the world and in India. The Complainant has been extensively involved in organizing events and promotional programs in India. The Complainant has expended a great amount of time, money and effort to promote and advertise the trademark TUPPERWARE in all and every manner possible. As a result the Complainant has established an impeccable reputation and goodwill under its trademark TUPPERWARE in India.

3.7 Apart from the huge consciousness created in the TUPPERWARE mark by reasons of the use of TUPPERWARE products in India, a huge awareness for such products have also stemmed from widespread exposure and publicity of TUPPERWARE products, in magazines and newspapers having a widespread reach and circulation in India, exposure via the internet, exposure of consumers to TUPPERWARE products

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overseas, word of mouth publicity and review articles appearing in various trade publications etc.

3.8 The Complainant is the owner of the top level domain name www.tupperware.com as well as numerous variations thereof in the .com and other gTLDs. The domain name www.tupperware.com leads to an active website. The Complainant has filed a printout of the Complainant's website located at www.order.tupperware.com along with the Affidavit of IT expert, authenticating the validity of the documents.

3.9 The Complainant is also the owner of numerous other country code top level domain name registrations that incorporate its reputed mark TUPPERWARE. The Complainant has filed printouts of the websites.

3.10 The widespread promotion and advertisement by the Complainant has resulted in an increased awareness and exclusive association of the TUPPERWARE trademark with the Complainant. This has provided significant value and strategic advantage to the Complainant. The brand TUPPERWARE holds an enviable position in the market, offering a wide selection of food storage, preparation and serving items. The Complainant has filed printouts from the internet showing use of the mark TUPPERWARE.

3.11 The Complainant's reputed trademark TUPPERWARE is a registered trademark in over 100 countries around the world. The Complainant has furnished details of a selection of registrations/applications for the mark TUPPERWARE.

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3.12 In India, the Complainant has registered the mark TUPPERWARE in classes 21, 7, 3, 4, 8, 9, 10, 11, 16, 25, 28, 30, 35 and 41. The first registration in India dates back to 1977.

3.13 The disputed domain name <tupperware.in> has been registered on March 23, 2008.

B Respondent

3.14 The Respondent has not filed any reply to the Complainant's Compliant in this arbitration.

4. Parties Contentions

A Complainant

4.1 The disputed domain name <tupperware.in>:

- (a) Fully incorporates the registered trade mark TUPPERWARE of the Complainant.
- (b) Is identical to the trading style and trademark TUPPERWARE of the Complainant.
- (c) Is identical to the Complainant's another domain name in India www.tupperwareindia.com. The consumers and the members of the trade would get confused that the disputed domain name <tupperware.in> also belongs to the Complainant. Complainant has filed print out of the website www.tupperwareindia.com.

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- 4.2 The Complainant has spent several years building up "search engine trust" in a domain. In the present instance, any Indian user searching for the Complainant's business online as TUPPERWARE will be taken to the Respondent's disputed domain name <tupperware.in>, which enhances the possibility of confusion and/or deception.
- 4.3 Incorporation of a trademark in its entirety in a domain name is sufficient to establish confusing similarity. The Internet user or the general public who do not know that the Complainant and the Respondent have no affiliation with each other or that the Complainant has not licensed or authorized or endorsed the use of its reputed mark TUPPERWARE will thus confuse the Respondent's activities as those authorized or endorsed or affiliated with the Complainant which would lead to the dilution of the Complainant trademarks.
- 4.4 Since the disputed domain name <tupperware.in> comprises the registered trademark TUPPERWARE of the Complainant, it is evident that the Respondent cannot have any rights or legitimate interest in the disputed domain name <tupperware.in>.
- 4.5 Respondent's choice of the Complainant's registered trademark TUPPERWARE as part of its disputed domain name <tupperware.in> is totally unnecessary and the sole purpose of carrying on business through the use of the disputed domain name <tupperware.in> incorporating the

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Complainant's registered trademark is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website.

4.6 The Respondent is not making a legitimate non-commercial use of the domain name <tupperware.in>. The website to which the disputed domain name <tupperware.in> resolves has not even been properly constructed as of yet. Complainant has filed print outs from the disputed domain name <tupperware.in>.

4.7 TUPPERWARE is not the Respondent's personal name, neither is the Respondent commonly known by the disputed domain name <tupperware.in> and Respondent is not known to the public under the name TUPPERWARE.

4.8 The Respondent's website is not bona fide. The Respondent is trading on the fame and recognition of the Complainant's registered trademark in order to cause: (a) initial interest confusion and bait internet users to accessing its website, and (b) force the Complainant to buy the disputed domain name <tupperware.in> from the Respondent in order to avoid such confusion.

4.9 The Respondent has not been engaged in any activity to show that it has legitimate rights or interest in the disputed domain name <tupperware.in>. Given that the disputed domain name <tupperware.in> was only registered on March 23, 2008, it is inconceivable that the

A handwritten signature in cursive script, appearing to read "Induvaran S", is located in the bottom right corner of the page.

Respondent was unaware of the existence of the Complainant at the time of registration.

4.10 The sole purpose of the adoption of the Complainant's registered trademark TUPPERWARE in its entirety by the Respondent is to misappropriate the Complainant's registered trademark TUPPERWARE.

4.11 Respondent is presumed to have had knowledge of the Complainant's registered trade mark at the time it registered the confusingly similar disputed domain name <tupperware.in>. This knowledge indicates Respondent's bad faith use and registration. Therefore, the Respondent is bound to have had prior knowledge of the fame and reputation of the Complainant's registered trademark TUPPERWARE.

4.12 There is a great likelihood that an actual or potential visitor to the Respondent's present web page or any future web page under the disputed domain name <tupperware.in> will be induced to:

(a) Believe that the Complainant has licensed its registered trademark TUPPERWARE to the Respondent or has authorized the Respondent to register the disputed domain name.

(b) Believe that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant.

4.13 The disputed domain name has been registered and is being used in bad faith. If this kind of situation is not remedied at the earliest, it may lead to

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various hardships to the Complainant such as loss of profits, dilution of mark, future litigation, loss of reputation, etc.

B. Respondent

4.14 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5. Discussion and Findings

5.1 Respondent did not file his response within the stipulated time. On 4th January 2011, one Mr. Tarun Chopra on behalf of the Respondent asked me what needed to be done to retain the disputed domain name <tupperware.in>. Though the Respondent approached me beyond the time allotted to him, as a matter of natural justice, I granted him a further period of ten days and asked him to file his response to the complaint filed by the Complainant within the extended time of ten days. Respondent did not file his response even during this extended period.

5.2 Since the Respondent chose not to respond to this Complaint within the original and extended time granted to him, I am proceeding to determine this Complaint on merits based on the materials available on record.

5.3 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:



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

5.4 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.5 The Complainant is the proprietor of the mark TUPPERWARE. The Complainant and its affiliates have been using the mark TUPPERWARE since 1950s internationally. The Complainant has registrations for the mark TUPPERWARE all over the world including India. The Complainant's first registration in India dates back to 1977. The disputed domain name <tupperware.in> has been registered on March 23, 2008. The Complainant is the prior adopter and registrant of the mark TUPPERWARE. The above facts have established that the Complainant has both common law and statutory rights in respect of its trade mark TUPPERWARE.

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5.6 The Complainant's TUPPERWARE marks are well known throughout the world including India. It is clearly seen that the disputed domain name **<tupperware.in>** wholly incorporates TUPPERWARE, the prior registered trade mark of the Complainant. The disputed domain name is similar to the Complainant's domain name < tupperwareindia.com >.

5.7 I, therefore, find that:

- (a) The Complaint has both common law and statutory rights in respect of its trade mark TUPPERWARE.
- (b) The disputed domain name **<tupperware.in>** is:
 - (i) Identical to the Complainant's prior registered trade mark TUPPERWARE, and
 - (ii) Similar to the Complainant's domain name <tupperwareindia.com>.

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.8 It is already seen that:

- (a) The Complainant is the prior adopter and user of the mark TUPPERWARE. The Complainant's mark TUPPERWARE is well known in many countries across the globe including India.
- (b) The Complainant's trade mark was adopted in the year 1948 in the United States of America. It was registered in India in 1977. The



disputed domain name <tupperware.in> was registered by the Respondent only on 23rd March 2008.

5.9 I visited the web site of the Respondent under the disputed domain name <tupperware.in>. The disputed domain name <tupperware.in> provided links to lots of web sites offering various services. It is obvious without any reasonable doubt that the Respondent registered the disputed domain name <tupperware.in> only for the purpose of selling it and never intended to use the disputed domain name <tupperware.in> in connection with a bona fide offering of goods or services.

5.10 The Respondent does not conduct any legitimate commercial or non-commercial business activity. The Complainant's highly distinctive TUPPERWARE marks have a strong reputation and are widely known. The word TUPPERWARE is highly distinctive and obviously connected with the Complainant's products and is not a word a trader would legitimately choose unless seeking to create an impression of an association with the Complainant.

5.11 In the absence of response from the Respondent, I accept the argument of the Complainant that the Respondent has not been commonly known by the disputed domain name <tupperware.in>. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the TUPPERWARE marks. The Respondent is trading on the fame and recognition of the Complainant's registered



trademark in order to cause: (a) initial interest confusion and bait internet users to accessing its website, and (b) force the Complainant to buy the disputed domain name **<tupperware.in>** from the Respondent in order to avoid such confusion.

5.12 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name <tupperware.in>.

Respondent's domain name has been registered or is being used in bad faith.

5.13 The Complainant's well known trade mark TUPPERWARE was adopted in 1948 in the United States of America. The Complainant started using the mark TUPPERWARE internationally in 1950s. It was registered in India in 1977. Complainant got registered its domain name <tupperwareindia.com> in India in 1996. The Respondent got registered the disputed domain name **<tupperware.in>** on 23rd March 2008. Complainant's rights in the TUPPERWARE trademark pre-dates Respondent's registration of the disputed domain name 23rd March 2008 by approximately 60 years. The Respondent could not have ignored, rather actually influenced by, the well-known trade mark TUPPERWARE of the Complainant at the time he acquired the disputed domain name **<tupperware.in>**.

5.14 As seen above, Respondent is currently using the disputed domain name **<tupperware.in>** primarily for giving links to other web sites offered by

third parties and not for any other purpose. Respondent registered the disputed domain name <tupperware.in> only for the purpose of selling it and never intended to use the disputed domain name <tupperware.in> in connection with a bona fide offering of goods or services. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <tupperware.in> is nothing but an unjust exploitation of the well known reputation of the Complainant's prior registered trademark TUPPERWARE.

5.15 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's trademark TUPPERWARE.

5.16 Respondent has acted in bad faith because the Respondent has intentionally attempted to attract internet users to the Respondent'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 Respondent's website or location or of a product or service on the Respondent's website or location.

5.17 Thus it is clearly established that Respondent registered the disputed the disputed domain name <tupperware.in> in bad faith.

5.18 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <tupperware.in> into any fair/useful purpose. Respondent not even considered it worth responding the complaint of the Complainant.



Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

6. Decision

6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

6.2 It is hereby ordered that the disputed domain name <tupperware.in> be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs. 10,00,000/- (Rupees ten lakhs only) towards costs of the proceedings.



S.Sridharan

Arbitrator