



तमिलनाडु TAMILNADU

24898
12.8.06

Harini Narayana swamy

P.100/

A 168054

Mrs G. VASANTHA
Stamp Vendor
No : 10, Jawaharlal Nehru Sala
Ashok Nagar, Chennai - 600 08
L. No. 02 / 3 / 99

IN THE MATTER BETWEEN

BACCARRAT SA

V

DOREEN JUNGNICHEL/DARIUS HERMAN DOMCREATE

ARBITRATION AWARD

THE PARTIES

The Complainant is Baccarat SA, Rue des Cistalleries, a French limited company registered under the laws of France , represented by MEYER & Partenaries, France.

The Respondent is Doreen Jungnickel / Darius Herman Domcreate of Nuremberg ,Germany

THE DOMAIN NAME

The disputed Domain Name is <bacarrat.in> , is registered with the .IN Registry ..

Harini Narayana swamy

LAW , POLICY AND RULES APPLICABLE

This Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996, the .IN Domain Name Dispute Resolution Policy (the INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").

PROCEEDURAL HISTORY

The Complaint was filed with the .IN Registry in Aug 2006. The sole Arbitrator appointed in the case is Mrs.Harini Narayanswamy . The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

A copy of the Complaint was sent by courier, to the Respondent by the National Internet Exchange of India on September 8th, 2006 . A notice was sent to the Respondent under Paragraph 5 (c) of the INDRP Rules of Procedure on September 11th, 2006 and the Arbitration Proceedings commenced from this date. The Respondent was giving ten days time to file a Response. Subsequently emails were sent by on September 12th 2006 and September 14th , 2006 by the National Internet Exchange of India to the Respondent.

There is neither a response filed by the Respondent nor any reply communication sent by the Respondent. The Arbitrator therefore proceeds under paragraph 11 of the Rules, to determine on the merits of the case, based on the documents on record, despite the default by the Respondent.

FACTUAL BACKGROUND

PARTIES CONTENTIONS

Complainant

The Complainant, Baccarat SA, formerly known as the " Compagne Des Cristalleries De Baccarat" is a world famous manufacturer of crystal-ware since 1764. Over these 200 years, the Complainant claims that it has supplied its goods to heads of states and foreign courts and received numerous awards world wide for its products.

It states that over sixty thousand people visit the two crystal museums at its factory at Baccarat and in Paris. The special exhibits in the New York headquarters have also attracted many visitors from the year 1948.

The Complainant states that it operates the web portals at <http://www.baccarat.fr> and at <http://www.baccarat.com> , which displays historic information about the company. Other domain names which belong to the Complainant are, <crystaldebaccarat.com>,<baccarat-

Harini Narayanswamy

crystal.com>,<crystal-baccarat.com>. Having succeeded in the WIPO Case No 2003 -0428, the Domain Name <crystalbaccarat.com> was transferred to the Complainant.

The Complainant further states that it has registered several country code domain names using its trademark "BACCARAT", these are :

BACCARAT.BE
BACCARAT.ES
BACCARAT.GR
BACCARAT.GR
BACCARAT.JP
BACCARAT.COM.MX
BACCARAT.SG
BACCARAT.HK

The Respondent, according to the Complainant, is a compulsive cyber squatter, named Doreen Jungnickel / Darius Herman Domcreate. The Complainant alleges that by conducting searches on the name of the Respondent it has found the email address of the Respondent associated with approximately seventeen hundred domain names .A number of these domain names infringe trademark rights, listed in the Complaint are the following:

E-MULE.BIZ
PAYBOX .BIZ
MOBIFONE.BIZ
CORNEILLE.INFO
EROSTAR.INFO
EURYTHMICS.INFO
CARVIN.INFO
E-DONKEY.US
FEDERER.INFO
EMULESEARCH.COM
EMULE-SERVER.COM

The Complainant states that a cease and desist letter dated 25 Feb 2005, was sent through its trademark attorneys to the Respondent by mail and email requesting for transfer of the domain name. At that time the .IN Policy was not in force. The Respondent, in the meanwhile renewed the domain name registration in February 2006.

The Complainant emphasizes that it is the owner of one of the oldest trademarks in the world, as it has been in business in the field of crystal wares since 1764. The Complainant further states that it was registered under the name "COMPAGNIE DES CRISTALLERIES DE BACCARAT" by a legal statute passed in June 1881.

The Complainant first registered trademark for "Baccarat France and devices (in French 'Vignette Baccarat')", for articles and goods made of crystal glass, which dates back to December 29, 1860. This registered trademark it claims is still in force and it was last renewed on April 4, 1999.

 3

The Complainant changed its trade name to "BACCARAT SA" on 19 December 1994. It has also filed a declaration by the Mayor of Baccarat, dated July 31st, 1998 alleging that the Complainant has legitimate and exclusive rights in the trademark "Baccarat" for crystal and glassware.

The Complainant claims that it has numerous trademarks world over, the number mentioned in the Complaint is over seven hundred. The following trademark registrations, along with the relevant documents are listed in the Complaint:

- Indian nominative trademark registration No 480880B BACCARAT dated November 11, 2001
- Indian Stylized trademark registration No 665715 BACCARAT dated May 15, 1995
- International registration No 592210 dated , October 15th, 1992 (BACCARAT).
- Community nominative trademark registration No 1816859 dated August 18 , 2000
- French nominative trademark registration No 99787695 dated April 16, 1999
- German nominative trademark registration No 1117781 dated June 13, 1997.
- US nominative trademark registration No 1130893 for "Baccarat", dated August 18, 1978 and last renewed on February 12.

The Complainant states that it has protected its two centuries old mark, which is widely used and well known through out the world. To demonstrate this, the Complainant refers to the court rulings which have recognized the well known character of the mark , these are:

- In Venezuela : opposition Baccarat v Auto-Caracas SA, February 23rd 1997
- In Greece, Administrative Court of Athens January 31st 1996
- In Brazil, court of Appeal, Baccarat v Cinter International Brands Industria e Comercio , April 22nd, 1997
- In Argentina, court of Appeal, May 21st 1999: Baccarat v Nobleza Piccardo.
- The French supreme Court held in favor of the Complaint's mark in the dispute between the Complainant and SA Cristalleries d'Art Francois Gross on 17 May 1982. WIPO Case No D BIZ 2002-00081 Baccarat SA v Priority Software, July 9th 2002.
- WIPO Case No D 2005-0048 Baccarat S.A v MSL International, March 7, 2005
- WIPO Case No D 2006- 0038 Baccarat S.A. v Web Domain Names

The Complainant therefore claims extensive, long use and goodwill attached to the mark .The mark according to the Complainant should be considered a well known mark in the sense of Article 6 Biz of the Paris Union.

The Respondent should be considered to have no rights or legitimate interest in the mark for the following reasons:

- The Respondent is not related to the Complainant's business .
- The Respondent is not currently known, nor has been known by the name "Baccarat".
- The Complaint has not licensed or authorized the Respondent to make use or apply for registration of the disputed domain name.
- The Respondent has not engaged in any activity to show it has rights or legitimate interests. Respondent is not using the Domain Name in a distinctive legitimate manner neither is there any demonstrable preparation to use the domain name in a



bonafide offering of goods or services. The domain name is currently pointing to a French parking site SEDO, and has been offered for sale on this site. Such use has been found in previous WIPO decisions as not a legitimate use

- The Respondent has not made any fair or non commercial use of the Domain Name.

The Complainant states that under similar circumstances, in WIPO Case No. 2003-0428, it was held that the Respondent, in that case did not have any rights or legitimate interest in the domain name. The Complainant furthermore alleges that as the Domain Name is identical to its trademark, it was registered by the Respondent to take advantage of its well known reputation to confuse and divert internet users.

The Complainant states that the Respondent has registered the Domain Name in bad faith. This is due to the fact that the Complainant has a well known trade mark, and the Respondent could not have ignored the Complainant's international reputation at the time of registration and acquiring the domain name.

The Complainant cites , WIPO Case No D2002-0028 *Societe Air France v. Van Wijk & Mester Holding BV*. <airfrance-delta.com> and <airfrance-delta.net> , where it has been held that the notoriety of a Complainant's trademark creates a prime facie presumption of bad faith .

The Complainant believes that the Registrant of the domain name ought to be a French speaking person as the domain name is parked at a French parking SEDO. The Registrant would therefore have been aware of the well known character of the mark and have registered the domain name to gain from the internet traffic which is dedicated to the Complainant.

The website which is linked to the Domain Name has hyperlinks to other websites which are connected with crystal and glassware products. This, as per the Complainant will direct web users to its competitors, hence misleading consumers to believe that the competitor's products are being offered by Baccarat.

The Complainant has provided the figures for its sales turnover from the year 2000 till April 2005. The figures show the turnover of the Complainant runs in millions of Euros. Advertising expenses for promoting the trademark from the period 2000 to 2004 is also shown in several hundred thousand Euros per year.

The Complaint states that there are a combination of facts which highlight the bad faith manner of registration and use of the domain name. First, that the Domain Name was registered mainly for sale to the Complainant's competitors, for valuable: consideration in excess of out of pocket costs.

The Complainant draws attention to the remarks posted at the web page which states that the Domain Name is for Sale , By clicking on "for more information" .. the following message is displayed:

" This web-name has an extraordinary potential. Easy to remember, concisely, promoting itself and very effective! Guaranteeing highest page views. Ensuring

Havini Narayany

appreciation value of this top level domain (TLD). Buy this domain name before someone else does!"

The Respondent, according to the Complaint, would have well been aware of the consequences of his registration if not earlier, at least from the date of the Cease and Desist letter 25 February 2005.

Further, on bad faith use of the Domain Name , the Complainant states that the Respondent is not making any fair non commercial use of the domain name in issue. The Respondent is using the domain name to divert internet users to a French parking webpage, SEDO, where the domain name is up for sale. The webpage also displays several hyperlinks , some of these are directed to crystal and glass products. By clicking on these hyperlinks, users are directed to competing third party websites. These hyperlinks generate revenue for the Respondent through a "pay per click" domain parking solution. The Respondent therefore benefits by diluting the fame of the Complainant's trademarks.

Further, as held in previous UDRP decisions, the Respondent is responsible for the content posted on the site. The Respondent is not making any non commercial fair use of the disputed domain name. Such use may mislead the consumers, as the Respondent has no license or permission from the Complainant to use its trademark in this manner. The Complainant further states, that the Respondent is responsible for the content posted on the net, and cites an NAF decision, Hewlett Packard Company v Alvaro Collaza - WIPO Case D 2003-0417 .

The Complainant claims that such use by the Respondent is deceptive, and has the potential to mislead consumers by offering competing services, without any license and permission from the Complainant, which is the legitimate owners of the trademarks "BACCARAT".

The use of the Domain Name in this manner according to the Complainant is to be considered as unfair competition . Some WIPO decisions , WIPO Case No D 2006-0038 Baccarat v Web Domain Names, WIPO Case No. D 2003 - 0417 Air France Vs Alvaro Collazo, WIPO Case No. D 2005-0569 Credit Industriel et Commercial v Richard J. are cited regarding the discussion on this point.

The Complainant submits that the Respondent has offered the Domain Name for sale on an active web page. These circumstances are indicative of the Respondent's bad faith registration and use of the Domain Name.

Furthermore the registration of the domain name 'Baccarat.in' by the Respondent has prevented the Complainant from activating its website under the .IN country code corresponding to India in which the Complaint has trademark rights.

The Complainant has requested for a transfer of the domain name <baccarat.in>.

Haimi Narayany

Respondent.

The Respondent in these proceedings did not file a Response. The Arbitrator also notes that pursuant to the Respondent's default, it is appropriate to draw such inferences as considered fitting, if a party does not comply with the rules of the proceedings.

DISCUSSION AND FINDINGS

Under the .IN Policy the Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and the Rules .

Under Paragraph 4 of the .IN Policy the Complainant has to establish the following three criteria:

- (i) The 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
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

The Arbitrator will now proceed to find whether the Complainant has discharged the burden of proof in respect of each of the three criteria referred to in Paragraph 4 of the Policy.

The following are the findings, based on all the material which has been placed on record .

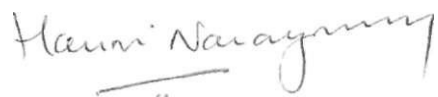
Identical or Confusing similarity

On the first criterion regarding the Complainant's rights in the trademark, it has been demonstrated beyond reasonable doubt that the trademark "BACARRAT" is a well known mark of the Complainant. Ample evidence has been provided by the Complainant of its longstanding use. Indian and international trademark registrations establish its national and international fame.

It is evident that the mark has been used extensively in commerce for a sufficient length of time and has been advertised widely by the Complainant. The Complainant has registered its trademark "BACARRAT" in many countries and has also registered the domain names in many countries under the country level top domain name system.

There is no doubt that the disputed domain name is identical to the Complainant's trade mark. It is likely that the public and internet users, in particular, may be confused to thinking that the disputed domain name is in some way associated with the Complainant. In *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. D2001-0505, it was held that if a trademark was incorporated in its entirety, this is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark.

In accordance with the discussions above, it has been established that the disputed domain name is identical to the trademark in which Complainant has rights and that the Complainant has successfully proved the first criterion under paragraph 4(i) of the .IN Policy.



Rights or Legitimate Interests

The Complainant has asserted that Respondent has no rights or legitimate interests to the disputed domain name for the following reasons: (a) The mark BACARRAT is well known and widely used by the Complainant (b) The Respondent is not commonly known by the domain name, and (c) The Respondent has no license or permission from Complainant to use its trademark. It is found that there is no evidence to contradict these assertions made by the Complainant.

The Complainant has also furnished evidence that Respondent is using the domain name on a pay - per click parking site "SEDO". Web page displays links with other Web sites including links to competitor's of the Complainant. Such use has not been found to be legitimate good faith use, particularly if the domain name is identical to a well known trademark.

In *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. D2006-0964 , it was held that "simply parking the domain where the Respondent or a third party can generate click-through advertising revenues from parties advertising their own goods and services, " does not constitute legitimate rights or interest in a domain name. Also see *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. D2005-1304; *Gerber Products Co. v. LaPorte Holdings*, WIPO Case No. D2005-1277.

The Respondent has failed to respond in these proceedings and has not submitted any evidence of using the disputed domain name in a *bona fide* offering of goods or services. The Arbitrator finds, based on all of the evidence in the record that the second criterion, namely , that the Respondent has no rights or legitimate interest in the domain name has been established .

Bad Faith

The .IN Policy lists non exhaustive circumstances that would be indicative of bad faith registration and use :

"For the purposes of Paragraph 5 (iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain 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; 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

(iii) by using the domain name, the Registrant has intentionally attempted, to attract Internet users to the Registrant's website or other on-line location, by creating a

Hanni Naayman

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 of a product or service on the Registrant's website or location."

It has been clearly established, by the Complainant that the Domain Name has been offered for sale on the SEDO website, and that the Registrant is aware of the commercial value of the name. Clearly, by using the domain name in this manner, the Respondent has prevented the owner of the trademark from using the mark in a corresponding domain name.

It has also been established beyond reasonable doubt, that the manner in which the Respondent has parked the domain in a pay per click site "SEDO", that the Respondent is deriving commercial benefit from the likely confusion with the Complainant's trademark.

The Complainant has successfully demonstrated and established that these factors and circumstances present in this case, indicates that the Domain Name was registered and used in bad faith.

The fact that the Complainant's mark is a well known mark of repute and that the Respondent's name has been found to be linked to registration of several such marks, and that the Respondent has not responded in these proceedings leads the Panel to conclude that the Respondent, when registering the domain name, acted in disregard of the rights of third parties and therefore acted in bad faith.

DECISION

In the light of all that has been discussed above, it is appropriate to order that the Domain Name <baccarat.in> be transferred from the Respondent to the Complainant



Harini Narayanswamy

Arbitrator

October 6th, 2006