



दिल्ली DELHI

N 719285

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR

IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

M/S. Ivoclar Vivadent AG,
Bendererstrasse-2'
FL-9494 Schaan/Liechtenstein
E-mail: nicole.knoelle@ivoclarvivadent.com
Telephone no: 00423 235 3669

FASCIMILE no : 00423 235 3209

COMPLAINANT

Versus

Mr. TOM
13, NORTH Road CRAWLEY,
West SUSSEX RH101, U.K
E. mail: hegaoxing@gmail

TELEPHONE NO: +44.12456145

RESPONDENT

THE PARTIES:

The complainant is M/S. Ivoclar Vivadent AG, Bendererstrasse-2'_FL-9494 Schaan / Liechtenstein, E-mail: nicole.knoelle@ivoclarvivadent.com
(The complaint is represented in the present proceeding by L.S DAVAR & CO. 5/1, FIRST FLOOR, KALKALL EXTENSION, NEW DELHI-10019, INDIA.
E-mail: iasdavar@ndf.vsnl.net.in, aniu2010@gmail.co.in, Telephone on: 011-26438162, 26418980, 09810578767 (m).

Sanjay Kumar Singh

The Respondent is, Mr. TOM, 13, NORTH Road CRAWLEY, West SUSSES RH101, U.K, E. mail: hegaoxing@gmail , TELEPHONE NO: +44.12456145.

DOMAIN NAME AND TRADEMARK IN DISPUTE:

Domain name of the respondent is "ivoclarvivadent.in"

The trademark of the complainant is "IVOCLAR VIVADENT".

AWARD

This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.

1. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "ivoclarvivadent.in"
2. I was appointed as Sole Arbitrator in the matter by NIXI.
3. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
4. A copy of complaint was sent to me on by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures /exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
5. Ivoclar Vivadent AC (herein after referred to as Complainant), being the Complainant in the present case has requested that the domain name ivoclarvivadent.in" be submitted to early arbitration in accordance with the Dispute Resolution policy and the Resolution policy (INDRP) as on date. The Complainant has attached along with List of Documents and marked as Annexure-1. That the present complaint is being instituted through the complainant's constituted Attorney Mrs. Laxmi Bisht who is duly authorized to do so in its behalf. The copy of power of Attorney is filed along with list of documents and marked as Annexure-2.
6. The complainant has submitted that the Respondent may kindly be contacted by post as well as e-mail at the postal address given above as well indicated in registrant details at sponsoring registrar Transecute Solutions Pvt. Ltd. and e. mail of the Respondent.
7. The Domain name "IVOCLARVIVADENT.in" is the subject of Complaint. The complainant has furnished the following particulars of said domain name:

A) Name of Registrant:	Tom
B) Registrant organization:	Tom
c) Domain Id	D4304356-AFIN

Laxmi Bisht

d) Created on: 29th June, 2010
 e) Expiration Date: 29th June, 2011
 f) Sponsoring Registrar: Transecute Solutions Pvt. Ltd. (RI20-AFIN)
 G) Registrant Id: DI- 9953878

8. The Complainant has submitted that it is a public limited company duly Incorporated under the laws of Liechtenstein. The complainant is a well established global company, offering a comprehensive range of innovative products and systems for dentists and dental technicians and also registered owner of various national and international Trademark "Ivoclar Vivadent". Thus, it is only complainant who has the proprietary right to register the subject domain name.
9. The Complainant has submitted that word Ivoclar Vivadent which are integral/prominent component of subject domain name are famous trade marks of the complainant and complainant is registered proprietor for the trademark Ivoclar Vivadent in class 10, 17 and 05 which is also derived for trading name of Complainant.
10. The Complainant has also submitted that complainant is registered proprietor for the trademarks INVOCALAR VIVADENT vide Registration no.976383 with World Intellectual property Organization. The complainant is also registered proprietor for the world consisting of the word 'Invocar Vivadent' as an integrant part, including India. The Complainant has filed copy of Resgistration Certificate for Registration No. 976383 along with List of Documents as Annnexure-3. The Complainant has also filed copies of few Indian Registration Certificates as Annexure-4.
11. The Complainant has contended that complainant has about 220 domain names registered in its name throughout the world, all having Ivoclar-Vivadent, Ivoclar of Vivadent as a significant part thereof. The Complainant has filed a list of the same as Annexure-5.
12. The Complainant has contended that from the aforementioned, it is evident that the Complainant is the prior adopter and user of the word Ivoclar Vivadent, Ivoclar and Vivadent throughout the world, including INDIA.
13. The Complainant has further contended that the approximate international/worldwide sales of the goods of the Complainant bearing the Trade mark Ivoclar and Ivoclar Vivadent of the pass 5 years are as follows:

<u>YEAR</u>	<u>Sales fin million Rupees)</u>
2006-2007	23.986. 000 .000
2007-2008	26.644. 000. 000
2008-2009	28.579. 100. 00
2009-2010	27. 554. 4000. 000
2010 (Up to December)	Not yet published

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14. The Complainant has submitted that at all material time, the trade mark Ivoclar Vivadent separately Ivoclar and Vivadent when used on or in relation to the aforesaid goods has indicated and still indicates to purchasers and intending purchasers as goods of the Complainant and none other, Some magazines and advertisement material has been filed by the complainant along with list of documents as Annexure-6.
15. The Complainant has submitted that the goods sold and offered for sale by the Complainant under the trade mark Ivoclar Vivadent and Ivoclar and Vivadent are of excellent quality and thus have acquired reputation and goodwill throughout the world, including India and intending purchasers identify and recognize goods of the Complainant by the trade mark Ivoclar Vivadent.
16. The Complainant has contended that the Complainant is, therefore, the exclusive proprietor of trade mark Ivoclar Vivadent in respect of the aforesaid goods and the respondent above named is, to the best of the knowledge of the complainant an individual residing at 13, North Road, Crawley, West Sussex RH10 DU.

The Complainant has made complaint on the grounds are as follows:

The Complainant has invoked the provisions of paragraph 3(b) (VI) (1) of the IN DOMAIN NAME RESOLUTION POLICY as the contested Domain Name ivoclarvivadent. n is identical and registered Trade Mark Ivoclar and Vivadent of the Complainant.

The Complainant has invoked the provisions the provisions of paragraph 3(b) (v) (2) of the IN DOMAIN NAME RESOLUTION POLICY as the Respondent has no right of legitimate interest in respect of the impugned domain name. Ivoclar Vivadent is not the personal of surname, trade/ service mark, trading name, of the Respondent. He has no reason whatsoever to adopt the domain name ivoclarvivadent.in, which is a registered trade mark of the Complainant. The Respondent is called upon to state why he adopted the domain name ivoclarvivadent.in.

The provisions paragraph 3(b) (vi) (3) of the IN DOMAIN NAME RESOLUTION POLICY are invoked by the complainant as the Respondent, to the best of the knowledge of the Complainant, has adopted the impugned domain name with dishonesty and bad faith with the mala-fide intention to trade upon the goodwill and reputation associated with the trade mark IVOCLAR VIVADENT of the complainant, thereby earning under profits. The Complainant has contended that the registrant has linked his domain name to that of that Complainant.

The Complainant has contended that the that the Respondent has registered the impugned domain name for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who is the proprietor of the trade mark and trade name Ivoclar Vivadent, or to a competitor of the Complainant, for a valuable consideration and also the Respondent has registered the impugned

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domain name in order to prevent the Complainant- the proprietor of the trademark and/ or service mark Ivoclar Vivadent from reflecting the mark in a corresponding domain name.

The Complainant has contended that by using the impugned domain name, the Registrant 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 trade name or trade 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. The Complainant has Print out of whois record showing subject domain name in the name of the Respondent: as Annexure-7.

17. The Complainant has submitted that the complainant on 19th November, 2010 issued notice to the Respondent along with copy to IN Registry. The Complainant has further submitted that the respondent in reply to the notice demanded US\$ 1200. The Complainant has filed the true copy of Notice dated 19th November, 2010 along with postal receipts and reply of the notice through mail for demanding of payment US\$ 1200 which as per complainant apparently shows the malafide intention of respondent.
18. The Complainant certified that the information contained in this Complaint is to the best of Complainant's Knowledge Complete and accurate, that this Complaint has not been presented for any improper purpose, such as to harass the Respondent etc.
19. The Complainant has requested for a decree for cancellation of the Respondent's domain name "ivoclarvivadent.in" and a decree for transfer of the Respondent's domain name "ivoclarvivadent.in" to the Complainant.
20. On 18-03-2011, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence
21. A copy of complaint has already been sent to the respondent by the .In Registry. Upon receipt of the complaint, the Arbitrator sent a notice dated 18-03-2011 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within Seven days from receipt. But the respondent did not come forward and did not send his defence / counter to the complaint.
22. Thereafter, the Arbitrator again sent a notice dated 27-03-2011 by giving another opportunity :o the respondent to send his defence / counter to the complaint within further three(3) days with further notice that in default of non-filing or sending of the defence / counter to the complaint, award would be passed ex-parte on merits of the complaint.
23. The respondent despite of earlier notices and reminders failed to send his defence / counter to the complaint. As such the Arbitrator again sent a notice dated 02-04-2011 by which further two(2) days was given for filing or sending of the defence / counter to the complaint, with further notice

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that this was last and final opportunity failing which the complaint would be decided ex-parte on merits of the complaint.

24. In spite of repeated notices, the respondent has not come forward and has not sent any reply / defence / counter to the either notice or complaint to the Arbitrator though the notices were served on Email ID of the respondent.

Therefore, this matter is being decided on the merits of the complaint and as per law of the land.

25 OPINION AND FINDINGS ON MERITS:

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision M/s Satyam Infoway Ltd. Vs. M/s Siffynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

Thus taking into consideration the decisions relied by complainant and mentioned in the aforementioned paragraphs and further the decision passed by the Apex court in M/s Satyam Infoway Ltd. Vs. M/s Siffynet Solution (P) Ltd. JT. 2004 (5) SC 541, the conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Hence the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name. The respondent has not submitted any reply / defence / document/evidence to the complaint of the complainant in spite of repeated notices from the arbitrator. The respondent, despite; sufficient opportunities, has failed to file any response/reply/counter in the arbitral proceedings to establish any circumstance that could assist it in demonstrating any right or legitimate interest in the disputed domain name.

The complainant has been able to make out a prima facie case of lack of rights of and legitimate interests. The complainant has also filed documents in support of its claim which certainly has evidentiary value. The respondent has failed to rebut the presumption of absence of rights of and legitimate interests.

Thus the conclusion is that the domain name "ivoclarvivadent.in" is identical and confusingly similar to the trademark of complainant "IVOCLAR VIVADEINT" and the complainant has established that he has right in the trademark "IVOCLAR VIVADENT".

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B) Whether the respondent's domain name has been registered or is being used in bad faith.

Taking in to consideration material on record and Keeping in view aforesaid facts and circumstances it is clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has not come forward to file any reply / counter and has further not provided any substantial evidence in its support. The complainant has submitted sufficient evidence in support of the complaint.

Thus the conclusion is that the respondent has got registered his domain name "ivoclarvivadent.in" in bad faith.

RELIEF

In view of the above mentioned facts and all the foregoing reasons, I hold that the domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith as such he is not entitled to retain the domain name. The complainant is entitled to transfer of domain name "ivoclarvivadent.in" as the complainant has established his bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name "ivoclarvivadent.in" be transferred to the complainant by registry.

No order as to costs.

Delhi

Date: 11-04-2

Sanjay Kumar Singh

(Sanjay Kumar Singh)

Arbitrator