



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Indian Farmers Fertiliser Cooperative Limited v. International Foodstuffs Company

Case No. D2001-1110

1. The Parties

The Complainant is Indian Farmers Fertiliser Cooperative Ltd. of 34, Nehru Place, New Delhi-110019, India, represented by Ms. Sangeeta Goel, of M/s Sim & San of New Delhi, India.

The Respondent is International Foodstuffs Company, of P. O. Box 4115, Sharjah, United Arab Emirates, represented by Mr. Vinod Arjun Bhagat, of Arjun T. Bhagat & Co., of Mumbai, India.

2. The Domain Name and Registrar

The disputed domain name is <iffco.com>.

The Registrar is Network Solutions, Inc., of Herndon, Virginia, United States of America.

3. Procedural History

This is an administrative proceeding pursuant to the Uniform Domain Name Dispute Resolution Policy ("the Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain

Name Dispute Resolution Policy, approved by ICANN on October 24, 1999, ("the Rules") and the Supplemental Rules for Uniform Domain Name Dispute Resolution Policy ("the Supplemental Rules") of the WIPO Arbitration and Mediation Center ("the Center").

The Complaint was received by the Center in hard copy on September 10, 2001, and by email on September 29, 2001. The Complaint was acknowledged on September 13, 2001. On September 17, 2001, registration details were sought from the Registrar. On September 18, 2001, the Registrar confirmed that the disputed domain name is registered in the name the Respondent at the address mentioned above; that Version 5 of the Registrar's Service Agreement (which incorporates the Policy) is in effect and that the language of the Service Agreement is English.

On October 8, 2001, the Center satisfied itself that the Complaint complied with all formal requirements (including payment of the prescribed fee) and that day formally dispatched copies of the Complaint by post/courier (with enclosures) to the Respondent at the address as recorded with the Registrar and by email (without attachments). The Center included with the material dispatched to the Respondent a letter dated October 8, 2001, containing notification of the commencement of this administrative proceeding, with copies (of the Complaint without attachments) to the Complainant, the Registrar and ICANN.

The last day specified by the Center for a Response was October 28, 2001. A Response was filed on October 23, 2001, by email and on October 26, 2001, in hard copy. Its receipt was acknowledged by the Center on October 23, 2001. On November 8, 2001, the Complainant filed an unsolicited Rejoinder, to which the Respondent objected on November 11, 2001, submitting that if the Rejoinder were nevertheless admitted, fairness required that the Respondent be given an opportunity to respond. That day the Center informed the parties that the admission of the unsolicited Supplemental Filing and any further procedural steps were at the sole discretion of the Panel.

The Respondent elected to have the case decided by a three-member Administrative Panel ("the Panel") and on December 20, 2001, the Center notified the parties of the appointment of the undersigned as panelists, each panelist having submitted a Statement of Acceptance and Declaration of Impartiality and Independence. That day, the Center transmitted the case file to the Panel and notified the parties of the projected decision date of January 3, 2002. This was subsequently extended by the Panel to January 10, 2002.

At the request of the Presiding Panelist, the unsolicited Rejoinder and the Respondent's objection thereto were sent to the Panel by the Center so that the Panel could decide whether to admit the Rejoinder and, if so, whether to seek a Response from the Respondent.

The Panel is satisfied that the Complaint was filed in accordance with the requirements of the Rules and Supplemental Rules; payment was properly made; the Panel agrees with the Center's assessment concerning the Complaint's compliance with the formal requirements; the Center discharged its responsibility under paragraph 2(a) of the Rules to employ reasonably available means calculated to achieve actual notice to the

Respondents of the Complaint; the Response was filed within the time specified in the Rules and the Panel was properly constituted.

The language of the proceedings was English, being the language of the Registration Agreement.

4. Factual Background

The Complainant is in the fertiliser business. Established in 1967, it is a multi-unit co-operative society, registered under the Bombay Cooperative Societies Act 1925, and having a membership of over 35,000 cooperative societies, representing millions of farmers. Its products are marketed in 25 states and 2 union territories in India. Its turnover in the year 1999-2000 was Rs. 4530 crores.

The Complainant imports some raw materials from other countries and has investments in actual and proposed phosphoric acid projects in Senegal and Tunisia; an ammonia and urea project in Oman and a potash project in Argentina. It is diversifying into insurance with a Japanese Insurance Company (Complaint, Annex G).

The Complainant is popularly known as IFFCO and it has used the trademark IFFCO with respect to fertilisers since 1970. The mark is registered under the Indian Trade and Merchandise Marks Act 1958 and has been renewed until December 5, 2005.

The Respondent is in the food business. Incorporated in 1975, in the United Arab Emirates ("U.A.E."), it manufactures, markets and imports fresh and frozen meat, poultry, dairy products and fresh fruits, which it stores in its own warehouses and distributes with its own fleet of trucks all over the country. It also exports to neighbouring countries in the Middle East. With its associated and subsidiary companies, it is the largest processed food group in the Middle East. In recent years its activities have extended to other goods and services (not including fertiliser) and the markets it services have extended beyond the Middle East. Group sales turnover in 2000, was over US\$300 million.

Since its inception, the Respondent and its group have been known as IFFCO, a coined name derived from the Respondent's corporate name, International Foodstuffs Company. The name IFFCO, when used by a member of the group, commonly appears in conjunction with a chevron logo, which the Respondent has registered as a trademark. Companies in the group whose corporate names include the word IFFCO include IFFCO Limited (of Sharjah, U.A.E.), IFFCO Egypt S.A.E., IFFCO (Malaysia) Sdn. Bhd., IFFCO Australia Pty Limited and IFFCO Hong Kong Limited.

On November 18, 1995, the Respondent applied to register in the U.A.E. the trademark IFFCO KHALEED in respect of certain foods in class 29. That mark was registered under No. 13258 on January 8, 1998 (Response, pp.121-122).

On August 12, 1997, the Respondent registered the disputed domain name <iffco.com> (Response, pp.127-128). It launched a website at that address in 1999,

offering information as to the group's activities. The site was redone and re-launched in June 2000. With the re-launch all companies in the group have links with the site, and the site has links with some government sites. Initially no efforts were made to popularize the site. Steps taken to promote the site, including printing the site address on all products, correspondence letterheads, employee visiting cards, banners and displays, and sending direct mailers to all customers and vendors throughout the world, have led to an average of 2011 hits per day (Response, p.129).

5. Parties' Contentions

A. Complainant

The Complainant requests the Panel to direct that <iffco.com> be transferred to the Complainant and it invokes the following legal grounds as a basis for the relief sought:

Identity or confusing similarity

The disputed domain name is identical and confusingly similar to the Complainant's highly distinctive trademark IFFCO, which is exclusively associated with the Complainant.

Legitimacy

The Respondent has no legitimate interests in the disputed domain name.

Bad faith

The disputed domain name was registered and is being used in bad faith.

B. The Respondent

Identity or confusing similarity

Both parties are registered proprietors of the trademark containing the word and name IFFCO in their respective countries. The registrations are in different classes for totally dissimilar goods.

Legitimacy

The Respondent has honestly adopted and used the name and mark IFFCO since 1975, which is also its domain name. The Respondent's active website contains information about its business activities and those of other companies in the group.

Good Faith

The disputed domain name has been registered and is being used to promote the activities of the Respondent and of the IFFCO group.

Reverse domain name hijacking

The Complainant filed its Complaint in bad faith in order to harass and embarrass the Respondent. This is an abuse of the administrative proceeding. The Respondent seeks the dismissal of the Complaint, a declaration that the Complaint was filed in bad faith and constitutes an abuse of the administrative proceeding and that costs be awarded in favour of the Respondent.

6. Discussion and Findings

Procedural issues

Under paragraph 15(a) of the Rules, the Panel must decide this Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The unsolicited Rejoinder filed by the Complainant does not raise evidence which was not reasonably available to the Complainant at the time of its initial submission, nor did it seek to address arguments by the Respondent that the Complainant could not reasonably have anticipated. For the reasons given in *Goldline International, Inc. v. Gold Line* ([WIPO Case No. D2000-1151](#)), this Panel does not admit the Rejoinder and has had no regard to it. However, the Rejoinder did annex a copy of the certificate of registration of the Complainant's trademark IFFCO, which had been inadvertently omitted from the Complaint. The Panel admits that certificate. The Panel considers that Rule 10(b), which obliges the Panel to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, does not require the Panel to give the Respondent an opportunity to respond to the admission of that certificate, because the Response proceeds on the basis that the Complainant does have a registered trademark, despite noting that no certificate was annexed to the Complaint and inviting the Complainant to produce it.

The Panel has no power to make an order as to costs.

Substantive issues

To qualify for cancellation or transfer, a Complainant must prove each element of paragraph 4(a) of the Policy, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Identity or confusing similarity

Essential or virtual identity is sufficient for the purposes of the Policy: see *The Stanley Works and Stanley Logistics, Inc v. Camp Creek. Co., Inc.* ([WIPO Case No. D2000-0113](#)), *Toyota Jidosha Kabushiki Kaisha d/b/a Toyota Motor Corporation v. S&S Enterprises Ltd.* ([WIPO Case No. D2000-0802](#)) and *Nokia Corporation v. Nokiagirls.com a.k.a IBCC* ([WIPO Case No. D2000-0102](#)).

The Panel finds the disputed domain name is virtually identical to the Complainant's trademark IFFCO.

The Complainant has established this element.

Illegitimacy

There is no evidence that the Respondent had the Complainant's mark IFFCO in mind when it adopted the name IFFCO in 1975, nor when it registered the disputed domain name in 1997.

The Panel accepts that the Respondent and other members of its group were commonly known by the name IFFCO long before the Respondent registered the disputed domain name; that the name IFFCO, when adopted by the Respondent, was fairly derived from the Respondent's corporate name; that the Respondent, since at least 1999, has used the disputed domain name to promote its bona fide activities and those of other group members; and that the Respondent has no intent to mislead consumers nor to tarnish the Complainant's mark IFFCO.

Under these circumstances the Panel finds that the Respondent has demonstrated its rights to and legitimate interests in the disputed domain name, under each of the subparagraphs of paragraph 4(c) of the Policy.

The Complainant has not established this element.

Bad faith registration and use

There is no evidence of bad faith registration or use.

The Complainant has not established this element.

Reverse domain name hijacking

Rule 1 defines reverse domain name hijacking as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name." See also Rule 15(e). To prevail on such a claim, a Respondent must show that the Complainant knew of the Respondent's unassailable right or legitimate interest in the disputed domain name or the clear lack of bad faith registration and use, and nevertheless brought the Complaint in bad faith. See, e.g., *K2r Produkte AG v. Jeremie Trigano* ([WIPO Case No. D2000-0622](#)) and *Goldline International, Inc. v. Gold Line* ([WIPO Case No. D2000-1151](#)).

In *Smart Design LLC v. Hughes*, ([WIPO Case No. D2000-0993](#)), bad faith was found to encompass both malicious intent and recklessness or knowing disregard of the likelihood that the Respondent possessed legitimate interests.

Here, although the Respondent's legitimate interest in the disputed domain name is clear, the evidence does not establish that the Complainant actually knew of this when filing the Complaint. IFFCO is a coined name, so the Complainant would not reasonably expect that it could be put to multiple legitimate uses. Although a cursory investigation of the Respondent might have shown the hopelessness of the Complainant's case, the evidence is insufficient to allow the Panel to conclude that the Complainant brought the Complaint with reckless disregard as to whether or not the Respondent had a legitimate right or interest in the disputed domain name. Accordingly a finding of reverse domain name hijacking is inappropriate.

General observations

The ICANN Policy has been adopted mainly to fight against cyber-squatting, as narrowly defined in the Policy. Many panel decisions have reaffirmed that, absent a characterized grabbing of trademarks, the ordinary courts remain competent to resolve *bona fide* disputes over Internet addresses. The ordinary adjudication of conflicts between corporations of different countries having - seemingly - equal rights in their trademarks and names under their national laws and (perhaps disputed) rights under the laws of third countries can better reflect the subtleties of the relevant legal considerations. Further, the ordinary courts are better equipped to enquire into the relevant facts.

Further, the evidence shows that the Complainant uses a variety of domain names based on the name "iffco", to which the Respondent did not make objection in these proceedings. A *modus vivendi* between those registrations might best be attained between the parties, or otherwise through ADR, international arbitration or ordinary court proceedings.

7. Decision

Pursuant to paragraph 15 of the Rules, the Panel finds that the dispute is not within the scope of paragraph 4(a) of the Policy. Accordingly, the Complaint is dismissed.

Alan L. Limbury
Presiding Panelist

Prof. François Dessemontet
Panelist

Ashwinie Kumar Bansal
Panelist

Dated: January 4, 2002