

23/05/12



उत्तर प्रदेश UTTAR PRADESH

AW 038419

16 NOV 2011

BODHISATVA ACHARYA
ARBITRATOR

(Appointed by. IN Registry-National Internet Exchange of India)
Case No. Of 2012.

ARBITRATION AWARD: DISPUTED DOMAIN NAME: www.arcelor.co.in

In the matter of:

Arcelor Mittal Legal Affairs Corporate
5 rue Luigi Cherubini
F-93212 La Plaine Saint-Denis cedex
France
Email- ml.pied@arcelormittal.com

Filed by its authorized representative attorney -

Guillaume Teissonniere
Teissonniere Sardain Cheve A.A.R.P.I.,
Avocat a la Cour de Paris (Attorney at Law, Paris Bar)
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...Complainant

Vs.

Simon Ting
Nelto Brands Inc.
8F, No. 199 Shifu Road
Taizhou, Zhejiang,
318000
China
E-mail- juc@qq.com

.....Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is Arcelor Mittal Legal, Affairs Corporate, 5 rue Luigi Cherubini, F-93212 La Plaine Saint-Denis cedex, France filed by its authorized representative Guillaume Teissonniere, Teissonniere Sardain Cheve A.A.R.P.I., Avocat a la Cour de Paris (Attorney at Law, Paris Bar) with email address as gt@tsc-advocats.com & rn@tsc-advocats.com

Respondent in this arbitration proceeding is Simon Ting, Nelto Brands Inc., 8F, No. 199 Shifu Road, Taizhou, Zhejiang, 318000, China with email address as juc@qq.com

2. The Domain Name, Registrar & Registrant:

The disputed domain name is www.arcelor.co.in



3. Procedural History:

The complainant, through its authorized representative, filed this complaint to NIXI regarding the disputed domain name www.arcelor.co.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed Mr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on March 8th, 2012 and the complaint was produced before the Arbitrator on March 14th, 2012 and the Arbitrator sent a notice of Arbitration proceeding to Respondent on March 15th, 2012 through the email of Respondent but Respondent neither replied nor filed therefore the complaint is being decided as Ex-parte on May 10th, 2012 .

4. Factual Background:

- (a) ArcelorMittal is the largest steel producing company in the world and is the market leader in steel for use in automotive, construction, household appliances and packaging with operations in more than 60 countries. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.
- (b) In 2011 the CNN Fortune Global 500 World's biggest Companies ranked ArcelorMittal on the 74th position in the world.
- (c) The word international trademark "ArcelorMittal" filed on March 8th, 2007 under number 947686 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 and the word trademark "ARCELOR" filed on February 26th, 2002, registered in France under number 3150239 in classes 6, 7 and 12. Such trademark, which was initially filed by ARCELOR S.A, was assigned to ArcelorMittal on May 31st, 2010.



- (d) In India the trademark "ARCELOR" has been initially registered by ARCELOR SA under the numbers 1083614 and 1083617 for classes 6 and 12. After the merger between ARCELOR SA and Mittal Steel in 2006 the above mentioned trademarks have been transferred to the newly created ArcelorMittal, which is the complainant in the proceedings.
- (e) Arcelor Mittal is a very active in India as the main shareholder and Chief Executive Officer of the company Lakshmi Mittal is of Indian origin and started his business in steel industry in such country.
- (f) Lastly the complainant filed this complaint for Arbitration proceeding and the complaint was produced before the Arbitrator on March 14th, 2012 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on March 15th, 2012, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the May 10th, 2012 as Ex-parte.

5. Parties Contentions:

- (a) Complainant contends that
 - (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



- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent never filed his reply properly.

6. Discussion & Findings:

Under the Paragraph 4 of the Policy (INDRP) Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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

After having gone through the records, documents, produced by the Complainant, **Arbitrator's findings** are:

- A. That the disputed domain name is identical to the Complainant's above mentioned prior rights. It is undisputable that ArcelorMittal has rights in the above mentioned marks. The registration of a mark is prima facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive. Respondent has the burden of refuting this assumption as decided in (WIPO Case n D2002-0201, Janus International Holding Co. v. Scott Rademacher)

"ARCELOR" and "ArcelorMittal" are well-known trademarks. Complainant has spent substantial time, effort and money advertising and promoting "ARCELOR" and "ArcelorMittal"



throughout the world. As a result, "ARCELOR" and "ArcelorMittal" have become distinctive and well-known, and the company has developed an enormous amount of goodwill in the mark.

The domain name www.arcelor.co.in reproduces entirely the trademark "ARCELOR". Moreover the domain name reproduces also a significant part of the trademark "ArcelorMittal", which is combination between two prior marks "ARCELOR" and "MITTAL", registered on March 8th, 2007 following the 2006 merger process between Mittal Steel and Arcelor that lead to the creation of today's ArcelorMittal.

It is of constant case law that when a domain name wholly incorporates a Complainant's registered mark that is sufficient to establish identity or confusing similarity for purposes of the policy decided in WIPO Case n D2000-1525, *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*

In the case WIPO Case No. D2010-0899, *ArcelorMittal v. PrivacyProtect.org/ Mr. Singh, Taj Pharmaceuticals Ltd., Taj group of companies*, regarding the domain names <arcelorment.com>, <arcelorchemicals.com>, <arcelorchemicals.net>, <arcelorlaboratories.com> and <arcelorlabs.com>, the panel considered the trademark "ARCELOR" to be an arbitrary or fanciful mark and therefore, on its face, very likely to be inherently distinctive. Additionally, the disputed domain names have been considered to be registered in bad faith regarding the prior international mark "ARCELOR" and prior registered domain names corresponding to the above-mentioned complainant's mark, including www.arcelor.com on August 29, 2001.



- B. The complainant claims that the Respondent has no right or legitimate interests in respect of the contested domain name because there is no evidence that the Respondent used the domain name for anything but parking page website, which in some instances advertise competing products. This effectively shifts the burden to the Respondent to demonstrate rights or legitimate interests in the domain names.

The Respondent is using the disputed domain name for pay-per-click parking page. The domain name is only mere doors to other websites which have paid for advertisement and which in many cases are not connected in any manner to ArcelorMittal. When internet users connect to the disputed domain name they are directed to parking pages showing advertising of different products and services related to steel and carbon which is notably the main domain of ArcelorMittal's business. This is a definite version of potential Complainant's consumers and it cannot be considered a bona fide offering goods and services.

NIXI has already judged in the INDRP Case No 286-Baincaintesa.co.in that when disputed domain names are resolved to pay-per-click website which features sponsored links pertaining to different goods and services, it is very clear that the Registrant has acquired the domain name purely to make illegal profit there from. Thus the Registrant makes no use of the domain name in connection with a bona-fide offering of goods or services and is holding on to a domain name in bad faith to derive monetary gains.

Thus the Respondent is making an illegitimate use of the domain name associated to Complainant's trademark "ARCELOR" to advertise directly competing products to those of the Complainant. This is in no way a bona fide offering of goods and services and this is only emphasizes the fact that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name and the Respondent has no registered trademark right in the word "arcelormittal", "arcelor" or "mittal", and there



is no evidence that the Respondent is commonly known by the disputed domain name.

- C. The disputed domain name has been registered and is being used by the Respondent in bad faith. As to bad faith registration, when registering the disputed domain name, the Respondent was necessary aware of the Complainant's well-known business and widespread reputation in its "ArcelorMittal" and "ARCELOR" trademarks. Such finding is supported by the fact that the disputed domain name present to users a list of products and services for which the Complainant is well known.

The disputed domain name has been registered on January 13, 2011, well after the registration of the trademarks "ARCELOR" and "ArcelorMittal" and of the corresponding top level domain names. Given the international reputation of the Complainant, the Respondent, by choosing to register and use the domain names which is totally identical to the Complainant's widely known and distinctive trademarks "ARCELOR" is no deniable that the Respondent intended to ride on the goodwill of the Complainant's prior rights in an attempt to exploit Internet traffic Destined for the Complainant .The respondent appears residing in China therefore he cannot have any reason to register a domain name identical to the trademark "ARCELOR" in India.

Respondent knowingly and intentionally attempted to divert the traffic intended for the complainant's website to its own websites. Consequently, the Respondent has through the use of identical domain names, created a likelihood of confusion with the Complainant's prior rights, which constitutes a misrepresentation to the public who might think that the disputed domain name belongs or is connected to the Complainant.

Secondly, the respondent acquired domain name with the clear intention to resell and to make money from it for valuable consideration in excess of the documented out-pockets costs directly related to the domain name. Indeed, in response to ArcelorMittal's a warning letter dated November 23, 2011 the Respondent replied using the e-mail address listed in the Whois



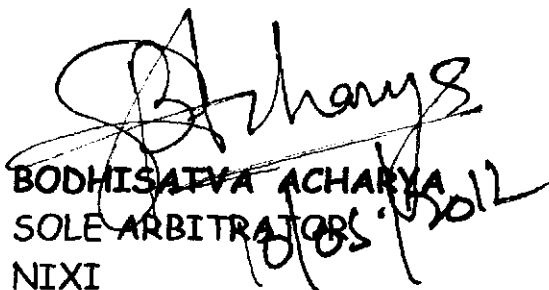
database as contact for the contested domain name (namely juc@qq.com) and sent a proposal to purchase the domain name arcelor.co.in for 1,500.00 €(One thousand and five hundred euros). Moreover, the domain name is publicly available for purchase on SEDO's website.

- D. The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

7. Decision:

Hence the Arbitrator decides, the Disputed Domain Name www.arcelor.co.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.arcelor.co.in shall be transferred to the Complainant with immediate effect.


BODHISATYA ACHARYA
SOLE ARBITRATOR
NIXI

DATED: May 10th, 2012,
PLACE: NEW DELHI,
INDIA.