

தமிழ்நாடு சீலை ஆணைக்குழு TAMILNADU

Dr. Sudhir Raja Ravindran

BR 046502
V. BEDHARAJAN
Stamp Vendor
L.No:12144/B1/96
Ekkattuthangal, Ch-32
Mobile No: 9710019475

BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: January 31, 2017

1. QRG Enterprises Limited

1 Raj Narain Marg, Civil Lines

Delhi – 110054, India

And

2. Havells India Limited

1 Raj Narain Marg, Civil Lines

Delhi – 110054, India

COMPLAINANT/s

VERSUS

Zhang Mi

Zhang Mi

Guangdong

Guangzhou – 510000, CN

RESPONDENT/REGISTRANT

DISPUTED DOMAIN NAME: "QRG.CO.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is represented by Mr. Rodney D. Ryder, Scriboard Advocates & Legal Consultants, Level 2, Elegance, Mathura Road, Jasola, New Delhi – 110025.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Zhang Mi

2. **The Dispute:** The domain name in dispute is QRG.CO.IN. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Endurance Domains Technology Pvt. Ltd. (R173-AFIN).

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as	28.12.2016

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	Arbitrator	
2.	Date on which consent was given to act as an Arbitrator	28.12.2016
3.	Date of appointment of Arbitrator	02.01.2017
4.	Date on which the Hard copy of the complaint was received	06.01.2017
5.	Date on which notice was issued to the Respondent	07.01.2017
6.	Due date for filing of Counter Statement by the Respondent	14.01.2017

4. Procedural History

- 4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.
- 4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).

4.4. On January 07, 2017, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before January 14, 2017.

5. Factual Background:

5.1. The Complainants are companies incorporated in India and are primarily in the business of electrical goods. Complainant #1 is the promoter company of Complainant #2 and the Complainants are part of the globally recognized QRG Group operating under the trade/service name/mark "QRG" coined and adopted by them with respect to their goods and services. The Complainant/s has registered trademarks for the mark and logo "QRG ENTERPRISES" in India.


5.2. The Respondent registered the disputed name <QRG.CO.IN> on 29th February, 2016.

6. Parties Contentions

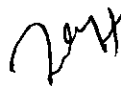
6.1. Complainant's Submission:

6.1.1. The Complainant/s claims that Complainant #1 is one of the companies of QRG Group of companies and is the promoter company of Complainant #2, also one of the companies of the QRG Group. Complainant #2 is a leading Fast Moving Electrical Goods [FMEG] company having a market cap of around Rs. 20,000 crores. It is a major power distribution equipment manufacturer with a strong global footprint and enjoys enviable market dominance over a wide range of products. QRG Group companies have a 20,000 strong global distribution network constituting 6500 professionals across 91 branches & representative offices in 50 countries. QRG Group has also played an active role in various philanthropic causes in India.

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- 6.1.2. The Complainant has obtained registration with the Indian Trademark Registry for its trademark "QRG ENTERPRISES" in the Classes 16 and 35 under trademark numbers 1675297 and 1675298 respectively on 11th April 2008.
- 6.1.3. The Complainant/s claims that it has spent a huge amount of money on the promotion and advertisement of its services and products under the well-known and famous trade/service name/mark "QRG" since its adoption and use.
- 6.1.4. The Complainant/s claim that the well-known and famous mark "QRG" has been used by the Complainant/s for years as all products and services offered by the Complainant/s are provided under the house mark 'QRG' and is associated exclusively with the Complainant/s.
- 6.1.5. The Complainant/s claims that the Complainant/s products are sold under several well-known trademarks such as Havells, Standard, CrabTree etc. However, the mark "QRG" is uniformly used as a house mark on all such products packaging and/or catalogues/promotion materials to indicate the origin of the goods as those originating from the 'QRG Group'. The "QRG" mark is thus an integral element of the Complainant/s trading style and trade dress.
- 6.1.6. The Complainant/s claim that they consider their trade/service name/mark an important and valuable asset and thus in order to protect the same, have secured trademark registrations for the mark "QRG" as mentioned in clause 6.1.2 above. This shows the Complainant's perseverance in securing and protecting their intellectual property for its brand name.
- 6.1.7. The Complainant/s claim that at present, the Complainant/s trade mark/name is identified by the purchasing public exclusively with the Complainant/s and the Promoter and Founding Chairman, i.e., late Shri Qimat Rai Gupta who was popularly known as 'QRG', a well-known philanthropist and industrialist. The Complainant/s further claims that by virtue



of this, the mark "QRG" has acquired an enormous goodwill and is an essential part of the brand identity of the Complainant/s.

6.1.8. The Complainant/s has to its credit various websites such as www.qrgenterprise.com, www.qrgmedicare.com, www.qrgmedicare.co.in, www.qrgmedicare.co, www.qrgmedicare.in, www.qrghealthcare.in, www.qrghealthcare.com, www.qrghealthcare.org, www.qrgcentralhospital.com, www.qrgcentralhospital.in, www.qrgcentralhospital.org, www.qrghealthcity.com, etc.

6.1.9. The Complainant/s learnt that the disputed domain name had been registered by the Respondent on 29th February, 2016.

6.1.10. The Complainant/s claim that as the Respondent has used the trademark/name of the Complainant/s verbatim, this establishes utmost *mala fide* intention on the part of the Respondent, a *prima facie* case of cyber squatting and trade/service/mark/name infringement.

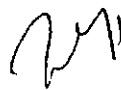
6.1.11. The Complainant argues that the domain name used by the Respondent <qrg.co.in> is identically and confusingly similar to the Complainant's trade name "QRG" beyond any doubt of imagination, and because the Respondent uses the name of the Complainant/s in its entirety in which the Complainant/s have common law as well as statutory trademark rights, it is bound to create confusion in the minds of the user public. Furthermore, the Complainant/s claim that its mark 'QRG' is entitled to the highest degree of protection as the trademark/trade name/ corporate name/ house mark 'QRG' is an invented, coined and arbitrary mark derived from the initials of the Complainant/s Founding Chairman.

6.1.12. The Complainant/s claim that the Respondent has no rights and legitimate interests in the disputed domain name nor has it acquired any proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part with the disputed



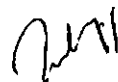
domain name/comprising “**QRG**” like the Complainant/s. Furthermore, the Complainant/s claims that the Respondent is not commonly known by the disputed domain name or the trade mark and does not actually engage in any business or commerce under the name ‘**QRG**’. Neither was the Respondent authorised or licensed by the Complainant/s to register, hold or use the disputed domain name. Thus, the Complainant/s claims that as domain names today are a part and parcel of corporate identity, the Respondent’s act of registering this domain name gives rise to the impression of an association with the Complainant/s which is not based on fact and the absence of any website in the disputed domain name further indicates that the Respondent does not have any rights and legitimate interest in either the ‘**QRG**’ mark or the disputed domain name.

6.1.13. The Complainant/s further claims that the disputed domain name was registered and used in bad faith with an intention to cash-in on the reputation of the Complainant/s’ mark by using the domain name for advertisements or setting up a business as the Respondent seeks to make unlawful gains out of the disputed domain name. This bad faith is evident from the fact that the name and initials of the late Qimat Rai Gupta [**QRG**] are extremely well-known and popular and the illegal and infringing activities of the Respondent are leading to dilution of the well-known mark ‘**QRG**’. The Complainant/s claims that the registration of the disputed domain name is in bad faith as the mark ‘**QRG**’ has acquired distinctiveness and is associated by consumers in India as the mark of the Complainant/s, denoting their goods, services and business. Thus the registration of the disputed domain name will induce the general public to believe that the Respondent has some connection with the Complainant/s in terms of a direct nexus or affiliation. The Complainant/s also claims that the passive holding of the domain name by the Respondent amounts to bad faith under the circumstances of the case.



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6.1.14. In support of its contentions, the Complainant/s relied on the decisions in the cases of *Reuters Ltd. V. Global Net 2000 Inc. (WIPO Case No. D2000-0441)*, *Altavista Company v. Grandtotal Finances Ltd. (WIPO Case No. D2000-0848)*, *Playboy Enterprises v. Movie Name Company (WIPO Case No. D2001-1201)*, *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson Sr., (WIPO Case No. D2000-1525)*, *Rollerblade, Inc., v. Chris McCrady (WIPO Case No. D2000-0429)*, *Wells Fargo and Company v. Jessica Frankfurter INDRP/392 (September 25, 2012)*, *eAuto, LLC v. Triple S Auto Parts, 02000-0047*, *Satyam Computer Service Limited v. Vasudeva Varma Gokharaju, D2000-0835*, *Express Publications [Madurai] Limited v. Murali Ramakrishnan, D2001-0208*, *Hindustan Petroleum Corporation Limited v. Neel Punatar, D2004-0351*, *Realmark Cape Harbour L.L.C. v. Lawrence S. Lewis, D2000-1435*, *Jeanette Winterson v. Mark Hogarth, Case No. D2000-0235*, *Julia Fiona Roberts v. Russell Boyd, Case No. D2000-0210*, *Mahendra Singh Dhoni & Anr. v. David Hanley, Case No. D2016-1692*, *ArcelorMittal SA v. Contact Privacy Inc. Customer 0140765615/Elena Blinova, Galina Ehlmoosen, Case No. D2015-1447*, *Shri Adi Godrej v. Summit Services LLC, Bruce Wayne, Case No. D2012-0596*, *Tata Sons Limited v. Deep Bhasin/ PrivacyProtect.org, D2012-2188*, *Tata Sons Limited and Ors. v. Aniket Singh CS[OS] 681 of 2012*, *Arun Jaitley v. Network Solutions Private Limited MANU/DE/2483/2011:181(2011)DLT 716*, *Etro S.p.A v. M/S Keep Guessing INDRP/024 (June 27, 2007)*, *Tata Sons Limited v. Jacob W., Case No. D2016-1264*, *Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000-0003*, *Daniel C. Marino, Jr. v. Video Images Productions, et al. Case No. D2000-0598*, *Charles Jourdan Holding AG v. AAIM D2000-0403*, *ITC Limited v. Mr. Mark Segal, INDRP/079*, *Wells Fargo & Co. And Anr. V. Krishna Reddy, INDRP/581*, *Aon PLC and Ors. v. Gangadhar Mahesh, INDRP/632 (October 31, 2014)*, *Aon PLC and Ors. v. Gaunrui, INDRP/633 (October 28, 2014)*, *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc., INDRP/250 (December 30, 2011)*,


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Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215 (July 9, 2011), Kenneth Cole Production Inc. v. Visvas Infomedia, INDRP/93 (April 10, 2009), Xpedia Travel.com, D2000-0137 and Goodfoodguide.net D2000-0019, Guerlain S.A. v. Peikang, D2000-0055, Veuve Clicquot Ponsardi, Maison Fondée en 1772 v. The Polygenix Group Co., D2000-0163, Cho Yong Pil v. Sinwoo Yoon D2000-0310, American Online Inc. v. Chinese ICQ Network, WIPO/D2000-0808 and thecaravanclub.com NAF/FA95314.

6.1.15. The Complainant/s requests for the following relief: “that the disputed domain name <QRG.CO.IN> be transferred to the Complainant/s and costs be awarded to the Complainant/s if the Arbitration Panel deems fit”.

6.2. Respondent:

6.2.1. The Respondent did not file any reply to the Complaint.

7. Discussion and Findings

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

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

7.3. Identical or Confusingly Similar

7.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

7.3.2. It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant/s by filing documents of its registered trademarks has established that it has rights in the trademark "QRG" in India. The documents filed by the Complainant/s also show that it has used the mark extensively for a considerable period. Evidence of use of the mark for several years by the Complainant/s undoubtedly shows its rights in the mark.

7.3.3. The Complainant/s has established that it has rights in the trademark "QRG".


7.3.4. The disputed domain name incorporates the trademark "QRG" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark. This position was upheld in *Akshaya Pvt. Ltd. v. Mr. Prabhakar Jeyapathy* (INDRP/277).

7.3.5. The Arbitrator finds that the Complainant/s has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. The Complainant/s has asserted that the Respondent has no rights or legitimate interests in the disputed domain name and that the Respondent has registered the domain name

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“qrg.co.in” mala fide with the sole motive to encash upon the goodwill and reputation of the Complainant/s.

7.4.3. The fact that the Respondent has no legitimate interest is corroborated by the fact that the domain in question was registered approximately 11 months ago on 29th February 2016 and the website has not been activated.

7.4.4. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) the registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

7.4.5. The Respondent has not responded in these proceedings and has not provided any material to show any rights in the disputed domain name. The Arbitrator finds no material on record to show that the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.6. The use of the Complainant/s’ mark in the disputed domain name in the Arbitrator’s view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant/s. Misleading users by incorporating a third party’s trademarks in a domain name gives a false impression to users and does not constitute a *bona fide use*

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under the Policy. This view has been upheld in *Six Continental Hotels, Inc v. The Hotel Crown* (INDRP/151).

7.4.7. The Arbitrator finds the Complainant/s have made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.


7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

7.5.2. The Complainant/s have asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant/s has well-established rights in the trademark "QRG", and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose.

7.5.3. The Complainant/s further state that bad faith is corroborated by the fact that the domain in question was registered on 29th February 2016 and the website has not been used since its registration. This effectively blocks the Complainant/s from exercising their rights with respect to the mark "QRG" including registering a domain name incorporating the "QRG" name.

7.5.4. The Complainant/s' prior adoption of the mark predates the Respondent's domain name registration and the registration of a name that is so obviously connected with the Complainant/s is suggestive of the Respondent's bad faith.

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7.5.5. The Arbitrator finds the Complainant/s have established its prior adoption and rights in the trademark "QRG". Further, the Complainant/s' trademark applications were clearly made before the disputed domain name was registered. The evidence on record shows that the Complainant/s' trademark is well known. Thus the choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.

7.5.6. The registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name is being operated or endorsed by the Complainant/s. This view was upheld in the decision in *BASF SE v. GaoGou*, (INDRP/752).

7.5.7. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no other reasonable explanation for the registration of the disputed domain name by the Respondent.

7.5.8. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.6. The above-mentioned contentions and submissions of the Complainant/s have not been rebutted by the Respondent, as such, they are deemed to be admitted by them.


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8. Decision

- 8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.
- 8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name <QRG.CO.IN> to the Complainant without any costs.
- 8.3. The Award is accordingly passed on this the 31st day of January, 2017.

Place: Chennai


Dr. Sudhir Raja Ravindran
Sole Arbitrator