

हरियाणा HARYANA

M 452202

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

L'OREAL

14, Rue Royale

75008

Paris

France

.....Complainant

Apex Laboratories Limited

Yitao, 76,

C.P. Rama Road,

Hong Kong

999077

HONG KONG

..... Respondent

Disputed Domain Name: www.kiehls.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is L'OREAL, 14 Rue Royale, 75008, Paris, France. The Complainant is represented by its authorized representatives Nathalie Dreyfus, Dreyfus & associates 78, Avenue Raymond Poincare, 75116, Paris France, who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Apex Laboratories Limited, Yitao, 76, C.P. Rama Road, Hong Kong, 999077, Hong Kong as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.kiehls.in. The Registrar is Business Solutions.


3) Procedural History:

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 (the Rules) were approved by NIXI on 28th June, 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.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on January 21, 2013 and the notice was issued to the Respondent on the same day at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. On February 01, 2013 the Arbitrator granted further opportunity to the Respondent to submit its response on or before February 11, 2013. However, no response was submitted by the Respondent within the stipulated time of thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.



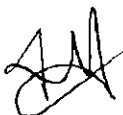
Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions

- a) The Complainant, L'oreal, is the world's largest a French industrial group specialized in the field of cosmetics and beauty.
- b) The Complainant product is one of the most widely known and specialized in the field of cosmetics and beauty. It markets in all sectors of the beauty industry, such as professional products, consumer products, luxury products and active cosmetics. L'oreal owns several international brands among which KIEHL'S covers essentially luxury products. The unique background of KIEHL'S represents a blend of cosmetic, pharmaceutical, herbal and medicinal knowledge developed through the generations. From this heritage, KIEHL'S is dedicated to giving customers quality skin care and hair care products based on the most advances science and utilizing unique, natural ingredients.
- c) The complainant provides an intensive education program to the KIEHL'S customer representatives, in which they learn about the properties of the ingredients in the brand's formulas as well as their value in making the products effective to be able to dispense advice and prescriptions to clients for a personalized skin and hair care regimens for each individual customer.
- d) The complainant's brand experiences an impressive success in Asia. The brand is also present in Hong Kong and India which represent some of the most dynamic zone for L'OREAL. The promotion of brand includes the participation of celebrities. For instance, in December 2011, L'OREAL has opened an important office in Mumbai for the brand KIEHL'S introduced by many Bollywood celebrities. The brand has world famous ambassadors as Julianne Moore, Pharell Williams and the "Scissor sisters" music band and is largely put in press.
- e) Complainant owns numerous trademark registrations for KIEHL'S throughout the world. Complainant is inter alia the owner of Indian trademark under no. 1277091 in class 03 and 1850615 in class 05 and Hong Kong trade mark under no. 1994B00370 in class 03.



- f) The Complainant also owns numerous domain names corresponding in the KIEHL'S trademark such as kiehls.com created on April 28, 1998; kiehls.fr created on March 08, 2002; kiehls.cn created on June 30, 2005 and kiehls.hk created on November 08, 2007.
- g) The Complainant sent a cease and desist letter on October 10, 2012 via email and registered letter to Respondent, requesting transfer of domain name i.e kiehls.in. The post version of the cease & desist letter was returned undelivered due to insufficient address provided by Respondent at the time the disputed domain name was registered. Respondent replied to cease & desist letter offering to sell the domain name for 1800 USD which would be "a good price" for Respondent and Complainant.
- h) The disputed domain name differs from KIEHL'S trademark by the addition the ccTLD."in". However, it is only minor difference that is insufficient to avoid likelihood of confusion between Complainant's trademarks and the disputed domain name. Previous panels have found that when a domain name contains a trademark in its entirety, the domain name is identical or at least confusingly similar to the trademark.
- i) The domain name is reproduction of the Complainant's trademark KIEHL'S in its entirety, with merely the omission of an apostrophe in a domain name does not change the identity of the original words.
- j) As the respondent is in no way affiliated with Complainant. Complainant, and has not authorized or licensed Respondent to use and register the KIEHL'S trademark, nor to seek registration of any domain name incorporating this trademark.
- k) Furthermore, Respondent has never provided evidence of being known or recognized by the Disputed Domain Name. Previous panels have concluded that where Respondent has not provided evidence that it is known or recognized by the domain name, Respondent has no rights or legitimate interests in the domain name.
- l) The Respondent is using the domain name to direct Internet users to a page of sponsored links which includes links in the field of cosmetics, links directing to products offered by Complainant's competitors. Such links cannot constitute a bona fide use offering of goods and services.
- m) Respondent has always clearly expressed its will to sell the domain name to Complainant for a sum largely exceeding the registration costs. The page to which the domain name points includes a link to post an offer and the domain name is offered for sale Sedo. It appears obvious that the sole reason for Respondent's registration of the Disputed Domain name was sale of said domain name. Such a conduct does not correspond a bona fide offering of



goods and services, it demonstrates that Respondent has no legitimate interest in the domain name.

- n) Additionally, the page includes a link directing Internet users to a page where they can make an offer for the domain name and domain name is offered for sale for 6200 Euros. Thus it appears that Respondent has never intend to use the disputed domain name for a bona fide offering of goods and services.
- o) Furthermore, the disputed domain name has been used for a page containing commercial links. It has been held where a domain name is found to be registered with an intention to attract Internet users by exploiting the fame of a well-known trademark; it constitutes bad faith registration.

5) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'KIEHLS' leads to the conclusion that the Complainant has superior and prior rights in the mark KIEHLS. Thus it can be said a) the web users associate the word 'KIEHLS' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the kiehls.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'KIEHLS'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's "KIEHLS" trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.



- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'Kiehls.in' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to explain its adoption or show interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. The Respondent has simply parked its domain for sale.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'kiehls.in'.

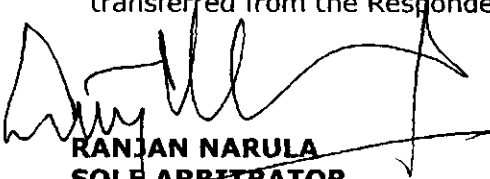
- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn. Further offering the domain for sale in excess of reasonable cost incurred in registering and maintaining the domain name shows bad faith.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'KIEHLS' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.kiehls.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.kiehls.in be transferred from the Respondent to the Complainant.


RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

20 February 2013