



हरियाणा HARYANA

M 682656

**BEFORE THE NATIONAL INTERNET EXCHANGE OF
INDIA**

ARBITRATION AWARD

In The Matter Between

REMY COINTREAU LUXMBOURG. S.A
7, Rue de la deportation
L-1415 Luxembourg
Luxembourg

Complainant

Versus.

SHAKLEE STUDIO (SHAKLEE WONG)
555 Lexington Avenue
10 th Floor, Room 202
New York
1001 USA

Respondent

1. The Parties

The Complainant is Remy Cointreau Luxembourg of Luxembourg and is represented in these proceedings by Laurent Becker of Nameshield France.

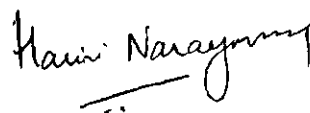
The Respondent is Shaklee Studio / Shaklee Wong of New York, United States of America.

2. The Domain name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <metaxa.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Directi Web Services Pvt. Ltd. Directi Internet Solutions Pvt. Ltd. d/b/a Public Domain Registry.com, Mumbai India. The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the "INDRP Policy" or "Policy"), and the INDRP Rules of Procedure (the "Rules").

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN registry on January 5, 2014 and on January 8, 2014 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies



of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response; no response was received from the Respondent.

Factual Background

The Complainant is a French corporation in the business of selling spirits. The Complainant states that the trademark METAXA refers to a Greek distilled spirit invented by Spyros Metaxas in 1888. The trademark METAXA is owned by REMY COINTREAU SA LUXEMBOURG SA, and is exported to over 60 countries. The Respondent registered the disputed domain name <metaxa.in> on December 30, 2011.

The Complainant owns and communicates on the Internet through various websites in its main website is www.metaxa.com (registered on August 27, 1995). The Complainant states it has also registered numerous domain names similar to trademark METAXA such as:

Domain names	Registration Date
metaxa.asia	21.01.2008
metaxa.at	13.04.2010
metaxa.ca	28.08.2008
metaxa.co.in	17.02.2012
metaxa.com.au	06.10.2008
metaxa.de	02.04.2008

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metaxa.es	19.08.2008
metaxa.fr	28.08.2008
metaxa.info	05.11.2011
metaxa.org	26.03.2010
metaxa.ru	20.10.2009
metaxa.us	23.04.2010

The Complainant owns numerous trademark registrations for the METAXA mark in several countries, such as:

Trademark	Country	Registration Number	Registration Date
METAXA	International	783527	06.05.2002
METAXA	International	466654	18.02.1982
METAXA	International	994866	12.02.2009
METAXA	China	707408	04.05.1993
METAXA	China	7 231456	07.08.2010
METAXA	International	958278	21.02.2008
METAXA	International	998435	12.02.2009

(Annex 4 of Complaint)

The Respondent has registered the Domain Names < **metaxa.in** > on December 30, 2011.

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The Parties Contentions

A. Complainant's Submissions

The Complainant contends the disputed domain name < **metaxa.in** > is identical to its trademark METAXA. The Complainant contends that the addition of the suffix CCTLD “.IN” is not sufficient to escape the finding that the domain is confusingly similar to its trademark and does not change the overall impression of the designation as being connected to a trademark of the Complainant. It does not avoid the likelihood of confusion between the disputed domain name < **metaxa.in** > and the Complainant trademarks METAXA and its associated domain names.

Its trademarks METAXA have been widely promoted to the general consuming public in the world for many years. The Complainant contends the disputed domain name is identical to its trademark METAXA for which it has provided registration certificates as *prima facie* evidence of its validity and prior use. The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name as he has no relationship with the Complainant's business and is not authorized or licensed to use the mark, nor is he known by the disputed domain name.

According to the Complainant the disputed domain name has been registered only in purpose of sale (\$5,000 USD). The disputed domain name is on sale through the website: www.metaxa.in linked to the disputed domain name and the Complainant and has filed documentary evidence to support its contentions.

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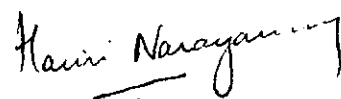
The Complainant argues that the disputed domain name < **metaxa.in** > is identical to the distinctive trademark METAXA, registered by the Complainant. Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. The Complainant contends that the Respondent registered this domain name in bad faith and used this domain name only in purpose of sale to the Complainant. And refers to the case *Ferrari S.p.A v. American Entertainment Group, Inc.*, WIPO Case No.D2004-0673.

The Complainant has also urged that the Respondent has registered this domain name in purpose of sale to an amount of \$5000 USD and contends that this price is considered far in excess of the out of pocket expenses for registering the disputed domain name and refers to the case *Air Group v. Pat Reinhardt*, WIPO Case No. D2000-0482. The Complainant therefore requests for transfer of the disputed domain name.

Discussion and Findings

Under the INDRP Policy, Paragraph 4 the Complainant has to establish the following three elements to succeed in the proceedings:

- (i) The domain name is identical or confusingly similar to a name, 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 Respondent's domain name has been registered or is being used in bad faith.

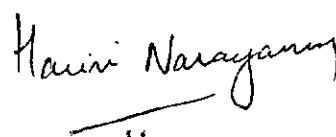
Identical or Confusingly Similar

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.

The Complainant has submitted evidence to show that it has rights in the METAXA trademark by submitting details of its international trademark registrations for the mark. Trademark registration is considered *prima facie* evidence of rights in a mark, based on evidence on record, the Complainant is found to have established its rights in the trademark METAXA.

The disputed domain name consists of the METAXA trademark in its entirety. This is sufficient to find the disputed domain name is identical or confusingly similar to the trademark.

Accordingly, for the reasons discussed, the Arbitrator finds that the disputed domain name is identical and confusingly similar to a mark in which the Complainant has rights. The Complainant has satisfied the first element under paragraph 4 of the Policy.

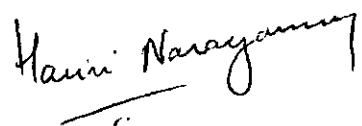

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Rights and Legitimate Interests

The second element requires the Complainant to show that the Respondent lacks rights and legitimate interests in the disputed domain name. It is sufficient for the Complainant to put forward a *prima facie* case regarding the Respondent's lack of rights and legitimate interests.

The burden of proving rights or legitimate interests in the disputed domain name rests with the Respondent. Paragraph 7 of the Policy, provides a non-exhaustive set of circumstances that a respondent could rely on to establish rights in the domain name. These briefly are: (i) if before notice of the dispute, the respondent 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 respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

The Complainant has submitted that the Respondent has no rights or legitimate interests in the disputed domain name as the Complainant has not licensed or otherwise permitted the Respondent to use its mark. Further, given the international popularity of the METAXA mark and the fact that the Respondent has offered the disputed domain name for sale, the Complainant states that the Respondent has registered the domain name for purpose of exploiting the mark and therefore has no legitimate rights to the disputed domain name.

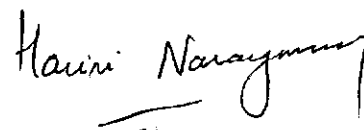
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The Arbitrator finds that there is no evidence on record to show that the Respondent has made preparations to use the disputed domain name for a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes any legitimate non-commercial fair use of the disputed domain name. The Respondent has not responded or filed any material that demonstrates his rights in the domain name. In the absence of any material from the Respondent, and any other material on record to indicate the Respondent has rights, it is found that the Respondent has not established any rights or legitimate interests in the disputed domain name.

Accordingly, for the reasons discussed, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

Bad Faith

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. The Complainant has urged that the Respondent has intentionally registered the disputed domain name to exploit its well-known trademark METAXA. The Complainant has provided evidence that the Respondent has advertised the sale of the disputed domain name. The Arbitrator finds there is sufficient evidence that shows the Respondent has registered and used the disputed domain name in bad faith registration and use under the Policy.

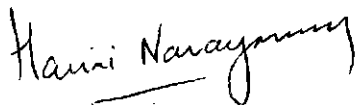


As discussed earlier it is found that the Complainant has adopted and used the mark METAXA extensively in several jurisdictions and its registered marks bear testimony to this fact. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally 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 the Respondent seeks to use the Complainant's mark in the manner mentioned under Paragraph 6 of the Policy, namely to attract Internet traffic to the Respondent's website, or to sell the disputed domain name which is considered bad faith registration and use of the disputed domain name under the INDRP Policy.

Based on all the facts and circumstances of the case the Arbitrator finds the disputed domain name was registered in bad faith and has been used in bad faith. The Arbitrator finds the Complainant has satisfied the third element under paragraph 4 of the Policy.

Decision

For the reasons discussed, it is ordered that the disputed domain name <metaxa.in> be transferred to the Complainant.



Harini Narayanswamy

(Arbitrator)

Date: February 24, 2014