



दिल्ली DELHI

N 719284

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR

IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

RHODIA
40RUEDE LA HAIE COQ
93306 AUBERVILLIERS
France
domain@nameshield.net

COMPLAINANT

VERSUS

Andrew Yan / Yan Wei
Domain broker, Inc
No .800, Dongchuan Road
200240 shanghai

China.

RESPONDENT

THE PARTIES:

The complainant is RHODIA , 40RUEDE LA HAIE COQ, 93306 AUBERVILLIERS, France E-mail: domain@nameshield.net

(Complaint represented by in the present proceeding by NAMESHIELD (Laurent Becker) of France)

The Complainant's authorized representative in this administrative proceeding

Sanjay Kumar Singh

NAMESHIELD, 27 RUE DES ARENES 49100Angeras France Telephone: +33241 18 28 28 28/ Fax: +33 241 18 28 29.

The Respondent is, Andrew Yan / Yan Wei, Domain broker, Inc No .800, Dongchuan Road, 200240 shanghai, China. E-mail: admin@ domainbroker.tw

DOMAIN NAME AND TRADEMARK IN DISPUTE:

Domain name of the respondent is "RHODIA.CO.IN"

The trademark of the complainant is "**RHODIA**".

The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is Electronic- only material

Method: email

The language of the arbitration proceeding shall be English.

The Arbitration pertains to dispute regarding the domain name <rhodia- co in>.

The Registrar for the disputed domain name is Directi WebServices Pvt. Ltd. Directi Web Services Pvt.

Directi Internet Solutions Pvt. Ltd. d/b/a Public DomainRegistry.Com
Directiplex, Mogra Village Nagardas Road, Andheri (East), Mumbai Maharashtra 400069, India.
Email: abuse.manager(5)directi.Com

The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current. IN Domain Name Dispute Resolution Policy (the 'INDRP POLICY'), and the INDRP Rules of procedure (the "Rules").

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "RHODIA.CO.IN".
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me on by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.

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6. The complainant has submitted that Rhodia is a world leader in the development and production of specialty chemicals. Rhodia provides added- value products and high- performance solutions to diversified markets including automotive, electronic, Flavors and fragrances, health, personal and home care, consumer goods and industrial, through its six global enterprises.
7. The complainant has submitted that in Asia pacific, Rhodia has two companies in India Albright & Wilson Chemicals India Ltd (A WCI), ACQUIRED IN 2000. AND Hindustan Gum & Chemicals (HICHEM)-A joint venture with one of India's largest conglomerates, the Mp. Birla Group, SINCE 1962.
8. The complainant has submitted that Rhodia owns numerous trademark registration with the term "Rhodia" in several countries and its Indian trademark & International Trademark the attachment as Annex - 2.

<u>Trademark</u>	<u>Registration Number</u>	<u>Date of registration</u>
RHODIA	144832	09.01.1950
RHODIA	170326	13.07.1953
RHODIA	186890A	12.08.1955
RHODIA	186890	12. 08.1955
RHODIA	329277	02.12. 1966
RHODIA	548371	28.02. 1989
RHODIA	660086	29. 03. 1996
RHODIA	661187	08.03.1996
RHODIA	956462	19.02.2008
RHODIA ACETOW	994260	01.09.2008
INNOVATIVE FILTER SOLUTIONSRHODIA ACETOW	994260A	01.09. 2008
INNOVATIVE SOLUTIONS		
Rhodia Way	1002296	12.12. 2008
Rhodia Way	1740720	06.10. 2008

9. The complainant has submitted that Rhodia has two companies in India, Albright & Wilson Chemicals India Ltd (AWCI), ACQUIRED IN 2000, AND Hindustan Gum & Chemicals (HICHEM)- a joint venture with one of India's largest conglomerates, the M. P. Birla Group since 1962.
10. The complainant has submitted that Rhodia owns and communicates on the Internet through various websites in the worldwide. The main one is "www. rhodia. com" (registered on 22/12 /1995). But Rhodia has also registered numerous domain names similar to trademark Rhodia- such as:

rhodia	registered on	19/11/2001
rhodia	registered on	29/05/2005
rhodia	registered on	31/07/2001
rhodia	registered on	15/11/2005

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rhodia	registered on	10/04/2000
rhodia	registered on	12/03/2006
rhodia	registered on	08/02/2008
rhodia	registered on	17/03/2003
rhodia	registered on	26/03/2001
rhodia	registered on	20/09/2007
rhodia	registered on	20/09/2007
rhodia	registered on	10/06/2006
rhodia	registered on	19/04/2002

11. The complainant has submitted that the disputed domain name < Rhodia. Co in> has been registered on 19/ 01/2010 by Domain BROKER Inc (Andrew yan). The complainant has also contended that the domain name rhodia .co. in> is identical to the trademark" RHODIA'.
12. The complainant has also submitted that to resolve the dispute, Rhodia requests NAMESHIELD to contact the registrant Domain Broker. Inc. NAMESHIELD contacted the Respondent by email to admin@domainbroke.com ; domainsnappig@gmail.com.
13. The complainant has also submitted that NAMESHIELD received a response from yan wei. The complainant has filed the same as attachment: ANNEX-5.
14. It has been contended by the complainant that to find mediation NAMESHIELD offered \$300 USD for this domain name buy YAN Wei don't accepted this offer he requested us amount of \$1500 USD. Rhodia refused the request because this domain name is identical to it trademark" RHODIA. It has been contended by the complainant that their offer covers the fees for this registration.
15. It has been also contended by the complainant that their complaint is based on the following grounds:
 - A. The domain name (s) is (are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights: (policy, paragraph 4(a) (i): Rules, paragraphs 3 (b) viii), (b)(ix)(l)

It has been also contended by the complainant that disputed domain name, <rhodia.co.in > is identical to its trademark "RHODIA"

The complainant has also contended that it does not avoid the likelihood of confusion between the disputed domain name <rhodia.Co in> and Rhodia, its trademarks "RHODIA" and its domain names associated.

The complainant has also contended that it sells its goods in 25 countries worldwide and has manufacturing facilities and R&D Centers in all four major regions of the world - Europe, North America, Latin America and Asia Pacific.

The complainant has further contended that the addition of a CTLD "CO.IN" is not sufficient to escape the finding that the domain is

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confusingly similar to the trademarks and does not change the overall impression of the designation as being connected to a trademark of "Rhodia".

The complainant has further contended that the term "RHODIA" IS KNOWN especially in relation to the Rhodia. It has no meaning whatsoever in English or in any other language. A Google search of word rhodia- displays several results, related to the company Rhodia. The complainant has further contended that the disputed domain name is confusingly similar to its trademark "RHODIA"- for which it has provided registration certificates as prima facie evidence of validity.

- B. The complainant has submitted that the Respondent has no rights or legitimate interest in respect of the domain name.

The complainant has relied on the WIPO CASE No. D2003- 0455, Croatia Airlines d.d v. Modern Empire Internet Ltd". According to the same a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4 (a) (ii) of the UDRP.

The complainant has argued 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.

The trademark "RHODIA" is well known in the world which Rhodia promotes its products and communicates on the Internet through various websites, such as:

www.rhodia.com

www.rhodia.biz

www.rhodia.org

www.rhodia.info

www.rhodia.es

www.rhodia.co.uk

www.rhodia.eu

www.rhodia.asia

www.rhodia.cn

www.rhodia.jp

www.rhodia.hk

www.rhodia.tw

www.rhodia.ru

www.rhodia.us

16. The complainant has contended the Respondent is neither affiliated with nor authorized by Rhodia in any way we contend the Respondent has no

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rights or legitimate interests in respect of the domain name and he is not related in any way to the Rhodia's business. Rhodia does not carry out any activity for , nor has any business with the respondent.

17. The complainant has contended according to the who is, the Respondent is based in China and appears to have no links with India and is not using the disputed domain name for legitimate fair use purposes. The domain name redirects to parking page with different advertising links and the domain name is on sale" Ce domaine est mis en vente par son propriétaire." The complainant has further contended that their exchange by emails shows that the Respondent does not provide a bonafide offering of goods or services or legitimate use of the domain name and the Respondent registered this domain name only in purpose of sale. Therefore Rhodia contends that no bonafide offering of goods or services or legitimate use of the domain name.
18. As per complainant the domain names (s) were/ were registered and are/ are being used in bad faith. The complainant has further contended that its trademark' RHODIA' is well known in the world especially in Asia which its activities created 28/% of sales in 2009.
19. The complainant has argued that the Respondent was aware of the complainant and tried to create a likelihood of confusion by registering a domain name that was confusingly similar to a trademark in which the Complainant has rights.
20. The complainant has further argued that the website linked to the disputed domain name displays a content advertising links in French as per annex (6). Moreover, the domain name is displayed on sale in French: Ce domaine est mis en vente par son propriétaire". Using the domain name for the purposes of displaying links for commercial gain under the circumstances discussed is evidence of bad faith use. The complainant has relied on the HSBC Finance Corporation v, Clear Blue Sky Inc and Domain Manager, WIPO Case No D2006-oo2.
21. It has been further urged by the complainant that 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 has submitted that the Respondent- registered this domain name in bad faith and used his domain name with terms in French only in purpose of sale to the Complainant The complainant has relied on the Ferrari S.P.A American Entertainment Group Inc , WIPO Case No, D224-0673.
22. The Complaint therefore requests for transfer of disputed domain name.

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23. The complainant has prayed that the domain name "rhodia.co.in" be transferred to the complainant.
24. On 17-03-2011, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence
24. A copy of complaint has already been sent to the respondent by the .In Registry through e-mail. Upon receipt of the complaint, the Arbitrator sent a notice dated 17-03-2011 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within 7(seven) days from receipt. But the respondent did not come forward and did not send his defence / counter to the complaint.
25. Thereafter, the Arbitrator again sent a notice dated 27-03-2011 by giving another opportunity to the respondent to send his defence / counter to the complaint within further 3 (three) days with further notice that in default of non-filing or sending of the defence / counter to the complaint, award would be passed ex-parte on merits of the complaint.
26. The respondent despite of earlier notices and reminders failed to send his defence / counter to the complaint. As such the Arbitrator again sent a notice dated 02-04-2011 by which further 2 (two) days was given for filing or sending of the defence / counter to the complaint, with further notice that this was last and final opportunity failing which the complaint would be decided ex-parte on merits of the complaint.
27. In spite of repeated notices, the respondent has not come forward and has not sent any reply / defence / counter to the either notice or complaint to the Arbitrator though the notices were served on Email ID of the respondent.

Therefore, this matter is being decided on the merits of the complaint and as per law of the land.

OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. Vs. M/s Siffynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

Thus taking into consideration the decisions relied by complainant and mentioned in the aforementioned paragraphs and further the decision passed by the Apex court in M/s Satyam Infoway Ltd. Vs. M/s Siffynet Solution (P) Ltd. JT. 2004 (5) SC 541, the conclusion is that domain name and trademark, which may be used in different manner and

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different business or field, or sphere, can still be confusingly similar or identical.

Hence the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name. The respondent has not submitted any reply / defence / document/evidence to the complaint of the complainant in spite of repeated notices from the arbitrator.

Thus the conclusion is that the domain name "rhodia.co.in" is identical and confusingly similar to the trademark of complainant "RHODIA" and the complainant has established that he has right in the trademark "RHODIA".

B) Whether the respondent's domain name has been registered or is being used in bad faith.

Taking in to consideration and Keeping in view aforesaid facts and circumstances it is clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has not come forward to file any reply /counter and has further not provided any substantial evidence in its support. The complainant has submitted sufficient evidence in support of the complaint.

Thus the conclusion is that the respondent has got registered his domain name "rhodia.co.in" in bad faith.

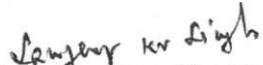
RELIEF

In view of the above mentioned facts and reasons, it is held that the domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith as such he is not entitled to retain the domain name. The complainant is entitled to transfer of domain name "rhodia.co.in" to complainant, as complainant has established his bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name "rhodia.co.in" be transferred to the complainant by registry.

No order as to costs.

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Date: 07-04-2011.


(Sanjay Kumar Singh)
Arbitrator