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NATIONAL INTERNET EXCHANGE OF INDIA
Incube Business Centre, 5th Floor,
18, Nehru Place,
NEW DELHI – 110 019

LA ROCHE-POSAY v. Mr. Zeng Wei

AWARD

1. The Parties

The Complainant is La Roche-Posay Laboratoire Pharmaceutique, Rue Rene Levayer, 86270 La Roche-Posay, France.

The Respondent is Mr. Zeng Wei, Shanghai Weihai Road, Shanghai 200001, China.

2. The Domain Name and Registrar

The disputed domain name is <larocheposay.in>. The said domain name is registered with Directi Internet Solutions Pvt. Ltd., d/b/a

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3. Procedural History

- (a) A Complaint has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on June 24, 2012. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Rules, on June 27, 2012 the Sole Arbitrator formally notified the Respondent of the Complaint. The Respondent was required to submit his defence within 15 days, that is by 26th July 2012 (providing 7 days each side for time taken by post) . The Respondent was informed that if his response was not received he would be considered in default and the matter will proceed ex-parte. No response has been received from the Respondent.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant is a company existing under the laws of France. It was established in 1928 for post treatment dermatological products formulated with La Roche-Posay thermal spring water. Presently, the Complainant specializes in the field of cosmetics, beauty and dermatology products suitable for even the most sensitive skins.



The Complainant is a subsidiary of the industrial group L'Oreal.

Respondent's Identity and Activities

The Respondent could not be contacted. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that it is one of the leading companies. In many countries, including India, China, etc. the word "LA ROCHE-POSAY" is registered as a trademark of the Complainant.

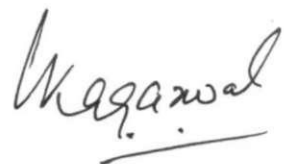
The Complainant is the owner of a number of domain names with the words LA ROCHE-POSAY. Some such domain names are :

<larocheposay.com.cn>;
 <laroche-posay.hk>;
 <laroche-posay.jp>;
 <laroche-posay.us>, etc.

Therefore, the Complainant is well known to its customers as well as in business circles as LA ROCHE-POSAY all around the world. The disputed domain name incorporates Complainant's corporate name and trademark LA ROCHE POSAY in its entirety. Therefore, the disputed domain name is identical and/or confusingly similar to the trademark of the Complainant.

In support of its contention, the Complainant has relied on the following decisions:

- (i) *PepsiCo, Inc. v. Bijon Chatterji*, Case No. INDRP/014, June 24, 2006;



- (ii) *Mothercare UK Limited v. Mr. Raj Kumar Jalan, New Delhi*, Case No. INDRP/061, April 27, 2008;
- (iii) *Bombay Stock Exchange Limited v. Jigar Vikamsey*, Case No. INDRP/063, August 17, 200.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark “LA ROCHE-POSAY”. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.laroche-posay.in> by the Respondent is to earn profit by selling the domain name and to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark to promote competing or infringing products or offering it for sale cannot be considered a “*bona fide offering of goods and services*”.

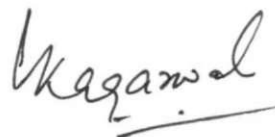
B. Respondent

The Respondent could not be contacted. Hence, the Respondent’s contentions are not known.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:



- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

As per the whois information, the Respondent has created the disputed domain name <www.larocheposay.in> on September 24, 2011. The expiration date is September, 2012.

According to the information submitted by the Complainant, the Complainant is the owner of several registrations of trademarks LA ROCHE-POSAY. The trademark LA ROCHE-POSAY is registered in many countries of the world. In most of these countries the registration is in various classes.

The Complainant has stated that in India also the word “LA ROCHE-POSAY” is registered as a trademark in class 3 on March 13, 2011.

The disputed domain name is very much similar or identical to other domain names and the trademark of the Complainant. The addition of the word “in” along with the word “la roche posay” in the domain name is insignificant. Therefore, I hold that the domain name <larocheposay.in> is identical and confusingly similar to the Complainant’s marks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

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- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a 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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the trademark LA ROCHE POSAY or in the disputed domain name.

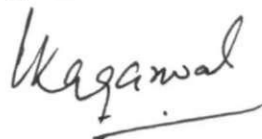
The Complainant has registered the trademark LA ROCHE POSAY much before the registration of the disputed domain name by the Respondent.

LA ROCHE-POSAY is the name and mark of the Complainant. The Respondent is known by the name of Mr. Zeng Wei. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. The Respondent is in no way affiliated with the Complainant. I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name



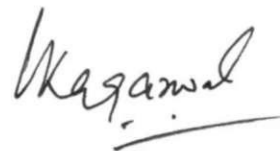
registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or

- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark.

The Complainant has further contended that, "Said domain name resolves to a parking webpage displaying various pay-per-click links as well as mention "This domain name may be for sale by its owner". Indeed, the disputed domain name has been put up for sale by the owner on Sedo's Domain Market place for Euro 6,700 and it has been listed for sale on Domain tools for \$ 8,818." It is thus clear that the Registrant is using the domain name only for sale.

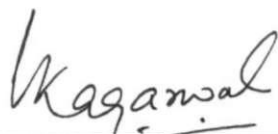
If a registrant registers a domain name for the purpose of selling, renting or otherwise transferring the domain name to Complainant or to a competitor, such registration can be considered as bad faith registration.



The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith and for the purposes of sale, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.larocheposay.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: July 30, 2012