

महाराष्ट्र MAHARASHTRA

FG 252504

अनुक्रमांक... २३.८५... दिनांक १०/३/१२... रुपये १००००/-
मुद्रांक का प्र. ३३ कारणावली बापरावयाचा आहे... हावी... भैरव
मुद्रांक अधिनियम १९५८ चे अनुच्छेद क्र. ११
मुद्रांक बापरावयाचे संपूर्ण नाव... शिरीश चिंतामणी बनारस
संपूर्ण पत्ता... २०४, १५ शनिवार वीथी, पुणे
हस्ताक्षर व्यक्तीचे संपूर्ण नाव... शिरीश चिंतामणी बनारस
पत्ता... ३११२ सुयतावरी, मिर्चगुड, पुणे-४११००२

मुद्रांक धारकाची/हस्ताक्षर व्यक्तीची सही

स्वाक्षरी (श्री. जयश्री मि. बेलसर)
मुद्रांक विक्रेता
परवाना क्र. हवेली I/३६/१९९५
परवान्याची मुदत ३१/३/२०
पत्ता- ४२५ ब, शनिवार पेठ, पुणे-४११००२



AWARD IN ARBITRATION

THE MCGRAW-HILL COMPANIES INC.
1221, Avenue of the Americas
New York, NY 10020, U.S.A.

THE COMPLAINANT

AND

WANG LIQUN
Chaoyangmenwai Road 1660 DK
Beijing, 100010, China

THE RESPONDENT /
THE REGISTRANT

IN THE MATTER OF DISPUTED DOMAIN NAME: - platts.in

BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

**DELIVERED ON THIS 19TH DAY OF MARCH TWO THOUSAND TWELVE
AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

- 01. Names and addresses
Of the Complainant: -** **The McGraw-Hill Companies Inc.**
1221 Avenue of the Americas
New York. NY 10020. U.S.A.
- Through its authorized
representative **ALG India Law Offices**
30, Siri Fort Road
New Delhi. 11049.
- 02. Name and address of
The Respondent: -** **Wang Liquan**
Chaoyangmenwai Road
1660 DK, Beijing, China.
- 03. Name and address of
The Registrar** **Dynadot, LLC.**
P.O. Box 345, San Mateo, CA 94401
United States. 1-650-585-1961

04. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me	15/02/2012
02	Acceptance given by me	15/02/2012
03	Hard copy of the complaint received	03/03/2012
04	Notice of Arbitration issued with the instructions to file reply latest by 15.03.2012	03/03/2012
04	Reminder notice sent to the Respondent	15/03/2012
06	Award passed	18/03/2012



I] PRELIMINARY: -

- 1) M/s The McGraw-Hills Companies, Inc. founded in 1988 is a global information and education company providing knowledge, insight and analysis in the financial, education and business information sectors through leading brands, including Standard & Poors, McGraw-Hill Education, Platts and J.D. Power and Associates. Its principal office is at 1221, Avenue of the Americas, New York, NY 10020, U.S.A. (**The Complainant**). It has filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name '**platts.in**' (**the disputed domain name / domain name**), through its authorised representative **ALG India Law Offices, 30, Siri Fort Road, New Delhi. 110049, India.**
- 2) The Complainant has disputed registration of domain name '**platts.in**' in the name of **Mr.Peter Korbelt, Chg, Verna, Goa 52552, IN, (The Respondent)**.
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRATION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 3RD March 2012 with the instructions to file his say latest by 15th March 2012.
02. The Respondent did not file reply to the Complaint within the stipulated period.
03. On the basis of principles of natural justice and as the last opportunity the arbitration panel extended *suo moto* time period to file his say / reply latest by 18th March 2012. However the Respondent failed / neglected to file any say / reply even within the extended period.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.



III] SUMMARY OF THE COMPLAINT: -

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

A) The domain name `platts.in' is confusingly similarly to the trademarks `platts' and `platt's' in which the Complainant has rights. (Policy Para 4(i), Rules 3(b)(vi)(1))

- a) The disputed domain name fully incorporates and is identical to the trademark 'PLATTS' and PLATT'S of the Complainant.
- b) The Complainant owns several trademark registrations (as per Annexure 7) all over the world, including in India. It also owns domain name registrations like 'platts.com'
- c) In India the Complainant has acquired significant goodwill and reputation through its long and extensive use of the trademark platts. This trademark has acquired status of 'well known status' under Section 11(6) of the Trade Marks Act, 1999.
- d) Platts is a well known mark having international fame and recognition. The Complainant has worldwide enforceable and exclusive trademark rights in the mark Platts arising out of its first adoption, registration, use, acquired reputation, inherent distinctiveness and vast and successful record of enforcement.
- e) Mere addition of ccTLD .in to the Complainant's mark Platts in its entirety is not sufficient to escape the finding that the domain is confusingly similar to the trademarks. (Forward Association Inc. Vs Enterprises Unlimited FA 0095491).
- f) Disputed domain name is also substantially similar to the Complainant's mark PLATT'S and mere omission of an apostrophe is not sufficient to distinguish it. (Chernow Communications Inc. V Jonathan D. Kimball – D2000-0119 (WIPO May 18, 2000).

B) The Respondent has no rights or legitimate interests in respect of the domain name `platts.in'. (Policy Para 4(ii) Rules Para 3(b)(vi)(2))

- a) The Complainant has never authorised the Respondent nor licensed him to use the mark 'Platts'.
- b) The disputed domain name does not resolve to any webpage. Such non-use of domain name has been held to be evidence of lack of rights or legitimate interests. (Melbourne IT Ltd. Vs Stafford – D2000-1167) (WIPO October 16, 2000).



- c) The use of disputed domain name by the Respondent using the Complainant's well known trademark to redirect internet users to other websites is not a bona-fide use and does not confer rights or legitimate interests. (Lego Juris A/s Robert Martine – INDRP 124 – NIXI February 14, 2010.)
- d) The Respondent through the webpage hosted at the disputed domain name was also offering the disputed domain name for sale.
- e) The Respondent's failure to make active use of the disputed domain name does not constitute a bona fide offering of goods and services or a legitimate non-commercial or fair use. (Thermo Electron Corp. VS Xu – FA 713851).
- f) The Respondent is not commonly known by the disputed domain name and has not acquired any trade / service mark rights to the knowledge of the Complainant. The Respondent is not making any legitimate non-commercial or fair use of the disputed domain name.

C) The Domain name 'platts.in' was registered and is being used in bad faith. (Policy Para 4(iii), Rules Para 3(b)(vi)(3))

- a. The Respondent registered the disputed domain name only in 2011 by which time the complainant had been using the mark 'platts' for over 90 years.
- b. The Respondent has no affiliation with the Complainant and has registered the disputed domain name only because it is identical with the Complainant's well known trademark 'platts' which itself is evidence of bad faith registration and bad faith use. (Yola Inc. Vs Karan – INDRP/ 154 – NIXI October 4, 2010)
- c. The disputed domain name is available for sale at www.sedo.com and visitors can make their offers for purchase of the disputed domain name.
- d. The Respondent is not hosting any website at the disputed domain name. Earlier the Respondent had hosted a webpage carrying advertisements which redirected internet users to websites competing with the Complainant. The Complainant has furnished these details in Annexure 11.
- e. The Respondent is a cybersquatter and has registered many other domain names featuring third party trademarks for example 'bayermaterialscience.in', shopdiadora.com etc.
- f. The Respondent appears to be a Respondent in a number of INDRP and UDRP complaints (similarity of address and similarity in the name of the Respondents in various complaints like Rautaruukki Oyi Vs Lique Wang in the matter of 'ruukki.co.in' (INDRP 158), Consorzio del Prosciutto di parma Vs Lique Wang in the matter of 'parmaham.in' (INDRP 198) Revlon Consumer Products Corporation VS Ye Genrong, Fang Fang,

Wang Liquin in the matter of 'Revlon-usa.com' (WIPO D2010-1586) and so on. The Complainant has attached decisions in these disputes in Annexure 14.

IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period. Thus the Respondent has failed / neglected to file any say / reply.

V] REJOINDERS OF THE PARTIES: -

In view of non-reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	No
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose	Yes

	of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?	
08	Has the Registrant 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?	Yes
09	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

VIII] BASIS OF FINDINGS: -

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word platts / platt's is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant world over. The Complainant has filed application for registration of trademark in India, vide Application No.2231426 on 9th November 2011. Though this registration is not complete on the date of filing of this Complaint, I have considered all trademarks registered in various countries, including China of which the Respondent happens to be a resident, for the purpose of deciding this question. This holds valid especially on the background of the Respondent being a habitual cyber squatter.

Against this the Respondent has no registered trade mark or service mark consisting of the word platts / platt's.

Therefore my finding on the first issue is affirmative.

2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?


Yes. Already discussed in issue (A) above.

Therefore my finding on this issue is in affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

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4. Whether the Registrant has been commonly known by the domain name?

The name of the Registrant, as available in the records is Wang Liquan. As such he is not commonly known by the domain name platts / platt's.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interests in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words platts / platt's. He is not commonly known by that name. He has not established that he has taken all reasonable steps to use the registered domain name. Against this he has offered it for sell on the website itself as also on the other website www.sedo.com. As established by a printout of the earlier webpage, the Respondent had established links to other websites including that of the competitors of the Complainant.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The webpage contains various switches which do not lead to anything. Thus it has not been used actively, much less for bona fide business purpose or non-commercial use. On the contrary there is a mention on the webpage that the domain name is for sale.

Therefore my finding on this issue is affirmative.

7. Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?

Yes. The webpage itself contains message that it is for sale.

Therefore my finding on this issue is affirmative.

8. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has cited various cases in confirmation of the fact that the Registrant / Respondent is a habitual cyber squatter.

Therefore my finding on this issue is in affirmative.

9. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

Though presently the webpage does not resolve into any valid subsequent page, it is already established that the Registrant has not used the site for his own purposes. Due to exactness of the registered mark of the Complainant incorporated in the domain name it would definitely create confusion in the minds of internet users.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion I have reached the conclusion that: -

- a. The Respondent does not have any registered trade mark / service mark in his name containing the words platts / platt's and hence does not have any legitimate interest in the same.
- b. Previously the webpage had links to other websites including that of the competitors of the Complainant. Presently the switches on the webpage do not resolve into any valid further page. There are no separate goods or services in which the Respondent regularly trades or deals with. This reveals that the Respondent has not been using the website / webpage for his bona fide business purpose or for non-commercial purpose.
- c. The Registrant has not been commonly known by the disputed domain name.
- d. The Registrant is not making any non-commercial or fair use of the disputed domain name.
- e. The Respondent / Registrant has completely failed to establish his nexus with the disputed domain name in any way.
- f. On the contrary he has offered to sell the disputed domain publicly.
- g. The Respondent / Registrant has been involved in the malpractice / business of registering domain names of various companies / organizations of global repute and by infringing their registered trademarks. He has been habitual cyber squatter and has been named in various other disputes as Respondent.
- h. Any person of reasonable prudence and with genuine business intentions would enquire and satisfy himself whether, by registering proposed domain name, he is going to infringe any third party rights or interests, especially of registered trademarks. It has been observed that the Respondent is in fact choosing intentionally those companies /

organizations which have gathered enormous goodwill and reputation due to their long existence, quality goods and / services, huge turnover and established trade names. It is always with the intention of encashing on their goodwill that he registers such types of domain names. His ultimate object is to sell these domain names at premium and make money out of it. Ethically, legally and morally, such practice is bad and needs to be curbed.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in which he does not have any legitimate interest with the purpose of selling the same for unlawful monetary benefits.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name – www.platts.in and hence the same be transferred to the Complainant immediately.
02. No orders as to the cost.

Dated: - 19/03/2012
Place: - Pune


(S.C.INAMDAR)
SOLE ARBITRATOR