



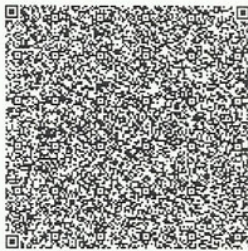
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**INDRP ARBITRATION**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**

**ADMINISTRATIVE PANEL DECISION**  
**ELIZABETH ARDEN, INC. V LIHENG**  
**SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB**

*A. Raheja*  
01-Jan-2016

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**In the matter of:**

**Elizabeth Arden, Inc**

200 Park Ave South,  
New York, NY 1003  
USA

**... Complainant**

**versus**

**Liheng**

Just Traffic Supervision Consulting  
Room 1326, Kexin Building,  
Hong Kong, HK 999077

**... Respondent**

**ARBITRATION AWARD**

**Dispute Domain Name: www.prevageskin.in**

**1. The Parties:**

- 1.1.** The Complainant in this arbitration proceedings is: **Elizabeth Arden, Inc**, a Company having it's office at 200 park Ave South, New York, NY 10003 USA represented by Dorf & Nelson LLP, NY USA.

- 1.2. The Respondent in this arbitration proceeding is Liheng, Just Traffic Supervision Consulting, Room 1326, Kexin Building, Hong Kong 999077.

## 2. The Domain Name and the Registrar:

- 2.1. The Disputed Domain Name is <[prevageskin.in](http://prevageskin.in)>, created on 7th September 2014.
- 2.2. Domain Registrar is Business Solutions.

## 3. Procedural History:

- 3.1. Arbitrator received an email, inquiring if Nixi can avail of its services as an arbitrator for the dispute pertaining to the domain name <prevageskin.in>. Arbitrator confirmed availability and sent the signed Statement of Acceptance and Declaration of Impartiality and independence as required by rules.
- 3.2. The .IN Registry appointed Ankur Raheja as the sole Arbitrator on 18 November 2015 and Arbitrator received the hard copy of the Complaint along with Annexures on 19 November, 2015.

- 3.3. Arbitral Proceedings were commenced by Arbitrator on 19 November 2015 by issuance of a notice by email to the Respondent directing him to file his response to the Complaint by 05 December 2015.
- 3.4. In the same notice, the Complainant was also asked to provide soft copy of the Complaint to expedite the proceedings, which was duly complied with. But Respondent failed to file any response to the original notice, therefore a new timeline was provided for filing of the Response, as 15 December, 2015 to the Respondent.
- 3.5. The hard copy of the Notice could not be delivered due to incomplete/false WHOIS provided but soft copy of the Complaint was duly served upon the Respondent on 19 November 2015 itself by the Complainant. But the Respondent still failed to file any response.
- 3.6. No personal hearing was requested / granted / held.
- 3.7. The language of these proceedings is in English.

#### **4. Factual Background:**

- 4.1. The complainant is the owner of rights to use PREVAGE as a Trademark for numerous goods (collectively the "PREVAGE Trademarks") and the goodwill associated with the PREVAGE Trademarks. Complainant is also the owner of the U.S. trademark registrations and that collectively are referred to as the PREVAGE Registrations. In addition to the rights that Complainant owns due to The Trademark Registrations, because of its use of the PREVAGE Trademarks, it has common law rights in both the U.S. and India as well.
  
- 4.2. United States Trademark registration numbers 3,012,294 and 3,319,345 were each issued in the name of Allergan, Inc, in respect of various products like non-medicated cosmetics namely, skin, hand, facial, body, lotions; non medicated facial, body, eye, hand, night, wrinkle vanishing creams; non-medicated skin bleaching preparations; non medicated anti-aging preparations and skin depigmentation preparations; non-medicated topical protectants; non-medicated cosmetics, namely, hair, non-medicated sunburn and foot lotions and oils, etc.

- 4.3. By virtue of an assignment recorded in the United States Patent and Trademark office at Reel 4664, Frame 0463, Allergan, Inc. assigned to PCR Technology Holdings, LC its entire interest in, including the Goodwill associated with, the PREVAGE Trademarks that are the subject of the PREVAGE Registrations. By virtue of an assignment recorded in the United States Patent and Trademark office at Reel 4644, Frame 0470, PCR Technology Holdings, LC assigned to Complainant its entire interest in, including the Goodwill associated with, the PREVAGE Trademarks that are the subject of the PREVAGE Registrations.
- 4.4. The complainant is the current owner of both the PREVAGE Registrations and all rights in, including the goodwill associated with, the PREVAGE Trademarks. The Complainant and its predecessors in interest began using PREVAGE as a trademark for than 10 years ago, and the PREVAGE Trademarks have become among the most world renowned marks in the beauty and cosmetics industries.
- 4.5. The Complainant continues to use the PREVAGE Trademarks and to invest extensive resources to protect and to promote its brand, including but not limited to using it on the website: <http://www.elizabetharden.com/>. Additionally, Complainant has

dedicated a separate domain name entirely to the PREVAGE brand  
:<<http://www.prevageskin.com/>>.

5. **Parties Contentions:**

5.1. **The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights**

**Complainant:**

5.1.1. The Disputed Domain Name that Respondent registered encompasses the sole word of the trademarks identified in each of the PREVAGE Registrations that are listed in the above table. The only other term in the Disputed Domain Name is "skin", which as Annexures show, is an intended site of application of products sold under the PREVAGE Trademarks.

5.1.2. The Disputed Domain Name that Respondent registered is identical to Complainant's earlier registered domain name, <<http://www.prevageskin.com/>>. According to the WhoIs database of domain name registrar Ascio Technologies Inc., the domain name <<http://www.prevageskin.com/>> is

registered to complainant and has been registered since June 14, 2005, approximately nine years prior to the registration of the Disputed Domain Name. Other than the dot in ccTLD the disputed domain name http www.prevageskin.in is identical to complainant www.prevageskin.com domain name.

- 5.1.3. Consumers routinely search for sellers of famous products by use of famous trademarks in search engine queries. Therefore, any use of the Disputed Domain Name, which is identical to the Prevage trademarks as well as the www.prevageskin.com domain name registered to complainant, would likely cause confusion amongst consumers who would come across the Disputed Domain Name of a website affiliated therewith.

**Respondent:**

- 5.1.4. The Respondent did not submit any response.

**5.2. The Respondent has no rights or legitimate interests in respect of the disputed domain name**

**Complainant:**



- 5.2.1. The Complainant's first use of the PREVAGE Trademarks with the goods and services recited in each of Complainant's registrations predates Respondent's registration of the Disputed Domain Name, which occurred on September 7, 2014.
- 5.2.2. Upon information and belief, there is no evidence that Respondent has used or made the demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with bona fide offering of goods or services.
- 5.2.3. Upon information and belief, there is no evidence that Respondent Liheng has been commonly known by the Disputed Domain Name.
- 5.2.4. Upon information and belief, there is no evidence that Respondent's organisation, Just Traffic Supervision Consulting, has been commonly known by the Disputed Domain Name.

5.2.5. Upon information and belief, there is no evidence that Respondent is making a legitimate or non-commercial or fair use of the Disputed Domain Name without the intent for commercial gain by misleading diverting customers or tarnishing the Trademark or Service Mark at issue.

5.2.6. Respondent's lack of current business interests or Intent for use of a future business that makes use of the Disputed Domain Name is clear evidence of a lack of a legitimate interest in using that domain name.

**Respondent:**

5.2.7. The Respondent did not submit any Response.

**5.3. The disputed Domain Name has been registered or is being used in Bad Faith**

**Complainant:**

5.3.1. Upon information and belief, the Disputed Domain Name was registered or acquired by primarily for the purpose of selling,

renting or otherwise transferring the registration for the Disputed Domain Name to the Complainant, which is the owner of the PREVAGE Trademarks.

5.3.2. On December 20, 2014, Complainant received an e-mail, provided as Annexure, offering to permit Complainant to purchase the Disputed Domain Name.

5.3.3. The submission of a request to the Complainant to purchase a domain name that is nearly identical to its registered trademarks and is identical to one of Complainant's most prominent domain names is clear evidence of bad faith.

**Respondent:**

5.3.4. The Respondent did not submit any Response.

**6. Discussions and Findings**

6.1. The Arbitrator has reviewed the Complaint and the Response along with all the documents filed before it by the complainant.

- 6.2. The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 6.3. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.
- 6.4. Complainant company was originally established a century ago by the founder Miss Elizabeth Arden. Miss Arden created skincare products that benefited, not masked, the skin. She not only promoted her concept of Total Beauty, including diligent skincare, nutrition and fitness, but lived it prudently as she persistently sought to bring a scientific approach to skincare formulations.

- 6.5. Complainant had first registered "PREVAGE" as Trademark in USA in the year 2005 and it forms part of its .com Domain Name as well in combination with term 'Skin' as PrevageSkin.com. Complainant adds the only other term in the Disputed Domain Name "Skin", as supported by the documents, is an intended site of application of products sold under the PREVAGE Trademarks. In the matter of Elizabeth Arden, Inc. v. Zhao Jiafei, it was held that the term is highly related to the Complainant's skin care product so it does not differentiate the disputed domain name from the trademark, to the contrary it may enhance confusion with the consumer [WIPO Case No D2015-1344]. Therefore, undoubtedly, the disputed domain name is confusingly similar to the Complainant's Trademark.
- 6.6. Over these years, PREVAGE Trademark has become amongst the most world renowned marks in the beauty and cosmetic industries. The Complainant's .com domain name was also registered in year 2005 itself, while the Respondent's .IN Domain has been registered in 2014, after a gap of 9 years. The domain extension doesn't matter, as it is technically required for the operation of a domain name, and thus it is without legal significance in an inquiry of similarity.

- 6.7. There is no showing that before any notice to the Registrant of the dispute, the Registrant'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. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes since its registration in 2014, but leads to a parking page displaying PPC (pay per click) advertising links. It has been held that merely registering the domain name is not sufficient to establish right or legitimate interests. [Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244].
- 6.8. It is well established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the Domain Name to rebut this presumption. But the Respondent has failed to come forward with a Response and therefore, in light of Complainant's unrebutted assertion that Respondent has no rights or legitimate interests in the disputed domain name, the Arbitrator may presume that no such rights or interests exist. [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221].

- 6.9. In the WIPO matter of Paris Hilton v. Deepak Kumar, [WIPO Case No. D2010-1364], if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill."
- 6.10. It seems the Domain Name has been parked to earn commission from affiliate links, which are competitive to the Complainant's product using keywords such as Serum for Skin, Skin Lotion, Skin Care and so on. Therefore, cannot be referred as legitimate or non-commercial or fair use of the Disputed Domain Name without the intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's Trademark. Therefore, it can be concluded that the Respondent has no rights or legitimate interests in respect of the domain name.
- 6.11. By using the disputed domain name, the Respondent has intentionally attempted to attract Internet users to the said website, by creating a likelihood of confusion with the Complainant's

Trademark as to the source, sponsorship, affiliation, or endorsement of the said website and of a product or service on the Respondent's website. It has been held that "where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration". [Lego Juris V Robert Martin, INDRP/125 - lego.co.in]

6.12. There is no evidence on record or otherwise from the WHOIS, therefore, it cannot be concluded the Respondent or his company are commonly known by the Disputed Domain name. In the matter of Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum February 10, 2003) it was held: "nothing in Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as one factor in determining that Policy paragraph, does not apply to the Respondent either.

6.13. Also the Respondent has been party to many domain disputes proceedings previously also against strong Trademarks and Respondent's email is indicated online as provided for over one thousand domain names for WHOIS, which cannot and can never be for any legitimate use. Obviously, the Registrant has registered the



disputed domain name too, in order to prevent the Complainant from reflecting the mark in a corresponding domain name, and Respondent has in fact engaged in a pattern of such conduct.

- 6.14. Furthermore, the evidence produced by the Respondent as to the email received in December 2014 offering to permit Complainant to purchase the Disputed Domain Name, is enough to conclude that the Disputed Domain Name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the registration for the Disputed Domain Name to the Complainant.
- 6.15. Moreover, Respondent registered a domain name comprising Complainant's trademark, combined with the term "skin", it is obvious that Respondent was aware of the Complainant at the time of registration, since the term "skin" is related to Complainant products.
- 6.16. Therefore, the Arbitrator concludes that the Complainant has established all the three essential elements to maintain its complaint being that the disputed domain name is identical or confusingly similar to its Trademark PREVAGE; the Respondent has no rights or legitimate interests in respect of the disputed domain name; the Disputed Domain Name was registered or is being used in bad faith.

## 7. Decision

- 7.1. For all foregoing reasons, the Complaint is allowed.
- 7.2. It is hereby ordered in accordance with INDRP policy that the disputed domain name <prevageskin.in> be transferred to the Complainant.
- 7.3. The parties shall bear their own costs.



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Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 1st January 2016

Place: New Delhi