



दिल्ली DELHI

P 080967

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

Schlumberger Limited, USA v. Mr. Manoj T, India

AWARD

1. The Parties

The Complainants are Schlumberger Limited, 277, Park Avenue, New York, USA and Schlumberger Asia Services Limited, Gurgaon, Haryana, India

The Respondent is Mr. Manoj T, Dhanpur, Bulandsahar, Uttar Pradesh 202392

2. The Domain Name and Registrar

The disputed domain name is <www.schlumberger.co.in>. The said domain name is registered with Directi Web Services Private Limited.

u

Procedural History

- (a) A Complaint dated March 21, 2011 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 April 21, 2011. 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 April 25, 2011 the Sole Arbitrator formally notified the Respondent of the Complaint. The Respondent was required to submit his defence within 15 days from the date of receipt of the letter, that is, by May 10, 2011 (taking 5 days each in the transit of the communication both ways). The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will proceed ex-parte.
- (d) The said communication has however been returned by the postal authorities with the remarks that, "In dhanpur there are many persons with this name. Please send with the father's name and the name of the area. Incomplete address. Hence returned." Thus, no reply has been received from the Respondent. Accordingly, the Respondent's default has been notified.

u

4. Factual Background

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

Complainant's activities

In these proceedings the Complainant is Schlumberger Limited, 277, Park Avenue, New York, USA. Schlumberger Asia Services Limited, Gurgaon, Haryana, India (a company incorporated under the Companies Act, 1956 of India) is a wholly owned subsidiary of the Complainant. The Complainant is an oilfield services company supplying technology, information solutions and integrated project management that optimizes reservoir performance for customers working in the oil and gas industries. The Complainant has two business segments. The first is Schlumberger Oilfield Services which supplies services formation evaluation through directional drilling, well cementing and stimulation, well completions and productivity to consulting software, information management and IT structure services that support core industry operational processes. The second segment is called WesternGeco. It is a seismic company and provides advanced acquisitions and data processing services.

Respondent's Identity and Activities

Respondent did not file any reply. 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 its name is Schlumberger Limited. The disputed domain name is <www.shclumberger.co.in>. Thus, the disputed domain name contains the complete name of the Complainant. The addition of the words "co" or "in" is insignificant. The word "Schlumberger" is registered as trademark/service mark of the



Complainant in many countries. Therefore, the Complainant is well known to its customers as well as in business circles as Schlumberger all around the world.

In support of its contentions, the Complainant has relied on the decisions in the cases of **Reuters Ltd., v. Global Net 2000 Inc.**, (WIPO Case No. D2000-0441); **Altavista Company v. Grandtotal Finances Ltd.**, (WIPO Case No. D2000-0848), **Playboy Enterprises v. Movie Name Company** (WIPO Case No. D2001-1201) wherein it has been held that the mere omission of one letter of a trade mark has no effect on the determination of confusing similarity between a trade mark and a domain name. Further that, in the case of **Farouk Systems Inc., v. Yishi**, Case No. 02010-0006 it has been held that the domain name wholly incorporating a complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the addition of other words to such marks.

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 "Schlumberger". 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.schlumberger.co.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 or service mark to promote competing or infringing products cannot be considered a *"bona fide offering of goods and services"*.

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name www.schlumberger.co.in or any trademark right, domain



name right or contractual right. Therefore, the Respondent has no legal right or interest in the disputed domain name.

6. Discussion and Findings

The Rules instruct 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.schlumberger.co.in> on March 30, 2010. The expiration date is March 30, 2011. The Complainant has been filed by the complainant on March 21, 2011. It appears that due to the pendency of the present Complaint, the Respondent has not renewed the domain name.

The trademark and/or service mark "Schlumberger" is registered in many countries of the world such as, Algeria, Argentina, Australia, Bolivia, Bangladesh, Brazil, Canada, China, Czech Republic, Denmark, Egypt, Finland, France, Germany, Ghana, Hong Kong, India, Italy, Japan, Malaysia, Morocco, Mexico, Nigeria, Pakistan, Russia, South Africa, Sri Lanka, Thailand, United Kingdom, United States, etc. in various classes. The applications of the Complainant are also pending registration of the trade make "schlumberger" in many



countries.

In India the trademark "Schlumberger" is registered since 1989 in classes 1, 7, 9, 12, 13 and 16, that is, for "Products for completing wells, including cementing additives such as retarders dispersants, fluid loss agents, gas migration preventors, weighting agents, extenders, loss circulation materials, antifoaming agents, foaming agents, salt compatibility agents, and accelerators, etc."

The present dispute pertains to the domain name <www.schlumberger.co.in>. The Complainant possesses a large number of other domain names with the word "schlumberger" as indicated above. The Complainant is also the owner of trademark/service mark "schlumberger". Most of these domain names and the trademarks/certification marks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is very much similar or identical to these domain names and the trademarks/service marks of the Complainant.

Therefore, I hold that the domain name <www.schlumberger.co.in> is 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
- (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

fel

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 disputed domain name. Schlumberger is the name and mark of the Complainant. The trade mark "Schlumberger" has acquired unique importance and is associated with the Complainant. A mention of the said trade mark/service mark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Manoj T. 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. I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

It has been held in the cases of **American Home Products Corporation vs. Ben Malgioglio**, WIPO Case No. D20000-1602 and **Vestel Elektronik Sanayi Ve Ticaret As vs. Mehmet Kahvect**, WIPO Case No. D2000-1244 that a passive holding of a domain name is an evidence of a lack of legitimate rights and interests in that name.

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 Respondent's registration of the domain name www.schlumberger.co.in is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The Complainant has further contended that the Respondent can transfer or sell the domain name to some competing interest of the Complainant who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant's company.

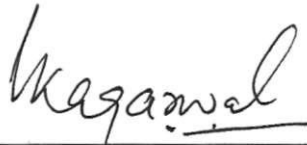
The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the

ld

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, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.schlumberger.co.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 17th May 2011