



उत्तर प्रदेश UTTAR PRADESH

AW 005105

BODHISATVA ACHARYA
ARBITRATOR

(Appointed by IN Registry-National Internet Exchange of India)

Case No. Of 2010

ARBITRATION AWARD: DISPUTED DOMAIN NAME : < SHUUEMURA.CO.IN >

In the matter of:
L' OREAL
14, rue royale
75008 PARIS (FR)
France

Filed by its authorized representative attorney -
NAMESHIELD,
27 rue des arenes
49100 Angers
France
Email- domain@nameshield.net

...Complainant.

BA

Vs.

Corporate Domains
Rimi Sen
76 Ninth Avenue
10011 New York
US
Email: domain@india.com

.....Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is L' OREAL
14, rue royale, 75008 PARIS (FR), France filed by its authorized
representative attorney NAMESHIELD, 27 rue des arenas, 49100
Angers France.

Respondent in this arbitration proceeding is Corporate Domains, Rimi Sen,
76 Ninth Avenue, 10011 New York, US
Email: domain@india.co.in

2. The Domain Name, Registrar & Registrant:

The disputed domain name is www.shuuemura.co.in



3. Procedural History:

The complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name www.shuuemura.co.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed Mr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on September 4th, 2011 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on September 6th, 2011, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the November 3rd, 2011 as Ex-parte.

4. Factual Background:

(a) SHU UEMURA is a famous L'Oreal's brand. The brand SHU UEMURA is developing its international activity in three areas: makeup, skincare and accessories business. The brand is best known in numerous countries in Asia. Its flagship products; Shu Uemura Cleansing Oil, Makeup UV Underbase Mousse, Mascara Eye Lash Curler, facial lines Depsea Water, LIFO and Beta-Glucan Therapy

(b) L'Oreal Owns numerous trademark registrations with the term "SHU UEMURA" in several countries and its Indian trademarks, such as:

Trademark	Country	Registration Number	Date of Registration
SHU UEMURA	India	1889383	27.11.2009
SHU UEMURA	International	1027071	26.11.2009
SHU UEMURA	International	1030415	01.02.2010
SHUSU SLEEK SHU UEMURA	International	1030814	12.01.2010
SHU UEMURA	US	1394564	27.05.1986

L'Oreal owns and communicates on the internet through various websites in the worldwide. The main one is www.shuuemura.com (registered on

22/03/2003), but L'Oreal has also registered numerous domain names similar to trademark "SHU UEMURA" such as:

Shuueemura-usa.com	registered on 30/05/2001
Shuueemura.asia	registered on 22/11/2007
Shuueemura.us	registered on 07/01/2004
Shuueemura.cn	registered on 04/02/2004
Shuueemura.de	registered on 27/11/2007
Shuueemura.fr	registered on 26/01/2010
Shuueemura.hk	registered on 28/07/2009
Shuueemura.jp	registered on 26/03/2001

(c) The disputed domain name <shuueemura.co.in> has been registered on 12/03/2011 by Corporate Domains. We contend that this domain name is identical to the trademark "SHU UEMURA"

(d) Lastly the complainant filed this complaint for Arbitration proceeding and the complaint was produced before the Arbitrator on September 4th, 2011 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on September 6th, 2011, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the November 3rd, 2011 as Ex-parte.

5. Parties Contentions:

(a) Complainant contends that

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.



(b) Respondent contends that

The respondent gave no response and produced no reply.

6. Discussion & Findings:

- (i) That SHU UEMURA is a well-known brand in worldwide especially in activities in of makeup, skin care and accessories business. L'Oreal owns and communicates its products on the internet through various websites in the worldwide. The main one is www.shuueamura.com (registered on 22/03/2003). Moreover, the term "SHU EMURA" is known especially in relation to the L'Oreal. It has no meaning whatsoever in English or in any other language. A Google search of word "SHU UEMURA" displays several results, related to the company L'Oreal. On those facts, L'Oreal contends the disputed domain names are identical to its trademark "SHU UEMURA" for which it has provided registration certificates as prima facie evidence of its validity.
- (ii) L'OREAL argues 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 disputed domain name. In the WIPO case No. D2003-0455."Croatia Airlines d.d.v. Modern Empire Internet Ltd.", a complainant is required to make out a prima facie case is made; 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 4(a)(ii) of the URDP.* According to the .IN policy, the Respondent doesn't use this domain name and has no provided a bona fide offering of goods or services or legitimate use of the domain name. We content that the Respondent registered this domain name only in purpose of sale. Therefore, L'OREAL contends that no bona fide offering of goods or services or legitimate use the domain name.



- (iii) L'OREAL contends that its trademark "SHU UEMURA" is well known in the world, especially in the United States which the Respondent lives (76 Avenue 10011 New York US). Therefore, L'OREAL argues that the Respondent was aware of the Complainant's brand and tried to create a likelihood of confusion by registering domain name that were identical to the trademark in which the complainant has rights. *Using the domain names for the purpose of displaying links for commercial gain under the circumstances discussed is evidence of bad faith use. See HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager. WIPO Case No. D2006-0062.* In addition, according his twitter twitter.com/domainbiz it seems that the Respondent registers domain name only in purpose of sale.

7. Decision:

Hence the Arbitrator decides, 'the Disputed Domain Name www.shuuemura.co.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.shuuemura.co.in shall be transferred to the Complainant with immediate effect.


BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI 02/11/2011

DATED: November 3rd, 2011,
PLACE: NEW DELHI,
INDIA.

