

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100



सत्यमेव जयते

ONE
HUNDRED RUPEES

भारत INDIA

INDIA NON JUDICIAL

தமிழ்நாடு தமில்நாடு TAMILNADU

19607

D. SARAVANAN
Advocate, Arbitrator & Mediator
"Orient Chambers", No. 69 (Old No. 73),
4th & 5th Floor, Armenian Street,
Chennai - 600 001.

AD 538747
P.S. SHANMUGA SUNDARAM
STAMP VENDOR,
L No B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

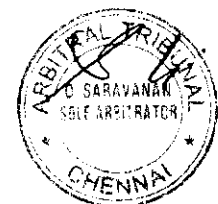
Disputed Domain Name: < www.cma-cgm.co.in >

M/s CMA CGM,
4, Quai d'Arenc,
13002 Marseille,
France

...Complainant

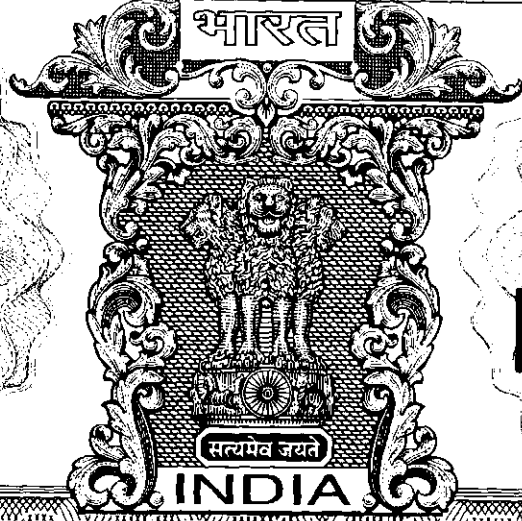
Versus

1. Mr.Ding RiGuo,
8F, No.199 Shifu Road,
318000 Taizhou,
Zhejiang,
China



भारतीय गैर न्यायिक

पचास
रुपये
₹.50



FIFTY
RUPEES
Rs.50

INDIA NON JUDICIAL

தமிழ்நாடு தமில்நாடு TAMILNADU

D. SARAVANAN

Advocate, Arbitrator & Mediator
"Invent Chambers", No. 90 (Old No. 72)
5th & 5th Floor, Arambam Street
Chennai - 600 081

AD 538987

19643
12 2 MAY 2013

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2. Thomas, Registrant
Shaklee Software,
Flat B, 15/F,
Winsun Building,
Sanhplane No.2,
Hong Kong- 999077

...Respondents

1. The Parties:

The Complainant is a Joint Stock Company duly organized under the laws of France, having its principal place of business at 4, Quai d' Arenc, 13002 Marseille, France.

The 1st Respondent is Ding RiGuo, having place of communication at 8F, No.199 Shifu Road, 318000 Taizhou, Zhejiang, China. The 2nd respondent is Thomas,



Registrant, having place of communication at Shaklee Software, Flat B, 15/F, Winsun Building, Sanhoplane No.2, Hong Kong- 999077

2. The Domain Name and Registrar:

The dispute domain name : < www.cma-cgm.co.in >

The disputed domain name is registered with National Internet Exchange of India (NIXI).

3. Procedural History:

- | | |
|---------------------------|---|
| September 04, 2013 | The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure. |
| September 04, 2013 | Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure. |
| October 03, 2013 | Notice was sent to the Respondents by e-mail directing them to file their response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry. |
| October 14, 2013 | Due date for filing response. |
| October 17, 2013 | Notice of default was sent to the respondent notifying their failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry. |

4. Factual Background

4.1 The Complainant:

The Complainant is a Joint Stock Company duly organized under the laws of France, having its principal place of business at 4, Quai d' Arenc, 13002 Marseille, France. The Complainant is Joint Stock Company. The authorized representative of the



Complainant is M/s K.G.Bansal & Co, Advocates, High Court and Supreme Court having office at 52, Sukhdev Vihar, Mathura Road, New Delhi- 110025.

4.2 Complainant's Activities:

(i) The Complainant is a Joint Stock Company doing business of shipping and shipping related services such as (a) Delmas, ANL and MacAndrews shipping services; (b) extensive vessel and container fleets; (c) hazardous cargo solutions; (d) multimodal services; (e) railway, river and road freight; (f) container fleet management; (g) Supply chain solutions and special transport services.

(ii) The Complainant offers efficient services and innovative products such as shipping lines dedicated to certain markets, eco friendly bamboo floor containers and information technology tools like the eco calculator.

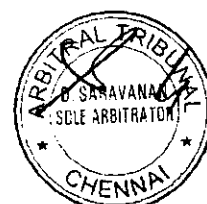
(iii) The Complainant company was founded by Jacques R.Saade' in 1978 and presently it is the third largest container shipping group having offices and agencies in more than 150 countries, 170 shipping lines.

4.3 Complainant's Trading Name:

(i) The Complainant has obtained trade mark registrations of the word CMA CGM across various countries around the world.

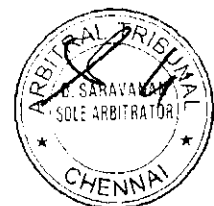
(ii) The Complainant has also registered its mark CMA CGM in India under Classes 12, 37 and 39 under trade mark registration number 1408620.

(iii) Following is the list of trademarks registered by the Complainant in various countries.



LIST OF REGISTERED TRADE MARK

S. No.	Trade Mark	Registration No.	Date	Class	Country
1.	CMA CGM	113872760	9/11/2011	12,37,39	France
2.	CMA CGM (planisphe're en couleurs)	2474917	17/11/2011	37	Argentina
3.	CMA CGM (planisphe're en couleurs)	2474921	17/11/2011	12	Argentina
4.	CMA CGM (planisphe're en couleurs)	2474919	17/11/2011	39	Argentina
5.	CMA CGM (planisphe're en couleurs)	879781	22/12/2005	12,37,39	Australia
6.	CMA CGM (planisphe're en couleurs)	879781	22/12/2005	12,37,39	Bahreïn
7.	CMA CGM (planisphe're en couleurs)	828032270	23/12/2005	12	Brazil
8.	CMA CGM (planisphe're en couleurs)	828032335	23/12/2005	37	Brazil
9.	CMA CGM (planisphe're en couleurs)		23/12/2005	39	Brazil
10.	CMA CGM (planisphe're en couleurs)	TMA700256	06/07/2007	12,37,39	Canada
11.	CMA CGM (planisphe're en couleurs)	76083, 76084 79171	19/12/2005 19/12/2005 24/01/2007	37 39 12	U.A.E

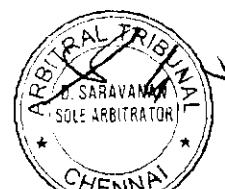


12.	CMA CGM (planisphe're en couleurs)	043327980	06/12/2004	12,39,43	France
13.	CMA CGM (planisphe're en couleurs)	053366726	23/06/2005	12,16,36,37, 38,39,41,43	France
14.	CMA CGM (planisphe're en couleurs)	300552599	21/12/2005	12,37,39	Hong Kong
15.	CMA CGM (planisphe're en couleurs)	1408620	23/12/2005	12,37,39	India
16.	CMA CGM (planisphe're en couleurs)	879781	22/12/2005	12,37,39	Japan
17.	CMA CGM (planisphe're en couleurs)	952301 979960 975741	19/12/2007	39 12 39	Mexico
18.	CMA CGM (planisphe're en couleurs)	879781	22/12/2005	12,37,39	Russia
19.	CMA CGM (planisphe're en couleurs)	879781	22/12/2005	12,37,39	Singapore
20.	CMA CGM (planisphe're en couleurs)	TM296283 SM33138 SM33273	21/12/2005	12 37 39	Thailand

5. Respondent's Identity and activities:

The 1st Respondent is Mr.Ding RiGuo, 8F, No.199 Shifu Road, 318000 Taizhou, Zhejiang, China.

The 2nd Respondent is Thomas having his office at Shaklee Software, Flat B, 15/F, Winsun Building, Sanhplane No.2, Hong Kong- 999077.



6. Dispute

The dispute arose when the Complainant came to know about unauthorized registration of the domain name www.cma-cgm.co.in through WHOIS search by the 1st respondent which registration has been subsequently transferred in the name of the 2nd respondent.

7. Parties contentions:

A. Complainant:

(i) The Complainant states that the respondents have without express leave and license of the Complainant have been hosting and managing online site under domain name www.cma-cgm.co.in.

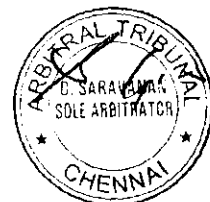
(ii) The Complainant avers that the respondents have dishonestly, wrongly, illegally and fraudulently obtained the registration of the impugned domain name.

(iii) The Complainant states that the respondents were very much aware of the existence of such domain name and registration of the disputed domain name subsequently amounts to fraud and mala fide intention of making profit from the goodwill of the trade mark.

(iv) The Complainant also states that the 1st Respondent had offered to sell the impugned domain name and earn profits by trading upon the Complainant's trade mark. The 1st respondent has failed to respond to the legal notice dated 27th March, 2012 issued by the complainant.

B. Respondents:

The Respondents did not submit any response.



8. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondents had received the notice of this Arbitral Tribunal?

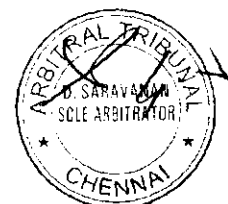
Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondents had been notified of the complaint of the Complainant. However, the Respondents did not choose to submit any response and that non-submission of the Response by the Respondents had also been notified to them on 17.10.2013.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

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

(a) Identical or confusing similarity:

i. The Arbitral Tribunal finds that the trade mark "CMA CGM" and the disputed domain name www.cma-cgm.co.in are confusingly similar and identical. The Complainant has established beyond doubt that it is the lawful owner of the trademark "CMA CGM". The Arbitral Tribunal in its various decisions categorically held that mere addition or substitution of descriptive suffix or prefix like '.com' or '.co' or '.in' does not make a trade mark distinctive.



ii. The respondents' unwarranted registration of the impugned domain name with NIXI identical to Complainant's trade mark is clearly an offence under laws of India.

iii. The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondents' Right or Legitimate Interest:

(i) The Complainant contends that the Respondents had no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondents' rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondents had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondents had not chosen to do so and had not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondents to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondents to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondents had failed to rebut the presumption of absence of rights or legitimate interests.

(ii) Based on the records filed by the Complainant and the WHOIS Database Search marked as ANNEXURE A-2 and ANNEXURE A-3, the Arbitral Tribunal is satisfied that both the respondents had registered the domain name without any authorization and also intends to sell the domain name.

(iii) The Arbitral Tribunal is satisfied that the Respondents have no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.



(c) Registration and Use in Bad faith:

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the 2nd Respondent has engaged in a pattern of such conduct and the 2nd Respondent has intentionally attempted to attract, for commercial gain, internet users to the 2nd Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the 2nd Respondent's website or location or of a product or service on the 2nd Respondent's web site or location. It is the specific case of the Complainant that the respondents' modus operandi is by creation of the website under the registered www.cma-cgm.co.in mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

(ii) The Respondents had registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondents have no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

(iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that the Respondents' purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondents have no legitimate right or interest in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondents was simply to generate revenue, either by using the domain name for their own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability



of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

9. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal finds that the trade mark www.cma-cgm.co.in constitutes a valuable intellectual property right owned by Complainant, which is entitled to protection in law against misuse, misappropriation as well as dilution and thus orders that the disputed domain name <www.cma-cgm.co.in> be transferred to the Complainant.

Dated at Chennai (India) on this 25th October, 2013.


(D.SARAVANAN)
Sole Arbitrator