





## AWARD

### 1. The Parties

The Complainant is M/s Rado Uhren AG, Bielstrasse 45, 2543 Lengnau, Switzerland

The Respondent is Mrs. M. Changoe, Parklaan 83, Hoofddorp, NH 2132 BM, Netherlands.

### 2. The Domain Name and Registrar

The disputed domain name is <www.rado.in>. The said domain name is registered with the Registrar – Dynadot, LLC (IANA ID : 472), P.O. Box 345, San Mateo CA 94401, United States.

The details of registration of the disputed domain name (as per Annexure-C to the Complaint) are as follows:

- a. Domain ROID: D625924 – IN
- b. Date of creation: February 25, 2005
- c. Expiry date: February 25, 2022

### 3. Procedural History

(a) A Complaint dated 16<sup>th</sup> July, 2021 has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs 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 the undersigned Mr. P.K.Agrawal, Advocate and former Addl. Director General in the Government of India, as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

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- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were served by the National Internet Exchange of India on 6.8.2021 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint with annexures to the parties through email on 6.8.2021. The Respondent was given 10 days for reply to the complaint. Since the efforts to notify postmaster@rado.in failed, notice was again issued through email on 8.8.2021 to all parties including the Registrar of disputed domain. The Complainant sent the copies of complaint & annexures by courier to the Respondent on 7.8.2021 (delivered on 9.8.2021) and confirmed it through email on 9.8.2021 to all parties including the Registrar of the domain name. The Complaint and its annexures have thus been served properly through courier and email to the Respondents as per INDRP rules. Since, the Respondent has not responded to the repeated notices served through courier as well as emails the present proceedings have to be conducted ex-parte as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

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

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

##### **Complainant's activities**

The Complainant in this arbitration proceeding is RADO UHREN AG (Rado Watch Co. Ltd.) incorporated under the laws of Switzerland, which is fully owned by The Swatch Group Ltd and has its principal place of business at Bielstrasse 45, 2543 Lengnau, Switzerland. The Complainant is active in the manufacture of finished watches, jewellery, watch movements and components. It produces nearly all of the components necessary to manufacture the watches sold under its eighteen (18) watch brands and the multi-brand Tourbillon and Hour Passion retail labels, as well as the entire Swiss watchmaking industry. In addition, it operates its own worldwide network of distribution organisations. The Complainant is a key player in electronics systems sector. It is serving millions of customers worldwide.

The Complainant contends that their trademark RADO is a globally recognised Swiss watch brand famous for innovative design and its use of revolutionary materials. Schlup & Co. began selling watches under the





Rado brand name in 1950s. By the end of decade, it became an international brand with a presence in over 61 countries. The trademark was registered by USPTO in 1992, by the Govt of The Virgin Islands of the US in 2008, by OMPI (International) in 1951 and by the Registrar of Trade marks, India for application no. 210065 by SCHLUP & Co. Ltd in 1962 and for application no. 1450617 by RADO UHREN AG in 2006 (for use since 1977). The Complainant is doing business in various parts of the world including Europe, America and Asia.

The "RADO" mark has acquired a high degree of public recognition and distinctiveness among customers around the world and symbolizes valuable goodwill for the Complainant. The Complainant is well known to its customers as well as in business circles as "RADO".

### **Respondent's Identity and Activities**

The Respondent's activities, except the fact that she has offered the disputed domain name for sale through a website, are not known. The Respondent has not responded to the Notice and complaint.

## **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 the trademark "RADO" is a globally recognised Swiss watch brand. The Complainant is the owner of several trademarks for the distinctive and well-known mark "RADO". Complainant commenced selling watches under the RADO brand name as early as 1950s – long before the creation of the disputed domain <www.rado.in>. Since the inception of the RADO marks, Complainant has continually been using it in commerce and has gained, both common law and registered trademark rights.

The Complainant has been active in the Indian market at least since 1962 when the trade mark RADO was registered. By virtue of long-standing adoption and extensive use of the RADO marks by the Complainant in the Indian Market, Complainant's RADO marks have become well known and Complainant has established a reputation and commercial goodwill.



Further, in India the mark "RADO" + Logo was registered for the first time on July 17, 1962 in Class 14 vide registration No. 210065. Thereafter, one more trademark "RADO" was registered on May 11, 2006 vide Registration No. 1450617. This is besides registration in US vide number 1729207 on Feb 28, 1992 and international registration through OMPI vide number 154838 on July 10, 1951.

The Complainant is also carrying on its business activities under the said trademark RADO on the internet through its website / domain name <www.rado.com> which was created on 18<sup>th</sup> December 1995. The complainant's domain / website contains extensive information about the said goods and business under its said trademarks.

The Complainant contends that the disputed domain name contains the complete trademark, that is, "rado". The letters "in" following the trademark RADO in the disputed domain name makes no change. The addition of the ".in" gTLD in a domain name is insignificant. It does nothing to distinguish or alleviate confusion between the Complainant's trademark and disputed domain name <rado.in>.

Therefore, the disputed domain name is confusingly similar or identical to the registered trademark of the Complainant.

In support of its contentions, the Complainant has relied on the decisions in the cases of *Confederation Nationale du Credit Mutuel v. Domain Administrator, Fast Serv Inc. d.b.a. QHoster.com / Konate Asita*, WIPO-Case No. D2018-2748; *PUMA SE vs Christian Schmidt*, INDRP-Case No. INDRP/956, *Tata Motors Limited vs Mr. Shay Rahman*, INDRP-Case No. INDRP/929.

The Complainant has further contended that the addition of the .in-ccTLD may be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark (see *PUMA SE vs Christian Schmidt*, INDRP-Case No. INDRP/956). Thus, the Disputed Domain is indisputably confusingly similar under the Policy

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any legitimate interest in using the disputed domain name. The Respondent (as an individual, business, or other organization) has not been commonly known by the mark "RADO". The Respondent does not own any trademark registration for "RADO". The Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use <rado.in> domain name or the RADO Mark. The Complainant discovered that disputed domain name resolved into a website operated by the Admin "Royal Domains Inc", where the disputed domain was offered for sale



for a very high price of USD 24,500 since 29<sup>th</sup> Aug, 2012.

Further, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. There is no relationship whatsoever between the Complainant and the Respondent. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public. The use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*". In response to the Cease-and-Desist Notice dated 21.6.2021, the lawyer of the Respondent replied that- "the client wishes to use the domain herself" making it clear that the Respondent and Royal Domains Inc, now Admin, have only acquired the disputed domain to later sell it with the aim of financial gain.

Apart from being a given a name or surname, the term "RADO" does not have a generic meaning. Consequently, where the "RADO" mark is widely known and associated to the Complainant, no legitimate use of a domain slowly comprising "RADO" is permissible.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

In support of its contentions, the Complainant has relied on the decision in the case of *PUMA SE vs Christian Schmidt*, INDRP-Case No. INDRP/956.

Regarding the **element (iii)**, the Complainant contends that the main object of registering the domain name <www.rado.in> by the Respondent is to mislead the customers of the Complainant and earn undue profits by selling it. The Respondent has not demonstrated any preparations to use the domain name or a name corresponding to the domain name in connection with any bona fide offering of goods or services. The Respondent is not commonly known by the domain name or is engaged in any business activity associated or related with the trademark "RADO" of the Complainant. The fact that Royal Domains Inc offers numerous domains consisting of world famous brands in combination with the .in-ccTLD such as <swissair.in>, <thaiair.in>, <gulfair.in> and <skyfm.mob> for sale on exorbitant price in the range of USD 22000 to USD 30000 only leads to the conclusion that this organization is cybersquatter.

Further that, according to the Complainant, the Respondent has, through Royal Domains Inc, offered the disputed domain name for exorbitant price of USD 24,500. It indicates that an entity has registered or acquired a domain name primarily for the purpose of selling, renting or otherwise transferring the domain name to someone in bad faith.



In support of its contentions, the Complainant has relied on the decision in the case of *Tata Motors Limited vs. Mr. Shay Rahman*, INDRP Case no. INDRP/929, *ByteDance Ltd. Vs Jing Ren*, INDRP Case no. INDRP/1228, and *Deloitte Touche Tohmatsu vs Lina Doublefist Ltd.*, INDRP Case No. INDRP/1032 wherein it has been held that "So long as the Respondent registers any domain name which is not infringing any third party rights, registering and selling domain name (sic) may become legitimate and lawful activity. However, when it is purposeful act to gain profits on the basis of business standing, reputation and credentials of others, this business cannot be considered as legitimate and lawful. This confirms the bad faith in registering disputed domain (sic) name in terms of INDRP". Thus, the facts of the case strongly demonstrate that Respondent has registered and used the <rado.in> domain in bad faith.

## **B. Respondent**

The Respondent did not submit any evidence or argument indicating her relation with the disputed domain name <www.rado.in> or any trademark right, domain name right or contractual right.

## **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 by the parties 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 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's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.





#### **A. Identical or Confusingly Similar**

The disputed domain name <www.rado.in> was registered by the Respondent on February 25, 2005. It will expire on February 25, 2022.

The Complainant is an owner of the registered trademark "RADO" in many countries including India for the last more than 50 years. The Complainant is also the owner of other domains as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <rado.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for "RADO" products in India or elsewhere would mistake the disputed domain name as of the Complainant.

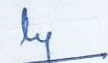
In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <www.rado.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

#### **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 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; or





- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without 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. The name of the Registrant / Respondent is Mrs. M. Changoe. 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.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "RADO" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide 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.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <www.rado.in> under INDRP Policy, Paragraph 4(ii).

### **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 Registrant 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 bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or

- (ii) the Registrant 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 the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. 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. It may also lead to deceiving and confusing the trade and the public.

The fact that the Respondent offered to sell the disputed domain name for an exorbitant price also indicates that the domain name was registered by the Respondent in bad faith.

The foregoing circumstances lead to the conclusion that the domain name in dispute 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 the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the





disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.rado.in> be transferred to the Complainant.

No order to the costs.



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**Prabodha K. Agrawal**

**Sole Arbitrator**

Dated: 19<sup>th</sup> August, 2021