



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl. No. 7A30 Dt. 21/11/14

Sold to Harini Narayan Swamy

Sto, Dto, W/o B. Narayan Swamy R/o Hyd

To Whom Self

K. Geetha Rani
BH 322732

KODALI GEETHA RANI

Licensed Stamp Vendor

Licence No 16-04-1/2013

8-3-191/132 167/C Behind E-Seva
Jangal Rao Nagar, Hyderabad (South)

Cell: 94920 25252

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

In The Matter Between

Midea Group Co. Ltd.
B26-28F, Midea Headquarters Building
No. 6 Midea Avenue
Beijiao, Shunde, Foshan, Gangdong
P.R. China

COMPLAINANT

Versus.

Alexander K. Dobrenkov
A-812a, Main Building, Leninskie Gory
Moscow, 119992
RU

RESPONDENT

Harini Narayan Swamy

1. The Parties

The Complainant is Midea Group Co. Ltd. of Gangdong, P.R China, represented in these proceedings by Mr. Paddy Tam of CSC Digital Brand Services Group AB of Sweden. The Respondent is Alexander K. Dobrenkov of Moscow, Russia.

2. The Domain name, Registrar and Policy

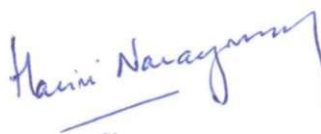
The present Arbitration proceeding pertains to a dispute regarding the domain name <midea.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Dynadot LLC. The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN registry on September 12, 2017 and on September 14, 2017 communicated by email, a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given three weeks from the date of the notification to file a response. There was no response from the Respondent.

Factual Background

The Complainant is in the business of manufacturing electrical appliances and has its headquarters in Beijiao, in South China. The Complainant uses the trademark MIDEA in connection with its business and owns trademark registrations in several jurisdictions. The Complainant’s registered trademark are:



Trademark	Jurisdiction / TM Office	Registration No.	Class
MIDEA	IN	890972	11
MIDEA	EU	001792605	7,9,11
MIDEA	US	2619399	11
MIDEA	CA	TMAS570076	7,9,11
MIDEA	WO (LV, LU, VN,HR,RO LS,LR,DZ,HUMG,ME MK ZM, DE, UZ MC, MD,MA, AT,MN,AZ,IT,BA,PT,UA,ES,NL,EG,AL,A M,BW,BY,GE,TJ,BT, TM,BG,FR,ST,SZ,BE,SX,BQ,KG,KE,SD,C Z,KP,CW,CU,SI,SL,SK,SM,KZ,PL,RS,RU, CH, LI)	751860	7,9,11

The Respondent registered the disputed domain name <midea.in> on March 11, 2012. The main content displayed on the webpage that the disputed domain name resolves to, is a message stating, “We are coming soon. We are working very hard on the new version of our site. It will bring a lot of new features. Stay Tuned!”

The Parties Contentions

A. Complainant’s Submissions

The Complainant states it was established in 1968 and is a public listed company that offers a comprehensive range of home appliances. The Complainant manufacturers

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equipment for air treatment, refrigeration, laundry, large cooking appliances, large and small kitchen appliances, water appliances, floor care and lighting appliances. With its headquarters in South China, the Complainant states it is a global company with over 10,000 employees and has operations in more than 200 countries. The Complainant states it has 21 production facilities and 260 logistics centers worldwide. In 2015, The Complainant states it posted a net revenue of over \$ 22.17 billion USD. Since July 2016, the Complainant states it is listed as a Fortune 500 company.

The Complainant states it has several high profile projects, and in 2016 it obtained an order to install sophisticated Heating Ventilation Air Conditioning (HVAC) solutions in 12 stadiums for sports in Brazil. The Complainant states it is a strong supporter of sport and is the sponsoring partner of FINA, the World's Swimming Federation. The Complainant states its products have been the recipient of numerous design awards that include Red Dot 2016, and 13 design wins at the 2016 iF Design Awards.

The Complainant states it has two Indian subsidiaries Midea Home Appliances (INDIA) Private Limited and Midea India Pvt. Ltd. and also has a joint partnership with Carrier, which is operating as Carrier Midea India Private Limited (CMI) that manufactures air conditioners and washing machines in Bawal, Haryana. The unit is operational from the year 2012, and has over 230, 000 square feet production capacity of 700,000 – 1,000,000 units.

The Complainant states that it has a high web presence through its primary website <midea.com>. According to the Complainant, its website received an average of 370,000 visitors in January 2017 as per SimilarWeb.com. The Complainant states its website has a global rank of 73,078 a rank 14,208 in China, and a rank of 158,192 in United States as per Alexra.com.

The Complainant states its mark is well known, and is recognized by consumers, industry peers, and the broader global community. The Complainant alleges that it has made significant investments over the years to promote and protect its mark and has advertised

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it through various forms of media, including the Internet. Based on the extensive use of its mark and its trademark registrations, the Complainant asserts that it owns the exclusive right to use the MIDEA mark.

The Complainant contends the Respondent's disputed domain name is identical or confusingly similar to a mark in which it has rights. Its trademark registrations are sufficient to prove its rights, and the ccTLD ".in" can be disregarded for assessing confusing similarity. The Complainant argues that as the disputed domain name contains the trademark in its entirety, identical or confusing similarity is established here.

The Complainant contends the Respondent has no rights or legitimate interests in disputed domain name. The Complainant states that its trademark registrations in numerous jurisdictions is evidence of its ownership in the MIDEA mark. The Complainant states that the Respondent is not authorized or licensed by the Complainant to use its mark, therefore the use of the mark by the Respondent without its permission violates its rights. The Complainant believes that the Respondent is not known by the disputed domain name and has no business by the name or any trademark rights in the name. The Complainant adds that the Respondent is not running a website or a business from the disputed domain name and the Respondent has no *bona fide* or legitimate interests in the disputed domain name. The Complainant states the disputed domain name has been put up for sale, and has filed evidence of the sale advertisement for the disputed domain name. Hoarding a domain name with a view to making financial gain is not legitimate use, argues the Complainant.

The Complainant states the disputed domain name has been obtained in bad faith as the Respondent's intention is to sell or transfer the disputed domain name to the Complainant for financial gain, which is recognized as bad faith under section 4(b)(i) of Policy. The Complainant further argues that the Respondent has registered several other domain names containing well known trademarks which shows a pattern of cybersquatting behavior. The Complainant states that the disputed domain name resolves to an inactive website, and argues that the Respondent's lack of use of the disputed domain name shows

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bad faith, as there is evidence of passive holding of a domain name containing a well-known mark by a party unconnected to the mark, which constitutes bad faith registration and use.

The Complainant argues that the disputed domain name must be considered to have been registered for causing confusion among Internet users as there is no plausible good faith reason for the registration of the disputed domain name except to cause confusion. The Complainant adds that the MIDEA trademark is known internationally, due to its prior adoption and substantial use. The Complainant states the Respondent had ignored the Complainant's attempts to resolve the dispute prior to the proceeding. Failure to respond could be indicative of bad faith on the part of the Respondent, states the Complainant. It is likely that the Respondent had knowledge of the trademark from all the facts submitted by the Complainant, and the Complainant requests for the transfer of the disputed domain name.

B. Respondent's Submissions

The Respondent did not respond in these proceedings. The Arbitrator notes that the case documents were sent to the Respondent's physical address, as given in the registration records of the disputed domain name. The consignment was returned by the courier company on September 16, 2017, stating that, "*nobody knows such a recipient at address provided for the subject shipment.*" There is also no response from the Respondent for the email sent by the Arbitrator on September 14, 2017, notifying the Respondent of the commencement of the arbitration proceedings.

Discussion and Findings

Under the INDRP Policy the Complainant has to establish the following three elements to succeed in the proceedings:

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

Identical or Confusingly Similar

The first element requires the Complainant to prove that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Arbitrator finds from the evidence, that the Complainant has adopted and used the MIDEA mark in relation to its business from the year 1968. The evidence of trademark registrations filed by the Complainant establish its ownership and use of the MIDEA mark and shows the Complainant's prior adoption and extensive use of the mark in commerce in several jurisdictions world-wide. The Arbitrator finds, based on the evidence on record, that the Complainant has established its rights in the MIDEA trademark. The disputed domain name incorporates the Complainant's mark in its entirety and it is identical to the mark. Internet users looking for Complainant online, are likely to be misled or confused as to the origin and ownership of the disputed domain name.

It is well established that if the disputed domain name contains the entire trademark, and if it is found that there is not even a single letter difference between the mark and the disputed domain name, confusing similarity is established as required under the INDRP Policy, See for instance *Oracle International Corporation v. Ritesh Galam*, INDRP 883 (<peoplesoft.in>) June 21, 2017, and *Kimberley Clark Worldwide Inc. v. Lin Yanxiao*, (<huggies.in>), INDRP Case No. 823, November 29, 2016 (where it was held that if the disputed domain name bears the complainant's registered trademark in its entirety, and is its essential and memorable feature, consumers are likely to associate the mark and the

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disputed domain name with the complainant) .The Arbitrator accordingly finds that the disputed domain name in the present case, is identical or confusingly similar to the Complainant's MIDEA trademark. The Complainant has successfully established the first requirement under paragraph 4 of the Policy.

Rights and Legitimate Interests

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The burden of proving rights and legitimate interest is on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, the Complainant prevails. The Complainant has argued that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent is not known by the disputed domain name, has no business by the name or any authorization to use its mark or any other rights and interests connected with the term "midea". The Respondent has not responded or rebutted the Complainant's allegations.

The INDRP Policy states that the Respondent can demonstrate legitimate interests in the disputed domain name if there are circumstances that show (i) that before notice of the dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Arbitrator finds there is no evidence on record to show any preparations are made by the Respondent to use the disputed domain name in connection with a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes any legitimate non-commercial fair use of the disputed domain name or any other evidence to show rights. The Arbitrator therefore finds, that the Complainant's unrebutted submissions prevail.

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Accordingly, the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has established the second requirement under paragraph 4 of the Policy.

Bad Faith

The third element of Policy requires the Complainant to establish the disputed domain name was registered in bad faith or is being used in bad faith.

The Complainant has provided evidence that the disputed domain name has been registered and is being used in bad faith. Such evidence includes the Respondent's advertising the disputed domain name for sale. The Respondent is also known to have registered several other domain names containing well-known trademarks which is indicative of a pattern of behavior widely considered bad faith under the Policy. The disputed domain name resolves to website that states it is yet to be constructed. The lack of use of the disputed domain name, incorporating the Complainant's well known mark indicates bad faith, as rightly argued by the Complainant, it is evidence of passive holding of a domain name containing a well-known mark by a party unconnected to the mark. Under the circumstances discussed, further inference of bad faith can be drawn from the fact that the Respondent had provided incorrect contact information, as the documents sent to the Respondent's address has been returned.

It is quite clear from the evidence, that the Complainant has shown its prior adoption and the use of the MIDEA mark in commerce for nearly four decades. The Respondent has registered a domain name that is virtually identical or confusingly similar to the Complainant's mark. The Respondent has not shown use the disputed domain name in connection with a *bona fide* offering of goods or services, or established any rights or legitimate interests in the disputed domain name. Registration of a domain name incorporating a known mark is an indication of the Respondent's intention to ride upon the goodwill and reputation attached to the mark. See *Robert Bosch GMBH v. Zhao Ke*, INDRP Case No. 894 (<bosch.in>), August 10, 2017. (Where it was found that, as the

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respondent has not established rights or legitimate interests in the domain name, adverse inference can be drawn about the respondent's adoption of the domain name that corresponds to a well-known mark, and consequently establishes the respondent's bad faith).

The Arbitrator finds from the entire circumstances and facts in the present case that: There is lack of evidence of any actual good faith use of the disputed domain name by the Respondent. Circumstances and the evidence on record indicates there is no reason to register the disputed domain name except to gain from the association with the Complainant's mark. It is reasonable to infer, under the circumstances discussed, that the Respondent has deliberately registered the disputed domain name using the Complainant's trademark with the intention to exploit it.

Based on the material on record, and the discussed facts and circumstances, the Arbitrator finds the Complainant has established that the disputed domain name has been registered and is being used in bad faith. Accordingly, it is found that all three elements required under paragraph 4 of the Policy has been satisfied by the Complainant to obtain the remedy of transfer of the disputed domain name.

Decision

In light of all that has been discussed, it is ordered that the disputed domain name <midea.in> be transferred to the Complainant.



Harini Narayanswamy

(Arbitrator)

Date: November 10, 2017