



हरियाणा HARYANA

K 485300

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Laboratoires Expanscience

10 avenue de l'arche,
92400 COURBEVOIE
France
domain@nameshield.net

.....Complainant

HUA AN HOLDINGS (H.K.) LIMITED

Room 14-05-301, West block, North

Hongkong 999077
HK

.....Respondent

Disputed Domain Name: www.mustela.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is **Laboratoires Expanscience** of 10 Avenue de l'arche, 92400 COURBEVOIE, France. The Complainant is represented by its authorized representatives NAMESHIELD, 27 rue des arenes 49100, Angers, France who have submitted the present Complaint.

The Respondent in this arbitration proceeding is **HUA AN HOLDINGS (H.K.) LIMITED**, Room 14-05-301, West block, North, Hongkong 999077, HK as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.mustela.in. The Registrar is Business Solutions, Accredited .IN Registrar, Adarsh Palace, First Floor, 118, Old Hanuman Lane, Kalbadevi Road, Mumbai, MH, IN - 400002.

The Registrant is HUA AN HOLDINGS (H.K.) LIMITED, Room 14-05-301, West block, North, Hongkong 999077, HK.

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on November 16, 2012 and the notice was issued to the Respondent on November 16, 2012 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. The Arbitrator granted further opportunity to the Respondent to submit its response on or before December 07, 2012. However, no response was submitted by the Respondent within the stipulated time or thereafter.



In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions

- a) MUSTELA is a famous Complainant's brand.
- b) Created in 1950, MUSTELA is the leading cosmetic brand in the European pharmaceutical market for baby products.
- c) Growing steadily, the Complainant now sells more than 10 million products a year throughout the world.
- d) Today, MUSTELA is sold in about forty countries, through its own subsidiaries or distributor companies.
- e) The Complainant owns numerous trademark registrations with the term "MUSTELA" in several countries and its Indian trademarks, such as:

Trademark	Country	Registration Number	Date of registration
MUSTELA	International	1889383	16.07.1951
MUSTELA	US	2029761	03.08.1995
MUSTELA	INDIA	274490	23.08.1971

- f) The Complainant owns and communicates on the Internet through various websites in the worldwide. The main one is "www.mustela.com" (registered on 03/12/1998), but the Complainant has also registered numerous domain names similar to trademark "MUSTELA" such as:

mustela.fr	registered on 20/02/2002
mustela.de	registered on 22/11/2007
mustela.hk	registered on 27/05/2004



mustela.us	registered on 15/05/2002
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- g) The disputed domain name < mustela.in> has been registered on 24/11/2011 by EAC INTERNATIONAL CO., LIMITED. On 06 May 2012, the Complainant received a request from "dostonames@gmail.com" regarding the sale of the domain name "mustela.in" through the platform SEDO.
- h) The Complainant submits that on their behalf, Nameshield contacted the Respondent by email to explain the dispute regarding this domain name. The Respondent provided a response that the domain name is only on sale for \$1790 USD.

5) Decision/s Upholding the Complainant's Rights

The Complainant has relied on the ratio decidendi in the following decisions:

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 that the 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 paragraph 4(a) (ii) of the UDRP..."

HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager. WIPO Case No.D2006-0062.

_"Using the domain names for the purpose of displaying links for commercial gain under the circumstances discussed is evidence of bad faith use.

Ferrari Sp.A v. American Entertainment Group. Inc , WIPO Case No.D2004-0673

"...it is reasonable to infer that the Respondent has registered the domain names with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic....".

6) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

7) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'MUSTELA' leads to the conclusion that the Complainant has superior and prior rights in the mark MUSTELA. Thus it can be said a) the web users associate the word MUSTELA with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at



the www.mustela.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'MUSTELA'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'MUSTELA' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'MUSTELA' trademark. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. The Respondent has simply parked its domain for sale.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'www.mustela.in'

- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn. The Respondent has used the domain name to place sponsored links for the purpose of misleading and diverting Internet traffic. Moreover, it has been alleged by the Complainant that the Respondent has demanded amount of US \$ 1790 from the Complainant, which is far more than its out-of-pocket costs for registration. This has not been rebutted by The Respondent. Thus it can be concluded that the Respondent Registered the Domain name for the purpose of selling or transferring the domain

name and is an evidence of bad faith registration. Registering a domain name for the purpose of selling or transferring the domain name for excessive consideration in my view is evidence of *bad faith* registration.

8) Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.mustela.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.mustela.in be transferred from the Respondent to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

12 December, 2012