



हरियाणा HARYANA

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**BEFORE THE
NATIONAL INTERNET EXCHANGE OF INDIA**

ARBITRATION AWARD

In The Matter Between

QLX, INC.
485, 7TH Avenue
Suite 507
New York
New York 10018
United States of America

Complainant

Versus.

JATIN
Bright Computer Sec 22 Village
Mollahera
Gurgaon 122015
India

Respondent

Navin Narayana

1. The Parties

The Complainant is OLX Inc. and is represented in these proceedings by CSC DigitalBrand Services AB, Helena Myrin, Saltmatargatan 7, Box 3396 , 103 68 Stockholm Sweden. The Respondent is Jatin, Bright Computers of Gurgaon India.

2. The Domain Name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <olxsales.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Webiq Domains Solutions Pvt. Ltd. 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 9, 2014 and on September 10, 2014 sent by email, a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent did not reply, respond or make any representation in these proceedings.

Factual Background

The Complainant is an American corporation that is incorporated under laws of the state of Delaware, and its principal place of business is in New York, United States of

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America. The Complainant operates online classified services and owns several domain names incorporating the trademark OLX including the domain name <olx.com>. The Respondent registered the disputed domain name <olxsales.in> on July 6, 2014.

The Parties Contentions

A. Complainant's Submissions

The Complainant states it enables buyers and sellers of goods and services to avail its free online classified advertisement services. The Complainant avers it was founded in 2006 and is presently one of the world's largest free online classifieds platforms that operates in the United States and internationally. The Complainant states OLX online classified services are used in 107 countries including India and is available in 42 languages. It claims to be the leading online classified platform in India where the Respondent is located. The Complainant states it maintains offices in Buenos Aires, Sao Paulo, Delhi, Lisbon and New York and operates subsidiaries in United States, Argentina and China. The Complainant states its websites receive more than 100 million monthly unique users and generates over 1.8 billion monthly page views or 60 million page views per day.

The Complainant states it has high rankings on "Compete" traffic" and "Alexra" traffic and avers that the OLX trademark has inherent and acquired distinctiveness. The Complainant asserts that its trademark is well established and well known amongst the general public and is well recognized by consumers, industry peers and the broader global community. The Complainant has filed copies of certificates of its International registered trademarks and Indian trademark application as evidence. By virtue of the registrations and the well-known character of the trademark, the Complainant states it has exclusive rights to use the trademark OLX in India and throughout the world.

The legal grounds under which the Complainant requests for transfer of the disputed domain name under the INDRP Policy are: The disputed domain name is identical or



confusingly similar to the Complainant's well known mark. The additional word "sales" is insignificant argues the Complainant, as it does not negate the confusing similarity between the domain name and Complainant's trademark. The Complainant cites the case *Ing.h.cF Porsche AG v. Rojeen Rayaneh*, WIPO Case 2004-0488 where it was stated that well-known marks paired with generic prefixes or suffixes are found confusingly similar to the mark.

The Complainant states it is the sole owner of the famous OLX mark, that is registered across the world and it is the dominant part of the disputed domain name. The disputed domain name can be mistaken as being associated, endorsed or affiliated with the Complainant and it exploits the goodwill and fame of the Complainant's OLX trademark. The Complainant refers to previous cases where the words "ad", "ads" or "repair" with the OLX trademark was found not to distinguish the domain name from the OLX mark. See *OLX Inc. OLX S.A v. Privacy Protect / Raees Ur Rehman* , WIPO Case No. 2012-1245 and *OLX Inc. OLX S.A v. Privacy* WIPO Case No 2011-2249 and *OLX Inc. OLX S.A v. Privacy* WIPO Case No. 2013-2132 and further argues that the word "sales" in the present disputed domain name does not distinguish the domain name from the mark and the disputed domain name is therefore confusingly similar to the OLX mark.

The Complainant argues the Respondent lacks rights and legitimate interests, as the Respondent has not been given authorization to use the Complainant's mark and is not commonly known by disputed domain name as the Respondent's name is Jatin. The Complainant alleges that the Respondent does not use the disputed domain name in connection with a *bona fide* offering of goods and services and does not have any registered trademarks corresponding to the disputed domain name. The Respondent presently uses the disputed domain name to promote a company called "Bright Computers" and offers computer and computer related products of several different brands. Further, no disclaimer has been placed on the Respondent's website to show any disassociation with the Complainant. The prominent use of the OLX mark on the website is a fraudulent attempt to pass off as the Complainant and therefore constitutes infringing use of its famous trademark contends the Complainant. The Respondent has intentionally

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chosen the disputed domain name to create an impression of association with the Complainant and the Respondent's use does not qualify or fulfill requirements for *bona fide* offering of goods and services as set out in the *Oki Data* case (*Oki Data America, Inc. v ASD, Inc.* WIPO Case No. D 2001-0930). Complainant cites the case *Deutsche Bank Aktiengesellschaft v. New York TV Tickets Inc.* WIPO Case No. D2001-1314 and INDRP case 591 pertaining to <sonymusic.in> , and UDRP case *Drexel University v. David Brouda* WIPO Case No. 2001-0067, stating that "rights and legitimate interests cannot be created where the user of the domain name at issue would not choose such a name unless he was seeking to create an impression of association with the Complainant". The Complainant adds that the Respondent has the responsibility under paragraph 3 of the INDRP Policy to verify whether the domain name is likely to violate third party rights and for all the reasons cited by the Complainant, the Respondent has failed to establish any rights or legitimate interests in the disputed domain name.

The Complainant asserts that the disputed domain name was registered in bad faith and is being used in bad faith with dishonest intention to tarnish, mislead and divert consumers and to derive commercial gain from the goodwill and fame associated with its trademark. The Complainant argues that the Respondent has registered and is using the disputed domain name primarily for disrupting the business of the Complainant. The Respondent registered the disputed domain name on July 6, 2014 subsequent to registration of a vast portfolio of OLX marks by the Complainant and the Respondent ought to have known of the Complainant's legal rights in the OLX trademark as it is registered in several countries including India. Further, the Complainant argues the Respondent was likely to have been motivated by the fame associated with the OLX mark to register the disputed domain name and therefore was clearly aware of the mark.

On July 15, 2014, the Complainant states that it had sent a cease and desist letter sent to Respondent by email requesting transfer of disputed domain name and there was no reply. The Complainant states that the Respondent had the opportunity to respond to its notice but has not done so. Failure to respond, given the background of the Complainant's right's in its well known trademark shows the Respondent's bad faith

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asserts the Complainant. Use of the Complainant's Logo on the Respondent's website also shows awareness of the OLX mark and refers to WIPO case D2011 -0226 where the logo had been used on website and it was found that the Respondent in that case was deliberately seeking to imply a connection with the complainant in that case. The Complainant asserts that the Respondent was therefore aware of the OXL mark and the registration of the disputed domain name has been done in bad faith. The Complainant requests for the transfer of the disputed domain name.

Discussion and Findings

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

- (i) The 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 domain name; and
- (iii) The Respondent's 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 domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant has filed evidence that shows it has rights in the OLX trademark. Such evidence *inter alia* includes copies of its international trademark registration including a list of its registered trademarks in Mexico, Community Trademark registration number CTM 007225717, copies of United States Trademark Registration number 77603813 filing date October 30, 2008 , registration date May 2, 2009, and United States trademark number 78806887 with priority date February 3, 2006 and registration date September


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18, 2007, details of its Indian trademark application dated May 14, 2012, with application number 2330888, in class 35 that shows status as “ Accepted and Advertised”.

Trademark registration is considered *prima facie* evidence of rights in a mark, and the Complainant is found to have accordingly established its rights in the OLX trademark based on its trademark registration certificates. The Arbitrator finds, based on all the evidence, the trademark OLX was adopted and has been used in commerce by the Complainant, and the Complainant has proved its rights with respect to the OLX trademark in these proceedings.

The disputed domain name contains the trademark in its entirety along with the descriptive term “sales”. The Arbitrator concurs with the Complainant’s submission that the trademark OLX and the generic word “sales” along with the mark does not appreciably affect the confusing similarity. It is well established that the addition of descriptive terms with a well-known mark is insufficient to distinguish the domain name in question with the mark. See for instance *Hugo Boss AG v guanjing* WIPO Case No. D2014-1452, where the addition of words such as “cheap”, “outlet”, with the trademark HUGO BOSS were found insufficient to distinguish it from the Complainant’s mark.

The Arbitrator finds the Complainant is the original prior adopter, and registered proprietor of the trademark in which it has rights. The trademark OLX is the dominant part of the domain name and the word “sales” with the mark does not lessen the confusing similarity of the disputed domain name with the mark.

The Arbitrator finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights. The Complainant has satisfied the first element required under the Policy.

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Rights and Legitimate Interests

The second element requires the Complainant to show that the Respondent lacks rights and legitimate interests in the disputed domain name. It is sufficient for the Complainant to put forward a *prima facie* case regarding the Respondent's lack of rights and legitimate interests.

The burden of proving rights or legitimate interests in the disputed domain name rests with the Respondent. Paragraph 7 of the Policy, provides a non-exhaustive set of circumstances that a respondent could rely on to establish rights in the domain name. These briefly are: (i) if 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 Complainant has submitted that the Respondent has no rights or legitimate interests in the disputed domain name as the Complainant has not licensed or otherwise permitted the Respondent to use its mark. The Arbitrator finds the evidence shows the Respondent uses the disputed domain name to sell computers by using the Complainant's trademark. Given the Complainant's trademark is already well known in the area of online classified advertisements, and the trademark is associated with the Complainant on a worldwide basis, such use of the Complainant's mark by the Respondent does not qualify as *bona fide* offering of goods. Further, there is no evidence on record to show the Respondent has made preparations to use the disputed domain name for 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.

The Respondent has failed to file any material in these proceedings that demonstrates his rights in the disputed domain name. In the absence of any material from the Respondent,

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or any other material on record to indicate the Respondent has rights, it is found that the Respondent has not established any rights or legitimate interests in the disputed domain name.

Accordingly, for the reasons discussed, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

Bad Faith

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. The Complainant has urged that the Respondent has intentionally registered the disputed domain name to exploit its well-known trademark.

The evidence on record shows the Respondent has used the disputed domain name linked to a website that displays the trademark of the Complainant. As argued by the Complainant, this shows the Respondent ought to have been aware of the Complainant's mark and the Respondent's intention of deriving commercial gain is evident from the Respondent using the Complainant's trademark to sell computer and related products online. Using the disputed domain name for selling computers using the mark of the Complainant, in which the Complainant has proven established prior rights and extensive international fame associated with its mark shows the disputed domain name has been registered in bad faith and is being used in bad faith.

The Arbitrator finds the record clearly shows the disputed domain name is being used to by the Respondent for deriving gain based on the reputation associated with the Complainant's mark. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the

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circumstances here suggest that the Respondent seeks to use the Complainant's mark in the manner mentioned under Paragraph 6 of the Policy, namely to attract Internet traffic to the Respondent's website for deriving some gain based on the trademark of the Complainant, which is considered bad faith registration and use of the disputed domain name under the INDRP Policy.

Based on all the facts and circumstances of the case the Arbitrator finds that the disputed domain name was registered in bad faith and is being used in bad faith. The Arbitrator finds the Complainant has satisfied the third element under paragraph 4 of the Policy.

Decision

For the reasons discussed, it is ordered that the disputed domain name <olxsales.in> be transferred to the Complainant.



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(Arbitrator)

Date: November 7, 2014