



சென்னை தமில்நாடு TAMILNADU

20 APR 2012

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AC 984575
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.loreal-paris.co.in

L'OREAL
14 Rue Royale
75008 Paris
FRANCE
contact@dreyfus.fr

Complainant

Vs.

CORPORATE DOMAINS, INC
Weihai Road 755
Shanghai
2000041
CHINA
riley@kkinfo.com

Respondent

..2.

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தமிழ்நாடு தமில்நாடு TAMILNADU

20 APR 2012

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1. The Parties:

The complainant is L'Oreal, a Company incorporated under French law as "societe anonyme a conseil d'administration", whose registered office is located at 14, Rue Royale, 75008, Paris, France.

The respondent is Corporate Domains, Inc, Weihai Road 755, Shanghai 200041, China.

2. The Domain Name and Registrar:

The disputed domain name:

www.loreal-paris.co.in

The domain name registered with .IN REGISTRY



3. Procedural History:

- March 22, 2012 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- April 06, 2012 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant, Complainant's authorized representative and .IN REGISTRY.
- April 16, 2012 : Due date for filing Response by Respondent.
- April 20, 2012 : Arbitrator sent an e-mail to Respondent notifying their default, a copy of which was marked to Complainant's authorised representative and the .IN REGISTRY.
- : The language of the proceedings in English.

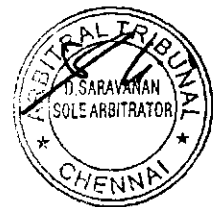
4. Factual Background:

4.1 The Complainant:

The complainant is L'Oreal, a French Company at 14, Rue Royale, 75008, Paris, France, Rep. by its Authorised Representative Nathalie DREYFUS.

4.2 Complainant's Activities:

The Complainant states *inter- alia* that the L'Oreal is a French industrial group specialized in the field of cosmetics and beauty which was created in 1909 by a French chemist of the same name, L'Oreal recently celebrated its centenary; it is one of the world's largest groups in the cosmetics business present in over 130 countries; L'Oreal creates and distributes products in all sectors of the beauty industry, such as hair color, styling aids, cosmetics, cleansers, and fragrances; L'Oreal markets professional products, consumer



products, luxury products and active cosmetics; L'Oreal owns 23 international brands among which GARNIER, KERASTASE, MAYBELLINE, LANCOME and SHU UEMURA (Annexe 3); the brand L'OREAL PARIS focused on offering top quality and affordable cosmetic products (Annex 4); it is inter alia under the brand L'OREAL PARIS that the line Men Expert is sold in China; this line of products has become number one on men skincare market. (Annex 5); Complainant is present all over the world and inter alia in China where it has recorded very significant growth in terms of sales; L'Oreal has a local subsidiary in China since 1997; L'Oreal has opened in particular a research centre in Pudong where it has conducted studies to create a range of shampoos and hair care products ideally suited to local hair types and cultural tradition; Chinese market is a particularly fast growing market for L'Oreal; in this country the sales have doubled from 2005 to 2009; L'Oreal has become number one for skincare in China thanks in particular to the brand Men Expert; in respect of professional products, L'Oreal is strengthening its position and has recorded a growth by 10% of its sales in 2009; to sustain its development, L'Oreal has used local icon like the actor David Wu to promote its products and has sponsored events like the World Expo in Shanghai (Annex 5).

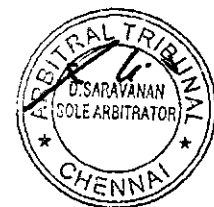
4.3 Complainant's Trading Name:

The Complainant states that they own numerous trademark registrations for L'OREAL throughout the world. Complainant, is inter alia the owner of (Annex 13):

- Indian Trademark Registration L'OREAL n° 165778, dated of September 14, 1954, duly renewed and covering goods in class 3;
- Indian Trademark Registration L'OREAL n° 1832961, dated of July 25, 2009 and covering goods in class 18;
- Chinese Trademark Registration L'OREAL n° 1487385, dated of November 8, 1999, duly renewed and covering services in class 42.

Additionally, the Complainant is the owner of many domain names composed of the L'OREAL trademark (Annex 14):

- <loreal.com> created on October 24, 1997.
- <loreal.fr> created on October 14, 1997



- <loreal.tv> created on December 21, 2001.

Moreover, the Complainant is the owner of many domain names composed of the L'OREAL PARIS brand (Annex 14):

- <loreal-paris.tv> created on October 6, 2010.
- <loreal-paris.com> created on August 17, 1996.
- <lorealparis.fr> created on January 10, 2003.
- <lorealparis.com> created on June 5, 1998.

4.3.1 Respondent's Identity and activities:

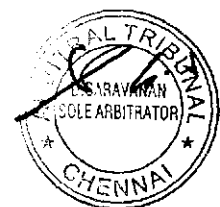
The respondent is Corporate Domains, Inc, Weihai Road 755, Shanghai 200041, China, who is the registrant of the Domain Name www.loreal-paris.co.in which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. Neither the Respondent represented himself nor represented by any one.

5. Parties contentions:

A. Complainant:

(a) The Domain Name registered by Respondent is identical to the trademark of Complainant

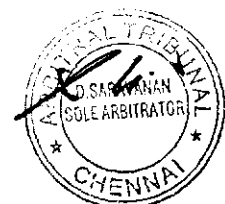
The Complainant states that the disputed domain name is identical or at least confusingly similar with Complainant's trademark L'OREAL. The disputed domain name differs from L'OREAL trademark by the addition of the geographical term "paris" and the ccTLD "co.in". However, these are only minor differences that are insufficient to avoid any likelihood of confusion between Complainant's trademark and the disputed domain name. Indeed, it is well established in domain name cases that the suffix to indicate the top level of the domain name has to be disregarded for the purpose of determining whether the domain name is identical or confusingly similar to the Complainant's trademark (*PepsiCo, Inc. v. Bijon Chatterji*, Case No. INDRP/014, June 24, 2006; *Mothercare UK Limited, United Kingdom v. Mr.Rajkumar Jalan, New Delhi*, Case No. INDRP/061, April 27, 2008; *Bombay Stock Exchange Limited v. Jigar Vikamsey*, Case No. INDRP/063, August 17, 2008 - Annex 15).



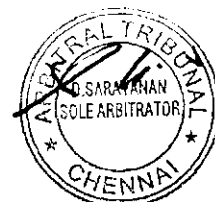
The addition of this geographic term may on the contrary increase the likelihood of confusion. Indeed, as noted by the Panel in WIPO Case No. D 2010-1318, *L'oreal SA v. LinChaojie, Guangxi NanNing IDEA Business Planning Co., Ltd* (Annex 16). Complainant owns a trademark including the term Paris, is using the term "L'oreal Paris" as the name of one of its product series. Furthermore, Complainant has its head-office located in Paris and is maintaining various websites using the Internet addresses [www.loreal-paris /](http://www.loreal-paris/) www.lorealparis (Annexes 13 and 17). The disputed domain name incorporates Complainants' trademark L'OREAL in its entirety. Previous Panels have found that when a domain name contains a trademark in its entirety, the domain name is identical or at least confusingly similar to the trademark (*Tenneco Inc. v. Toni Li*, Case No. INDRP/130, March 5, 2010; *ITC limited v. Travel India*, Case No. INDRP/065, April 15, 2008 - Annex 18). Previous UDRP decisions have recognized that Complainant's L'OREAL trademark is a famous trademark (WIPO Case n° D-2008-1748, *Lancome Parfums et Beaute et Compagnie, Laboratoire Garnier et Compagnie, L'Oreal S.A, L'Oreal U.S.A. Creative v. Therese Kerr*, WIPO Case n° D2006-0869, *L'Oreal Helena Rubinstein, Lancome Parfums et Beaute Cie v. Spiral Matrix*; WIPO Case No.D2007-1552, *L'Oreal v. Liao Quanyong* , WIPO Case No.D2011-0868, *L'Oriel v. Li Qian, Fast Hand Limited and Lisa* and WIPO Case No. D2011-0524, *L'Oreal and Lancome Parfums et Beaute et Campagnie v. Deco Trends Art, K.Plooyer* - Annex 19). Besides, the name L'OREAL is also the corporate and trade name of Complainant. For all the reasons above, it has been established that Complainant has rights on the L'OREAL trademark and that the disputed domain name is highly and confusingly similar to this trademark. The condition of paragraph 4(i) of the IN.Policy has therefore been fulfilled.

(b) Respondent has no rights or legitimate interests in the domain name:

Respondent does not have prior rights or legitimate interests in the L'OREAL trademark. Where Complainant's rights in a trademark predate Respondent's registration of the disputed domain name incorporating that trademark, Respondent does not have rights or legitimate interests in the disputed domain name (Case No. INDRP/096, June 27, 2009, *Compagnie Gervais Danone v. Digitech Software Solution* - Annex 20). Respondent is in no way affiliated with Complainant. Complainant has not authorized or licenced Respondent to use



and register the L'OREAL trademark, nor sought registration of any domain name incorporating this trademark. Although Respondent is the current owner of the disputed domain name, the simple use of Complainant's trademark in the disputed domain name does not confer rights or legitimate interests to Respondent (Case No. INDRP/050, November 30, 2007, *ITC Limited v. Vishal* - Annex 21). Furthermore, Respondent has never provided evidence of being known or recognized by the Disputed Domain Name. Previous Panels have concluded that where Respondent has not provided evidence that it is known or recognized by the domain name, Respondent has no rights or legitimate interests in the domain name (Case No. INDRP/256, November 4, 2011, *Citroen v. Hyderabad*; Case No. INDRP/127, February 24, 2010, *Acor v. Tang Wer*, Case No. INDRP/118, November 26, 2009, *Starbucks Corporation v. Mohanraj* - Annex 22). Additionally, Complainant had registered and used various domain names consisting in its marks and trade names L'OREAL before Respondent registered the disputed domain name. Consequently, there can be no right or legitimate interest on Respondent's side (Annexes 1 and 14 and Case No. INDRP/099, June 12, 2009, *Societe Anonyme des Eaux Minerales d. Evian (SAEME) v. Rajesh Aggarwal* - Annex 23). Respondent is not making a fair or legitimate non commercial use of the domain name. On the contrary it is making a commercial use of the domain name. Respondent uses the domain name to direct Internet users to a page of sponsored links which includes links reproducing Complainant's trademark, links in the field of cosmetics, links directing to products offered by Complainant's competitors (Annex 9). Such links which cannot constitute a bona fide use offering of goods and services (*Ste des Produits Nestle v. Nescafe Limited/INDRP/100* May 4, 2009 - Annex 24). Furthermore, Respondent appears to have engaged in a pattern of conduct of registering domain names reproducing well-known trademarks (Annexes 7, 8 and 12). This further deprives Respondent from having any right or legitimate interest in the disputed domain name. Lastly, Respondent has expressed its willingness to sell the domain name to Complainant. It appears obvious that the sole reason for Respondent's registration of the Disputed Domain Name was sale of said domain name. Such a conduct demonstrates everything but a legitimate interest in the domain name (*Compagnie Gervais Danome v. Digitech software Solutions*, INDRP/096, June 27, 2009 - Annex 20). For the aforementioned reasons, Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraph 4(ii) of the Policy. Since Complainant has established a prima facie case of Respondent's lack of rights or legitimate interests in the domain name, Respondent has not the burden to prove his rights or legitimate interests in



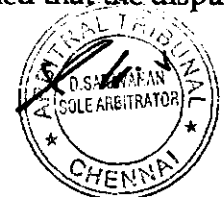
the Disputed Domain Name (*Rhodia v. Shi Jing*, Case No. INDRP/178, December 19, 2010-Annex 25).

(c) Respondent has registered and is using the domain name in bad faith:

The Complainant states that the Complainant is present on a worldwide basis and its trademark L'OREAL is well-known throughout the world and China where Respondent is located. China is a particular fast growing market for Complainant (Annexes 3, 4 and 5). Further, the well-known character of Complainant's mark L'OREAL has been underlined by several WIPO Panels (Annex 19). It is thus unlikely that Respondent was unaware of Complainant's existence or trademark rights before registering the disputed domain name. The notoriety of Complainant's trademark in particular in China has already been held by previous Panels (WIPO case D2009-0242, *L'Oreal v. Chenxiangsheng* and WIPO Case No. D2009-1231, *L'Oreal S A v. L V Kefeng* - Annex 26). It has been held that the registration of a domain name containing a well known mark is strong evidence of bad faith (Case No. INDRP/018, October 6, 2006, *Bacarrat SA v Doreen Jungnickel/ Darius Herman Domcreate*; Case No. INDRP / 051, November 5, 2007, *NBA Properties, Inc. v. Rickson Rodricks* - Annex 27). The addition of "paris" in the disputed domain names also suggests Respondent knew Complainants since it is the location of their head office (WIPO Case No. D2009-0242, *L'Oreal v. Chenxiangsheng* - Annex 26). The disputed domain name has been and is used for a page displaying commercial links, some of these links being in the field of cosmetic products, reproducing Complainant's trademark and directing to the websites of his competitors (Annex 9). Because of the distinctiveness of Complainant's L'OREAL trademark, it is reasonable to infer that Respondent registered the disputed domain name with full knowledge of Complainant's trademark. Where a domain name is found to be registered with an intention to attract Internet users by exploiting the fame of a well known trademark, it constitutes bad faith registration (Case No. INDRP/125, February 14, 2010, *Lego Juris A/S v. Robert Martin* - Annex 28). Even if Respondent was unaware of Complainant, which is unlikely in the present case, a quick trademark search or online search on Baidu using the key words "L'Oreal Paris" would have shown the existence of Complainant and its trademark rights (Annex 29). According to the Policy paragraph 3, it was Respondent's responsibility to conduct a trademark search before registering the disputed domain name. Respondent's failure to conduct this search is evidence of registration in bad faith (Case No.



INDRP/192, February 10, 2011, Alticor Inc. v. Aryanent; Case No. INDRP/002, May 20, 2006, *Monster.com (India) Private Limited v. Domain Leasing Company* - Annex 30). Policy, under paragraph 6(i) states that if there are circumstances which indicate that the Registrant has registered or acquired the domain name for the purpose of selling renting or otherwise transferring the domain name to Complainant or to a competitor, such registration can be considered as bad faith registration and use of the domain name. In the present case the disputed domain name has been offered for sale to Complainant by Respondent at a price presumably exceeding the registration cost of the disputed domain name, which evidences Respondent's bad faith (*Accor v. Tang Wei* INDRP/127 February 24, 2010 - Annex 22). Further, Respondent has engaged in a pattern of conduct of registering domain names consisting in famous trademark belonging to third parties and thus preventing them to reflecting their mark in corresponding domain names which is an evidence of bad faith pursuant to article 6(ii) of the Policy (Annexes 7, 8 and 12). Consequently, it can be assumed that Respondent has registered this domain name to capitalize on Complainant's long history, reputation and goodwill. It is thus established that Respondent registered the domain name in bad faith. Several elements can be put forward to support the finding that Respondent also uses the domain name in bad faith. As previously indicated the domain name <loreal-paris.co.in> resolves to a parking website displaying pay-per-click links reproducing Complainant's trademark and related to Complainant's competitors (Annex 9). The use of the disputed domain name to divert Internet users and directing them to a website providing click through revenues to Respondent evidences bad faith. Respondent is taking undue advantage of Complainant's trademark to generate profits. The use of a famous trademark to attract Internet users to a website for commercial gains constitutes use in bad faith pursuant to the Policy, paragraph 6 (*Lego Juris A/S v. Robert martin* Case No. INDRP/125, February 14, 2010 - Annex 28). Moreover, there is little doubt that many Internet's users attempting to visit Complainant's website have ended up on the web page set up by Respondent. Indeed, the disputed domain name is confusingly similar to Complainant's trademark and previous Panels have ruled that "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from Complainant's site to Respondent's site" (*L'oreal SA v. LinChaojie, Guangxi NanNing IDEA Business Planning Co. Ltd.*, - Annex 16). Finally, Respondent has engaged in a pattern of conduct of abusive domain name registration and is involved in several cases of cybersquatting (Annexes 7, 8 and 12). In view of the above it is established that the disputed



domain name is also being used in bad faith. It also is likely that Respondent registered the domain name to prevent Complainant from reflecting its trademark in the disputed domain name. This type of conduct constitutes evidence of Respondent's bad faith (WIPO Case No D2009-0242, *L'oreal v. Chenxiangsheng* - Annex 26). Consequently, it is established that Respondent both, registered and used the disputed domain name in bad faith in accordance with Paragraph 4 (iii) and Paragraph 6 of the Policy.

B. Respondent:

The Respondent did not submit any response.

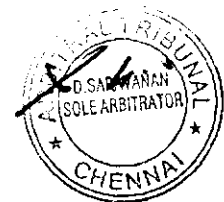
6. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? And Whether the Respondent has 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 Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response on merits of the complaint and that non-submission of the Response by the Respondent had also been notified to the Respondent.

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



(a) Identical or confusing similarity:

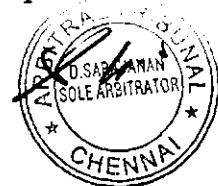
i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered Trade / Service Marks "L'OREAL" in various countries including India under Annexure 13 and also possesses registered domain names consisting <loreal-paris.tv>; <loreal-paris.com>; <lorealparis.fr>; <lorealparis.com> etc., throughout the world under Annexure 14. The Respondent's domain name, <loreal-paris.co.in>, consists of entirely Complainant's registered trademark, domain name except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <loreal-paris.co.in> is confusingly similar or identical to the Complainant's marks.

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

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has 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 Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response on merits of the complaint 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 Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Considering the above, and based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current



use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has 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 Respondent has intentionally attempted to attract, for commercial gain, internet users to the 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 Respondent's website or location or of a product or service on the Respondent's web site or location.

ii) On perusal of Annexure 9, it is seen that the respondent uses the domain name to direct internet users to a page of sponsored link which includes links reproducing complainant's trade mark, links in the field of cosmetics, links directing to products offered by the complainant's competitors. Further, on a perusal of Annexures 7, 8 and 12, it appears that the respondent indulged in a similar conduct of registering domain names reproducing well known trade marks. In the present case, the disputed domain name has been offered for sale to complainant by the respondent at a price presumably exceeding the registration cost of the disputed domain name. However, the word "paris" in the disputed domain name also suggest that the respondent knew complainant since Paris is the location of the Head Office. Thus it is established that the use of the disputed domain name to divert the internet users and directing them to the web site providing click through revenue to the respondent constituting bad faith. The Respondent has 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 Respondent has 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 inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to reap unfair rewards 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.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <loreal-paris.co.in> be transferred to the Complainant.

Dated at Chennai (India) on this 7th day of May, 2012.


(D.SARAVANAN)
Sole Arbitrator