



दिल्ली DELHI

E 356183

In the matter of:-

M/s Huawei Technologies Co.Ltd

Bantian Langgang District

Shenzhew-518129

People's Republic of China

Email - Support@huawei.com

Through

Rodney D. Ryder

Fox.Mandal & Co

Email-rodney-ryder@foxmandallittle.com .Complainant

Versus

Mr.Daniel Meng

M/s Neteye Information Technology

Sixth Avenue, Seattle,

Washington-98100

USA

Email:126818@gmail.com

...Respondent

Award

USA

Email:126818@gmail.com

.Respondent

Award

1. That the complainant has filed a complaint in IN REGISTRY OF NIXI against the respondent in respect to respondent's domain name "www.huawei.in"
2. That the complainant has filed the said complaint under in domain name Dispute Resolution Policy (INDRP).
3. That the copy of the complainant and its Annexures were supplied to the respondent.
4. That the respondent had sought extension of time to file his counter and documents. His time to file the counter and documents was extended by 10 days. The respondent filed his counter and documents in the extended time.
5. That the complainant was granted time to file the rejoinder and written arguments if any. The complainant did not file any rejoinder and written arguments. The respondent has filed one page written arguments. Thus the record before the Arbitrator consists of the complaint and documents filed by him AND the counter,

①

documents and the one page written arguments filed by the respondent.

6. That the complainant has stated in its complaint that Huawei Technologies Co. Ltd., is a limited company.
7. That the domain name "www.huawei.in" was registered by the respondent in June 06. It is further stated by the complainant in his complaint that, it is one of the world's leading networking and telecommunications equipment manufacturer and supplier. It provides fixed network, mobile network, data communication, optical network, software services and terminals, including modems, ranging from switching, integrated access network, NGN, xDSL, optical transport, intelligent network, GSM, GPRS, EDGE, W-CDMA, CDMA2000, a full series of routers and LAN switches and videoconferencing terminals to other key telecom technology fields. It is stated that the Complainant also manufactures mobile phones.
8. That it is also stated by the complainant in its complaint that "**Huawei**" (the complainant) was found by Ren Zhengfei in 1988, as a small distributor of imported PBX products. By 1989,

Huawei started developing and later on marketing its own PBX. It is stated that after accumulating knowledge and resource on PBX business, Huawei achieved its first breakthrough into mainstream telecommunication market in 1993, by launching C&C08 digital telephone switch, which had a switching capacity of over 10K circuits. Huawei's switches were first deployed only in small cities and rural areas. It eventually gained market share and made its way into major city switch offices and toll service. In 1994, Huawei established long distance transmission equipment business, launched its own HONET integrated access network and SDH product line. In 1996, Huawei captured its first overseas contract, providing fixed-line network products to Hongkong's Hutchison-Whampoa. Later, in 1997 Huawei released its GSM product and eventually expanded to offer CDMA and UMTS. After 2001, Huawei increased its speed of expanding into overseas market. By 2004, its overseas sales had surpassed that of the domestic market. Huawei has a joint venture with Siemens for developing TD-SCDMA products. In 2003, Huawei entered into a joint venture name,

"Huawei-3Com", with 3Com, for internet Protocol based routers and switches. Huawei eventually sold its 49% stake to 3Com in 2007 for \$US 882 million. A copy of the Enterprise Legal Person Business License of the Complainant is annexed with the complaint as **Annexure C**.

The complainant has also stated in his complaint that its products are marketed and sold in over 100 countries, including **India**, Brazil, Paraguay, The United States, Germany, France, United Kingdom, Spain, The Netherlands, Italy, Singapore, Argentina, Nepal, Pakistan, Chile, Ireland, Australia and the Philippines. The complainant has a huge customer base which spreads across the globe in several countries. Some of the key customers of the Complainant include Oi, Hologra Paraguay, **China Telecom, China Mobile, China Netcom, China Unicom**, BT, Carphone Warehouse (UK), Tiscali (UK), Opal, **BSNL (India)**, Cricket Communications(USA), KPN, 02, Orange, Globe Telecom, Vodafone, Telefonica, Telfort, SingTel, StarHub, Hutchison Telecom, Total Peripherals Group, Ufone (Pakistan), Nepal Telecom (Nepal). Further, the complainant's 3G equipment has been commercially deployed in the

UAE, Hongkong, Malaysia, Mauritius and the Netherlands.

10. That the complainant has also stated that the complainant's global contract sale for 2006 reached USD11 billion (a 34% increase from 2005), 65% of which comes from overseas market. The complainant has now become a leading vendor in the industry and one of the few vendors in the world to provide end to end 3G solutions. Further, Vodafone awarded the complainant, Global Supplier Award for outstanding performance in June 2007. The complainant has spent a huge amount of money on the promotion and advertisement of its services and products under the trade/service name/mark "**Huawei**" since its adoption and use. A statement of the promotional and advertising expenditure incurred by the complainant in the recent past along with a few advertisements released by the complainant annexed to the complaint as **Annexure D** (Collectively).

11. That the complainant has also stated that the profile and popularity of the Complainant company under the trade / service name / mark "**Huawei**", has been continuously increasing since

the date of adoption and use of the mark. At present, the Complainant's trade name/mark is a name to reckon with and has acquired enormous good will in India and many other countries. It is submitted by complainant that the Huawei mark/brand mark, due to its extensive use, advertisements, publicity and awareness throughout the world, has acquired the status of a WELL KNOWN TRADE MARK Under Section 2(1) (zg) of the Trade Marks Act, 1999. The said mark/name qualifies all tests for the well-known status of a mark under section 11 (6) of the Act, which includes considerations like knowledge or recognition among relevant section of public, duration, extent and geographical area of use, promotion and publicity of mark etc. It is further submitted by the complainant that the mark/brand Huawei also falls under the category of a famous mark as provided by Article 6bis of the Paris Convention.

12. That the complainant has further stated that it considers its trade /service name/mark, **HUAWEI**, an important and an extremely valuable asset and thus in order to protect the same, has obtained numerous trade mark registrations in different

⑥

countries including **India**, for the said mark. A copy of the trade mark registration certificate for the mark **HUAWEI** obtained by the Complainant in India is annexed to the complaint as **Annexure E**. Copies of trade mark registrations for the said mark obtained by the Complainant in **China** are annexed with the Complaint as **Annexure F (Collectively)**, Further, a list detailing out world wide: registrations obtained by the Complainant for the mark 'HUIAWEI' is annexed to the complaint as **Annexure G**.

13. That it is also mentioned in the complaint that the name/mark Huawei is distinctive, unique and an invented mark. A mere mention of the said name/mark establishes an identity and connection with the Complainant and none else. The Complainant owns all the rights in the said name which is its "Trade Mark" & "Service Mark". The use of the said name either as a mark, name, domain name, or in any other form whatsoever constitutes infringement and passing off and is a violation of the Complainant's rights in the said mark. Further, the use of the disputed domain name by the Respondent amounts to



misrepresentation and the Respondent by doing so is indulging in unfair competition.

14. That the complainant has also mentioned that the website/domain name of the complainant www.huawei.com is comprehensive guide to the business activities of the Complainant. Further, the said website provides contact details of the Complainant. **A print out of the Home Page of the Complainant's website www.huawei.com is annexed with complaint as Annexure H, which was registered in year 2000 .** It is also stated in complainant that domain name www.huawei.in. is registered in the name of respondent of Neteye Information Technology. Its evident from the glaring fact that the disputed domain name, is the verbatim duplication of the Complainant's domain name and has been put up for sale.

15. That its also stated by the complainant that the domain name of respondent is identical or confusingly similar to the trade mark or service mark in which the Complainant has rights. Domain name used by the Respondent is identical to the corporate name of the Complainant. It is stated by complainant that the malafide intention of



8

the respondent is evident from the fact that not even a single letter differs between the disputed domain name and the corporate name of the complainant. Respondent is a prima facie case of cyber squatting and trade/service, mark/name infringement. The use of the said name either as a mark, name, domain name, or in any other form whatsoever, constitutes violation of the Complainant's rights.

16. That the complainant has also stated in the complainant that the Respondent has no rights or legitimate interests in respect of the domain name. The Respondent, apparently, is in the business of holding domain names and selling them.

17. That it is also stated by the complainant in its complaint that the fact that the Respondent registered the disputed domain name six years after the registration of the Complainant's domain name www.huawei.com, is a prima facie evidence of malafide intentions and bad faith. A print out of the Whois record of the complainant's domain name www.huawei.com is annexed with complaint as **Annexure J**.



18. That it is also stated by the complainant that the respondent is not running any website on the disputed domain name and if any website is offered with dispute domain name, it wouldn't cause misrepresentation and also damage to the reputation of the complainant.
19. That the complainant has sought the transfer of the disputed domain name of the respondent **"huawei.in"** to it.
20. That the respondent has filed his counter with annexures. It is stated by respondent that the complainant did not apply for domain name "huawei.in" during the sunrise policy of the in registry and on opening of registry for general public on 16.02.05. It is further stated by the respondent that he got registered his domain name in June 2006 after waiting for more than an year.
21. That respondent has further stated that he does not use country code domain name of the worldwide website.
22. That respondent has also stated that the complainant (M/s Huawei Technologies Co. Ltd) registered the domain "huawei.com" and the trade mark "huawei", but that does not mean that they

have the rights in all other TLDs which contain "huawei".

23. That it's also stated by the respondent that the complainant (M/s Huawei Technologies Co. Ltd) has not given any evidence to indicate that the domain name "huawei.in" has been registered and is being used in bad faith. It is stated by respondent that he got registered "huawei.in" since 03 June 2006 08:55:20 UTC and had paid for "huawei.in" at the time of registration. He has also stated that he also pays for renewal of domain name "huawei.in".

24. That it also stated by the respondent that he did not registered or used domain name "huawei.in" in bad faith. He has also stated that he does not want to sell, or otherwise transfer the domain name registration to the complainant or to the competitor of the complainant. He has further stated that he never contacted the complainant or the competitor of the complainant, for the sale of the domain name. He has also stated that he does not want to disrupt the complainant's business.



25. That respondent has also stated in the counter that he does not want to use "huawei.in" to attract, internet users to his web site for commercial gain. He has further stated that he does not want to use domain name for creating confusion with the complainant's mark. He has stated by the respondent that he got the domain name "huawei.in" registered for his personal interest and that he wants to make a legitimate non commercial use of the site and domain name. He has stated that because of the busy work, he has no time to create the website, which uses domain name "huawei.in".


26. That I have gone through the entire record placed before me by the parties.

27. That the respondent has not challenged the Authority of Mr. Rodney D. Ryder to file the complaint on behalf of the complainant. Thus the complaint filed by the complainant is maintainable.

28. That the complainant has made submissions that the domain name of the respondent www.huawei.in is identical and confusing similar to the Trade mark or service mark in which it has got rights. The complainant has made averments that it is in

the business of Networking and Tele communication business since 1989 and now it is one of the worlds leading Networking and Tele communications company. It is also submitted by the complainant that its products are marketed and sold in over 100 countries across the world, which include India and China. It is also submitted by the complainant that it has collaborated with reputed companies. The complainant has further submitted that its global contract sails for 2006 reach USD 11 billion, 65% of which comes from overseas market and Voda Phone awarded to it the global supplier award, for outstanding performance in June 2007. The complainant has also filed statement of promotional and advertising expenditure incurred by it as **Annexure D**. The complainat has also stated that its mark **Huawei** has acquired status of well known Trade mark under section 2 (1)(Zg) of Trade mark of 1999. The said mark also qualifies all test for the well known status of a mark under section 11(6) of the Act, due to its extensive use advertisement publicity and aware ness through out the world. The complainant has also stated that its mark also

falls under categories of famous mark provided by article 6bis of the Paris convention. The complainant has also submitted that it has obtained numerous Trade marks registration in different countries including India for its said mark. The complainant has annexed Trade mark registration certification of India as **Annexure E**. It has also filed registration certification of its mark in china as **Annexure F**. It has also filed details of its world wide registrations of mark as **Annexure G**. The complainant has also submitted that its mark HUAWEI is distinct and unique and invented mark and its mere mention establishes, the identity and connection with complainant and with none else. The complainant has stated that it owns the right in the said mark, Trade mark and service mark. The complainant has also submitted that it had got registered its domain name www, huawei .com in year 2000 and has filed **Annexure H** in respect thereof.



The respondent has submitted that the complainant did not get registered the domain name "huawei.in" during the sunrise policy and when

the general registration was opened on 16.02.2005. It is further submitted by the respondent that he got registered the domain name on 03.06.06 after waiting for more than one year. The respondent has further stated that the complainant got registered its domain name "huawei.com" and Trade mark "Huawei", but that does not mean that, it has rights in all' other TLDS which contains "Huawei".

The complainant has made detailed submissions regarding its rights and interest in its mark, service mark and Trade mark. The complainant has also filed supporting evidence in the form of **Annexure D** to **Annexure H**. The respondent has not specifically disputed and denied the detailed submissions and supporting evidence of the complainant. The respondent has also not controverted the detailed submissions and the evidence of the complainant, by his own evidence. Moreover the submissions and evidence of the complainant are not only detailed but are convincing. The respondent has only stated that by registering the domain name and trade mark, the complainant does not have right in all other

(15)

TLDS which contains "**Huawei**". He has also stated that the complainant did not get the domain name "Huawei.in" registered during sunrise policy or opening of registration. The submissions of the respondent can not be accepted in view of uncontroverted and detailed submissions and evidence of the complainant. **As such I hold that the complainant has got right and interest in the mark, trade mark and service mark "Huawei".**

29 The complainant has further submitted that domain name of respondent "www.huawei.in" is identical or confusing similar to the trade mark and service mark of the complainant. The complainant has submitted that the disputed domain name does not differ from its corporate name. The complainant has also submitted that mere omission of one letter of mark has no effect on the determination of confusing similarity between a trade mark and domain name. The complainant has also submitted that top level of domain name may be disregarded while determining, as to whether it is identically or confusingly similar to the trade mark. The complainant has relied upon judgement cited as Reuters Ltd. Vs. Global Net 2000 Inc.



(WIPO Case No. D2000-0441), Altavista Company Vs. Grandtotal Finance Ltd. (WIPO Case No. D2000-0848), Playboy Enterprises Vs. Movie Name Company (WIPO Case No. D2001-1201) Magnum Piering Inc Vs. The Mudjackers and Garwood S. Wilson (WIPO case No.D2000-1525) and Rollerblade Inc. Vs. Chris McGrady (WIPO Case No. D2000-0429). The complainant has also submitted that the use of its mark, service mark or domain name in any other form, constitutes violation of complainant rights in it .

The respondent has not specifically controverted the above submissions and judgements of the complainant. The respondent has avoided the specific reply to the submissions made by the complainant and judgment relied upon by the complainant. Thus it is clear that the respondent has not seriously challenged the averment of the complainant that domain name of the respondent is confusingly similar and identical to its trade mark, service mark and corporate name "Huawei". More over the complainant has extensively used its mark world wide for very long time and has spent huge expenditure on its business, publicity



and advertisement. This is clear from the discussion in the para 28 of this Award. Thus the complainant has acquired distinct identity with mark "Huawei" and it can be confused with domain name or mark containing "Huawei". Moreover when complainant and respondent are in the business of Information Technology and Networking and Telecommunications. **As such I hold that the domain name of the respondent "Huawei.in" is identical or confusingly similar to the trade mark or service mark of the complainant "Huawei".**

30. The complainant has also submitted that respondent has no rights or legitimate interest in respect of domain name. The complainant has submitted that the respondent is not running any website on its domain name www.huawei.in and is not doing any business on it. The complainant has submitted that respondent do not have any bonafide interest in offering goods and services through domain name. The complainant has also stated that the respondent has not legitimately used the disputed domain name. The complainant has relied upon the judgements cited Gerber Products Company Vs. LaPorte Holdings (WIPO case No. D2005-1277), Aria Foods Amba Vs. Jucco



Holdings (WIPO case No.D2006-0409 and Bits & pieces Inc. Vs. LaPorte Holdings (WIPO Case No.D2006-0244)).

The respondent has submitted that he has got rights in his domain name "Huawei.in", as he got it registered for his personal interest, and he wants to make a legitimate non commercial site with it. The respondent has also stated that due to busy work he had no time to create website.

The respondent has not produced any evidence to controvert the submissions of the complainant that the respondent has no rights or interest in domain name. He has also not filed any judgement to controvert the judgments relied upon by the complainant. The respondent has also not filed any evidence about his right in domain name. Only evidence is his registration of domain name, which is not sufficient. Rather it is evident that the respondent has neither used the domain name for any website or business and nor he has made any preparations in this regard. The respondent has not shown any real intentions to bonafidely use his domain name. **As such in the**



aforesaid facts and circumstances I hold that the respondent has no rights and legitimate interest in his domain name.

The complainant has also stated that the respondent has got registered and used the domain name "huawei.in" in bad faith. The complainant has submitted that the respondent registered his domain name 6 years after the registration of the complainant's domain name www.huawei.com, is a prima facie evidence of malafide intentions and bad faith. A print out of the Whois record of the complainant's domain name www.huawei.in is filed as **Annexure J**.

The complainant has also submitted that the respondent may be able to represent itself as the complainant or its authorized representative through his domain name or by activating a website. The complainant has also stated that it can cause damaged to the third party by entering into transactions or contracts. The complainant has also submitted that the respondent can transfer or sell the domain name to some




competitor of the complainant, who may damage the goodwill and reputation of the complainant.

The respondent has merely made submissions that he did not use or register domain name in bad faith and never want to sell, rent or transfer it to complainant or its competitor. He has also submitted that he never wants to use domain name for commercial gain. The respondent has not made any serious efforts to challenge the submissions of the complainant, by giving cogent reasoning or by giving any evidence of his bonafide use of his domain name or his intentions to use it. **As such in view of the above I hold that the respondent has got registered his domain name in bad faith, for its malafide use.**

I therefore hereby direct IN REGISTRY NIXI to transfer the domain name "**Huawei.in**" to the complainant. The parties will bear their respective cost of the Arbitration proceedings.

Delhi:

Date: 20.02.08


Rajeev Singh Chauhan
(Sole Arbitrator)

(21)