

2 Procedural History

- 2.1 A Complaint dated January 29, 2018 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the "INDRP") and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On February 1, 2018, the Arbitrator had directed the Respondent to file his reply to the Complaint on or before February 17, 2018. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed *ex-parte*.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

Given the absence of a reply, the Arbitrator has found the following facts are undisputed:

- 3.1 The Complainant is a company incorporated under the laws of France. The Complainant is the holding company of Le Creuset India Trading Private Limited, which is incorporated on September 1, 2002 in India and manage the Complainant's business in India.
- 3.2 The Complainant has been in the business of manufacturing and selling cookware for over 90 years since 1925. It has manufactured over 300 million products for more than 70 countries and it committed to handcrafted quality.
- 3.3 The Complainant is the owner of the trademark "Le Creuset", which is also corporate name and trading style of the Complainant worldwide. The Complainant's first international registration of trademark "Le Creuset" dated back to May 24, 1951 in France and November 15, 1999 in India. The Complainant has 115 trademark registrations for "Le Creuset" in foreign jurisdictions.



3.4 The Complainant has incurred considerable expense in conducting advertising activities for promotion of the trademark "Le Creuset". The Complainant maintains an Indian website www.Le-Creuset.in and has been continuously using it since 2015. The Complainant, additionally owns 129 domain names across 66 countries worldwide, which incorporates its trademark "Le Creuset" as part of these domain names.

3.5 The Complainant has been consistently using the trademark internationally for over 90 years and in India since 2005 whereas the disputed domain name <lecreuset.in> was registered on January 30, 2014.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical to its trademark "Le Creuset"; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered or is being used in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant's trademark "Le Creuset" is a registered trademark in the France, India and other countries. The Complainant has provided evidence of

its registered trademarks, based on which, it is found that the Complainant has established its rights in the trademark "Le Creuset". It is well accepted, that submitting proof of trademark registration is considered *prima facie* evidence of enforceable rights in a mark.¹ The Disputed Domain Name <lecreuset.in> incorporates the Complainant's trademark "Le Creuset" in its entirety, and merely adds the generic top-level domain, ".in". A domain name that incorporates a trademark in its entirety is adequate to establish that the disputed name is identical to the mark.² It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The ".in" suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Therefore, the Arbitrator finds that the Disputed Domain Name <lecreuset.in> is identical and confusingly similar to the Complainant's trademark "Le Creuset".

5.4. Rights or Legitimate Interests

The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name. The Complainant asserts that it has not authorized or licensed the Respondent to use the trademark "Le Creuset". Use of a domain name that is identical or confusingly similar to a trademark that applies to goods sold by a Respondent is not a bona fide use if the domain name serves as a "bait" to attract customer to Respondent's website, rather than merely as descriptor of the Respondent's products.³ The Disputed Domain Name is primarily descriptive of Complainant's products as it incorporates the Complainant's trademark "Le Creuset". The Respondent's use of the Disputed Domain Name is merely intended to divert customers to Respondent's website, which provides parking services for unlawful profit generation. Hence, it cannot be considered a bona fide offering of goods and services. The Complainant has made out a *prima facie* case that the Respondent has no right or legitimate interest in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent⁴. The Respondent chosen not to challenge the Complainant's allegations.⁵ There is no evidence

1 In the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER WIPO Case No. D2010-0858 it was held that trademark registration constitutes *prima facie* evidence of the validity of trademark rights. See Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case no. D2001-0654.

2 See Indian Hotel Company Limited v. Sanjay Jha, INDRP case 148 <gingerhotels.co.in>

3 See Adobe Systems Incorporated v. Domain OZ WIP case no. D2000-057 <adobeacrobat.com> and <acrobatreader.com>

4 See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762

5 In the matter of Pavillion Agency, Inc., Cliff Greenhouse and Keith Greenhouse v. Greenhouse Agency Ltd., and Glenn Greenhouse, WIPO Case No. D2000-1221, it was held that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the Domain Names.

before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <lecreuset.in>.

5.5 Registered and Used in Bad Faith

At the time of registration of the Disputed Domain Name, the Complainant's trademark "Le Creuset" was famous trademark internationally and the Respondent should have been aware of the same. The Respondent has in fact knowingly incorporated the Complainant's trademark to attract Internet users to the Disputed Domain Name by creating a likelihood of confusion with the Complainant's trademark with the intent of commercial gain.⁶ In fact, the Respondent has made multiple offers to sell the Disputed Domain Name to the Complainant at the price, which is in excess of the Registrant's out of pocket costs directly related to the Disputed Domain Name. These facts supports the inference that the Respondent deliberately registered the Disputed Domain Name using the Complainant's trademark with the intention to exploit it. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. Decision

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <lecreuset.in> be transferred to the Complainant.



Dipak G. Parmar

Sole Arbitrator

Date: February 27, 2018

⁶ See Weny's LLC v. Apex Limited, INDRP Case no. 737. In this case the domain name <wendys.co.in> was found to be registered with the intention of trading on the goodwill and resputation associated with Wendy's trademark and was held to be registered and use of domain name in bad faith.