

Bond



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Haryana Government**



Date : 12/09/2017

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Deponent

Name : Rachna Bakhru

H.No/Floor : Na

Sector/Ward : Na

Landmark : Rna ip attorney

City/Village : Gurugram

District : Gurugram

State : Haryana

Phone : 0



SKYNDASS
STAMP VENDOR
GURUGRAM

Purpose : ALL PURPOSE to be submitted at Other

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RACHNA BAKHRU

ARBITRATOR

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

In the matter of:

Cheng Shin Rubber Ind. Co. Ltd.
No.215, Meei-Kong Rd.,
Ta-Tsun Township,
Chang-Hwa County 51545,
Taiwan (R.O.C.)

....Complainant

Kenny Shah
R/o 306/307, Diamond Industrial Estate
Near Virvani Industrial Estate
Goregaon East
Mumbai
Maharashtra - 400063
India

.....Respondent

Disputed Domain Name: <WWW.MAXXIS.CO.IN>

AWARD

1) **The Parties:**

The Complainant in this arbitration proceeding is Cheng Shin Rubber Ind. Co. Ltd., a company incorporated under the laws of the Republic of China (RoC)/Taiwan. It is the parent company of the Maxxis Group and carries on its business in India through its subsidiary Maxxis Rubber India Pvt. Ltd. The Complainant is represented by its authorized representatives Mr. Jia Ciao Liou, Director of Maxxis Rubber India Private Ltd.

The Respondent in this arbitration proceeding is Kenny Shah, of 306/307, Diamond Industrial Estate, Near Virvani Industrial Estate, Goregaon East, Mumbai, Maharashtra - 400063, India 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.maxxis.co.in>. The Registrar is Netlynx Technologies Pvt. Ltd. (R62-AFIN).

The Registrant is Kenny Shah of Total Solutions at 306/307, Diamond Industrial Estate, Near Virvani Industrial Estate, Goregaon East, Mumbai, Maharashtra-400063 India

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 Rachna Bakhru 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 July 19, 2017 and the notice was issued to the Respondent on July 21, 2017 at his email address with a deadline of 10 days to submit his reply to the arbitrator.



- The Arbitrator issued another notice to the Respondent on July 31, 2017 via email granting another opportunity to the Respondent to submit its response on or before August 04, 2017.

- The Arbitrator received no response from the Respondent within the said timeline and the Arbitrator has not been informed of any settlement between the parties.

In view of the above, the complaint is being decided based on materials and evidence submitted by the Complainant and contentions put forth by them.

4) **Summary of the Complainant's contentions:**

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

a) The Complainant is in the business of *inter alia* manufacturing and marketing of tyres which are sold all across the world. The word "Maxxis" has been continuously used in commerce in connection with the tyres manufactures by the Complainant. The Complainant states that they are the owners, designers and proprietors of the brand name "Maxxis" and have been using the brand since the year 1992. They claim that the word "Maxxis" is a reputed brand both across the world as well as India.

b) The Complainant's products are sold throughout India and overseas and has acquired an enviable reputation and goodwill, as a result of its excellent quality, distinctive packaging and characteristics, namely, excellent grip, long wear, distinctive tread pattern which offers precise handling, stability and high performance.

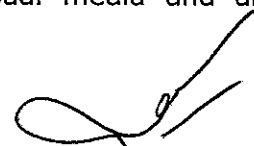
c) The Complainant is the registered proprietor of the trademark and domain name "Maxxis" in various countries and jurisdictions, including India. The Complainant owns trademark registrations for its mark "Maxxis" in countries/jurisdictions including Canada, Germany, Malaysia, China, Korea, USA, Hong Kong, Israel, United Kingdom, Laos, Morocco, Mauritius New Zealand, Australia and many more.

d) In India, the mark MAXXIS is registered under no. 684254 in class 12. The said registration stands in favour of the Complainant since October 19, 1995.

e) The Complainant owns several MAXXIS and MAXXIS formatted domain names. These websites contain extensive information about the Complainant and its products marketed and sold under the trademark and corporate name "Maxxis".

f) The Complainant's trademarks are unique to the Complainant, its products and business, and apart from having statutory rights, the Maxxis trademark has acquired a secondary meaning by virtue of first adoption, continuous and extensive use by the Complainant.

g) The Maxxis products have been discussed in various leading magazines and advertisements across the world. The Complainant claims to have painstakingly built up a good reputation worldwide and has invested substantial amounts of resources in advertising its products under the trademark "Maxxis" in various international magazines, brochures, catalogues, Internet, other print and visual media and also through fairs, exhibitions and events.



- h) The Complainant contends that the Respondent does not have any relationship with the business of the Complainant or any other legitimate interest in the trademark/brand "Maxxis". Moreover, the Complainant has never at any point of time given any license nor authorised the Respondent to use the Complainant's trademark. Hence, there is no actual or contemplated bona fide or legitimate use of the domain name by the Respondent.
- i) The Complainant contends that domain name in dispute contains the entirety of the Complainant's trademark. The disputed domain name is visually and phonetically identical and/or confusingly similar to the trademark and trade name of the Complainant. Such registration by the Respondent amounts to violation of Paragraph 3 of the INDRP.
- j) The Complainant contends that the Respondent has made a calculated approach purely with the intention of domain squatting and hoping to hold the Complainant to ransom. The Respondent has never attempted to create any content on the website.
- k) The Complainant contends that the Respondent is not popularly known in the public nor has applied for any registration of the mark "Maxxis" or any similar mark nor has registered his business under the said name with the Ministry of Corporate Affairs, India.
- l) The Complainant contends that the disputed domain name was intentionally created by the Respondent for commercial gain to misleadingly divert the consumers or traders of the Complainant to the disputed domain name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant.
- m) The Complainant contends that the Respondent has deliberately registered the disputed domain name with the intention of preventing the Complainant from reflecting the said trademark in its domain name in India.

5) **Respondent:**

The Respondent has not filed any official response dealing with the contents of the Complaint despite two opportunities. 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 INDRP policy.

6) **Discussion and Findings:**

The submissions and registration certificates provided by the Complainant in support of registration of the mark Maxxis shows that the Complainant has first adopted the mark Maxxis in around early 1990s. Further, registration details as provided by the Complainant in Annexures C/5 and C/6 show that it had filed Maxxis mark on June 27, 1990 under no. TMA406576 in class 12 in Canada. Further, the Complainant has filed evidence in form of whois details of its ownership of various domain names constituting Maxxis trademark. The Arbitrator notes that the Complainant created the domain www.maxxis.com on July 25, 1996.



In India, the Complainant has superior and prior rights in the mark MAXXIS and filed its first trademark application for the MAXXIS mark under registration no. 684254 in class 12 on October 19, 1995. The documents filed as Annexures C/10 constitute invoices dated as early as the year 2008 showing the business dealings, sale and distribution of the "Maxxis" branded products in India. The documents filed as Annexures C/8 and C/9 show the advertisements and billboard coverage of the Complainant's Maxxis brand/trademark in various countries and jurisdictions.

Based on the submissions and documents submitted by the Complainant, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

(i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

Based on evidence filed by the Complainant, it is clear that the Complainant had prior and subsisting rights in the mark MAXXIS world over with its earliest adoption dating back to year 1990 in Canada. Further, it had secured trademark registration for the MAXXIS trademark in class 12 in India which is dated back to the year 1995. The Complainant has successfully established its statutory trademark rights in the mark MAXXIS worldwide including in India. As a next step, it has to be ascertained if the domain name <maxxis.co.in> is identical to or confusingly similar with Complainant's mark.

It is well accepted proposition that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

In the present case, the disputed domain name <maxxis.co.in> is identical to the Complainant's registered trademark MAXXIS. It is clear that use of identical domain name will make any Internet users to believe that such domain hosts/displays the actual website of the Complainant dedicated to Indian customers/visitors. Since the disputed domain name <maxxis.co.in> is identical to the Complainant's mark MAXXIS and applicable ccTLD in a domain name is viewed as a standard registration requirement and is to be disregarded, I find that the requirement of the INDRP Policy paragraph 4(i) is satisfied.

(ii) The Registrant has no rights or legitimate interests in respect of the domain name;

In order to satisfy requirement of INDRP Policy paragraph 4(ii), the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. On making such prima facie case, the burden of proof shifts to the Respondent to provide appropriate allegations or evidence to demonstrate rights or legitimate interests in the domain name.



At the outset, the Arbitrator notes that no response was received to the Arbitrator's emails dated July 21, 2017 and July 31, 2017. Such inaction on part of the Respondent suggests that he does not have any legitimate rights in the disputed domain name. However, Paragraph 7 of INDRP Policy lists three non-exhaustive factors by which the Respondent may show that it has rights or legitimate interests in the Disputed Domain Names and the present case will also be adjudged based on the criteria covered under the subject paragraph.

Since the disputed domain name resolves to inactive webpage with no contents, it cannot be assumed that the domain name is being used with a bona fide offering of goods or services. The Registrant goes by the name Mr. Kenny Shah of the Organization named as Total Solution as per whois details. Hence, it cannot be presumed that the Registrant is being commonly known by the disputed domain name. Owing to no explanation or justification from the Registrant, it cannot be construed that the Registrant is making a legitimate non-commercial or fair use of the domain name without intent for commercial gain.

The Complainant has contended that the Respondent has no business relationship with the Complainant and the Complainant has not authorized or permitted the Respondent to apply for or register or use the disputed domain name.

Based on the above, I find that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

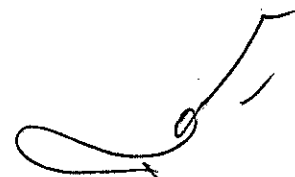
(iii) The Registrant's domain name has been registered or is being used in bad faith.

In view of evidence produced by the Complainant and the fact that same was not rebutted by the Respondent, the Arbitrator will consider evidence of bad faith as stated in Paragraph 6 of the INDRP policy.

Based on prior adoption, worldwide use, several trademarks and domain names registrations of MAXXIS by the Complainant, it is believed that the Respondent was well aware of the Complainant's products and services, its reputation and rights in the trade mark MAXXIS on worldwide basis including in India.

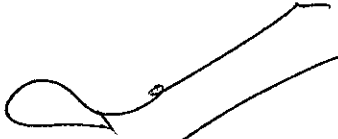
The disputed domain name reflects no active webpage, therefore it can be presumed that the Respondent has registered the domain name in order to prevent the Complainant from reflecting the MAXXIS mark in a corresponding domain name in India. The Respondent has registered the identical domain name in India with an obvious intention to attract Internet users to its website and create a likelihood of confusion with the Complainant's mark MAXXIS.

Based on the above, it can be concluded that the disputed domain name was registered in bad faith.

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher. It appears to be a personal signature, possibly of the arbitrator.

7) **Decision:**

The Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.MAXXIS.CO.IN> be transferred to the Complainant.



RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA
August 20, 2017