



दिल्ली DELHI

B 589089

**Dr. V. K. Agarwal**  
**Sole Arbitrator and Advocate**  
Former Law Secretary to the Government of India

**NATIONAL INTERNET EXCHANGE OF INDIA**  
121-123, ANSAL TOWER, NEHRU PLACE  
NEW DELHI - 110 019

**Netgear Inc. v. Chen Shenglu**

**Case No. of 2006**

**AWARD**

**1. The Parties**

The Complainant is Netgear Inc. 4500, Great America Parkway, Santa Clara, California 95054, United States of America.

The Respondent is Chen Shenglu, E1607, Jinghuayuan, Xiangmei Rd., Shenzhen, Guangdong - 518000

*W. Agarwal*

## 2. The Domain Name and Registrar

The disputed domain name <netgear.co.in> is registered with Direct Information Pvt. Ltd., dba Public Domain Registry.com (R5-AFIN)

## 3. Procedural History

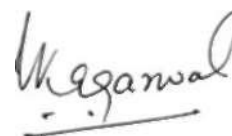
The Complaint was filed with the National Internet Exchange of India on August 2, 2006. The Complainant has made the registrar verification in connection with the domain name at issue. The print out so received are attached with the Complaint. It is confirmed that the Respondent is listed as the registrant and the contact details for the administrative, billing, and technical contact for the disputed domain name are that of the Respondent. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

The Exchange appointed Vinod K. Agarwal as the sole arbitrator in this matter on August 4, 2006. 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.

In accordance with the Rules, Arbitrator through an e mail dated 20<sup>th</sup> August 2006 formally notified the Respondent of the Complaint along with all its annexures. The Respondent was required to submit his defence within 15 days, that is, by 5<sup>th</sup> September 2006. The Respondent was informed that if his response was not received by that date, he would be considered in default. The Respondent did not submit any response. Accordingly, the Respondent's default was notified.

## 4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:



Vinod K. Agarwal

### **Complainant's activities**

The Complainant Netgear Inc. was incorporated in Delaware, USA on January, 1996. The Complainant designs, develops and markets branded and innovative networking products required by the consumers and businesses. The Complainant has about 100 products that are sold worldwide through 7,100 locations. These products enable the users to share internet access, peripherals, files, digital multimedia contents and applications among multiple personal computers, or PC's and other internet enabled devices. All such products are marketed under the trade name "NETGEAR". Further that, it is a coined and fanciful term, which has no denotative meaning.

### **Respondent's Identity and Activities**

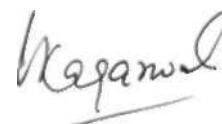
The Respondent did not reply to the Complainant's contentions. Hence, the Respondent's activities are not known.

## **5. Parties Contentions**

### **A. Complainant**

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that it is known amongst consumers worldwide as NETGEAR. The NETGEAR mark is used in the United States and in many other countries in connection with technologically advanced branded networking products. The disputed domain name is <netgear.co.in>. It is likely to be confusing with Complainant's distinctive mark NETGEAR. The Complainant owns more than 680 trademark registrations worldwide for marks containing the word NETGEAR. Further that, the Complainant uses the trade name NETGEAR throughout the United States. The Complainant has filed an application for the registration of its trademark NETGEAR in India and the same is pending. The Complainant has many customers in India. Such as, National Informatics Centre, Honda Siel Cars





- (i) The 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 interests in respect of the domain name;
- (iii) The domain name has been registered and is being used in bad faith; and
- (iv) The domain name is registered only for the purpose of trafficking.

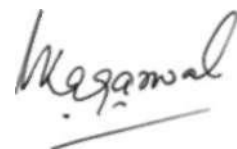
#### **A. Identical or Confusingly Similar**

The Complainant's trademark NETGEAR is registered in many countries including Argentina, Brazil, Canada, China, Hong Kong, New Zealand, Korea, Malaysia, Taiwan, etc. The present dispute pertains to the domain name <netgear.co.in>. The domain names possessed by the Complainants are <netgear.com>, <netgear.com.au>, <netgear.co.uk>, <netgear.de>, etc. The disputed domain name is very much similar to these domain names and the trademark of the Complainant.

The Complainant has many retail stores and uses the trade name NETGEAR in many countries including the United States. As such, consumers looking for NETGEAR may instead reach the Respondent's website. Therefore, I hold that the domain name <netgear.co.in> is confusingly similar to the Complainant's trademark.

#### **B. Rights or Legitimate Interests**

According to the Policy, the Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

A handwritten signature in black ink, appearing to read "Megamal", with a horizontal line underneath it.

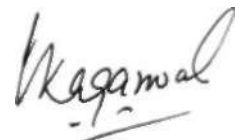
- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the default and the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name. NETGEAR is the name and mark of the Complainant. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

**C. Registered and Used in Bad Faith and for purpose of trafficking**

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of



selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or

- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, 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 its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web sites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its web sites. Further, the domain name apparently offered link to website of one of the competitor of the Complainant. Any person who typed the domain name <netgear.co.in> is directed to the website of D-LINK, the competitor of the Complainant. The Complainant has also given a list of domain names of various organizations, such as, <CNN.CO.IN>, <BBC.CO.IN>, <FIAT.CO.IN>, registered and existing in the name of the Respondent. Thus, it is contended that the Respondent is a professional squatter.

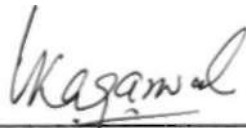
The Complainant has also stated that the Respondent offered to sell the disputed domain name back to the Complainant at an exorbitant price.

*Kagomal*

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. As the Respondent has failed to rebut this presumption, I conclude that the domain name was registered and used in bad faith.

7. **Decision**

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith and for the purposes of trafficking, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <netgear.co.in> be transferred to the Complainant.



---

Vinod K. Agarwal  
Sole Arbitrator

Date: September 15.2006