



महाराष्ट्र MAHARASHTRA

सदरचा मुद्रांक लिहू अँड लायसेन्ससाठी नाही

GL 498081

अनुक्रमांक 8000... दिनांक 22/11/12... रुपये 90079-987  
 मुद्रांक कोणत्या कारणासाठी वापरण्याचा आहे आरबीएस 31/11/12  
 मुद्रांक अधिनियम 1956 चे अनुच्छेद क्र. ....  
 मुद्रांक वापरणाराचे संपूर्ण नाव श्री. विनायक विनायक एम.एल.  
 संपूर्ण पत्ता 208/3, राजे काठण, पुणे  
 हस्त व्यक्तिचे संपूर्ण नाव राजे काठण पुणे  
 पत्ता ए.एम. विनायक एम.एल.  
 स्विकारी (मुद्रांक विक्री) श्री. जयश्री नि. वैलसरे  
 परवाना क्र. 2209099/9999  
 परवान्याची मुदत 29/3/20  
 पत्ता: 224 ब, शनिवार पेठ, पुणे-30



**AWARD  
IN ARBITRATION**

**E.Remy Martin**  
20, rue de la societe vinicole 16100 Cognac, Paris, France

**THE COMPLAINANT**

**AND**

**Ding RiGuo**  
8F, No.199, Shifu Road, Tiazhou Zhejiang  
318000 China. CN.

**THE RESPONDENT /  
THE REGISTRANT**

IN THE MATTER OF DISPUTED DOMAIN NAME: - `remy-martin.co.in`  
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

DELIVERED ON THIS 29<sup>th</sup> DAY OF NOVEMBER TWO THOUSAND  
TWELVE AT PUNE, INDIA.

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. **Names and addresses**  
Of the Complainant: -

**E. Remy Martin**  
**20, rue de societe vinicole**  
**16100, Cognac, France.**

Through its authorized  
representative

Nameshield  
27 rue des arenes 49100 Angers France

02. **Name and address of**  
**The Respondent: -**

**Ding RiGuo.**  
8F, No.199, Shifu Road  
Taizhou Zhejiang  
318000 CN. China

03. **Name and address of the**  
**Registrar**

**Directi Web Services P. Ltd.**  
Directi Internet Solutions P. Ltd. d/b/a/  
PublicDomainRegistry.com  
Directiplex, Mogra Village,  
Nagardas Road, Andheri (East)  
Mumbai. 400069.

04. **Calendar of Major events:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date (Communications in electronic mode)</b>
01	Arbitration case referred to me	05/11/2012
02	Acceptance given by me	05/11/2012
03	Hard copy of the complaint received	09/11/2012
04	Notice of Arbitration issued (with the instructions to file say / reply latest by 19.11.2012)	09/11/2012
04	Reminder notice sent to the Respondent (with the instructions to file say / reply latest by 24.11.2012)	29/10/2012
05	Notice of closure	27/11/2012
06	Award passed	28/11/2012

## I] PRELIMINARY: -

- 1) E.Remy Martin, 20 rue de la societe vinicole, 16100, Cognac, France (**The Complainant**) has filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name '**remy-martin.co.in**' (**the disputed domain name / domain name**), through its **authorised representative Nameshield, 27, rue des arenes 49100 Angers France.**
- 2) The Complainant has disputed registration of domain name '**remymartin.co.in**' in the name of **Ding RiGuo, 8F, No.199, Shifu Road, Taizhou Zejiang, 318000 CN. China (The Respondent / Registrant).**
- 3) Major events took place as enumerated in the above table.

## II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 9<sup>th</sup> November 2012 with the instructions to file his reply / say latest by 19<sup>th</sup> November 2012.
02. The Respondent did not file any reply to the Complaint within the period stipulated for that purpose.
03. On the principles of natural justice and final opportunity to the Registrant, the period to file say / reply was extended by this Arbitration panel *suo-moto* till 24/11/2012.
04. The Registrant / Respondent failed to file any reply / say even within the extended period.
05. In view of no response from the Registrant / Respondent the arbitration proceedings were closed and notice to that effect was sent to the concerned parties on 27/11/2012.
06. In view of no reply by the Respondent no rejoinders were called for.
07. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
08. No personal hearing was requested / granted / held.

### III] SUMMARY OF THE BACKGROUND OF THE COMPLAINANT: -

As per the Complainant the brief background of the Complainant, its history, its rights and interests in the marks and term 'remymartin' are as follows: -

- a) Remy Martin is a cognac produced by E. Remy Martin. Founded in 1724 by Remy Martin, E. Remy Martin is a brand of the company CLS REMY COINTREAU. Today E. Remy Martin is known for using only grapes from the most sought-after vineyards, traditional methods of distillation, longer aging Limousin Oak casks and the savior-faire of the E. Martin Martin Cellar Master to produce the most aromatic and flavorful cognac on the market.
- b) E. Remy Martin owns numerous trademarks registrations with the Remy Martin in several countries and its Indian trademarks. The Complainant has furnished a list of 30 such trademarks registered in its name globally.
- c) The Complainant also owns numerous domain names similar to trademark 'REMY MARTIN' including remymartin.in, remy-martin.in, remy-martin.com, and other CcTlds like .net, .fr, .asia, .cn and so on.
- d) The disputed domain name was registered on 27/02/2012 which is identical to the registered trademark 'Remy Martin'.
- e) The disputed domain name is for sale for US \$3000 on the website [www.sedo.com](http://www.sedo.com) which offer is far in excess of the out of pocket expenses for registering the disputed domain name in .in
- f) The disputed domain name is identical to its trademark and it incorporates the trademark in its entirety.
- g) The term Remy Martin is known especially in relation to the E. Remy Martin and has no meaning in English or in any other language.
- h) The Respondent has no rights or legitimate interests in the disputed domain name as he has no relationship with the Complainant's business and is not authorised or licensed to use the mark, nor is he known by the disputed domain name.
- i) The trademark 'Remy Martin' which is incorporated in the disputed domain name is well known in the world, especially in Asia which accounts for 52.6% of its sales in 2009.
- j) The Respondent was aware of the Complainant and tried to create a likelihood of confusion by registering a domain name that was identical to the trademark in which the Complainant has rights. The intention of the Respondent behind registration of disputed domain name is to mislead and divert internet traffic. Hence the registration of disputed domain name has been done in bad faith and merely for the purpose of selling the same for profits.

#### IV] SUMMARY OF THE COMPLAINT: -

The Complaint is based on the INDRP Rules and Policies on the following main contentions of the Complainant: -

1. The Respondent's domain name is fully identical and confusingly similar to the Complainant's registered trademarks and registered domain names consisting the words 'REMY MARTIN' or its variations.
2. The Registrant has recently adopted the impugned domain name in 27/02/2012 to derive benefit of the goodwill and reputation of the Complainant's brand and mislead members of the public.
3. The Respondent has no rights or legitimate interests in the disputed domain name.
4. The registration of disputed domain name by the Registrant leads to confuse and divert internet traffic to a false website which is not owned by the Complainant.
5. The Domain name was registered in bad faith.

#### V] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period.

#### VI] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

#### VII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes

02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	<b>Yes</b>
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	<b>No</b>
04	Whether the Registrant has commonly been known by the domain name?	<b>No</b>
05	Whether the Registrant has any legitimate interests in the disputed domain name?	<b>No</b>
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	<b>Yes</b>
07	Has the Registrant 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?	<b>Yes</b>
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	<b>Yes</b>
09	Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?	<b>Yes</b>

#### **VIII] BASIS OF FINDINGS: -**

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'REMY MARTIN' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant worldwide. It is personal name of the founder of the Complainant. In India the Complainant does have registered trade mark No.498773 dated 04/10/1988. Apart from this the Complainant has numerous trademarks registered worldwide. Moreover the Complainant has several domain names registered with the words remy martin. Therefore it can not be assumed that the Registrant was not aware of the same.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'remymartin'.

***Therefore my finding on the first issue is affirmative.***



2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

Yes. Already discussed in issue (A) above.

*Therefore my finding on this issue is in affirmative.*

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not filed any say or reply to the complaint and hence it is presumed that he has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

*Therefore my finding on this issue is in negative.*

4. Whether the Registrant has been commonly known by the domain name?

The name of the Registrant, as on the Whois records is Ding RiGuo. As such he is not commonly been known by the domain name 'remymartin' or 'any variation thereof.

*Therefore my finding on this issue is in negative.*

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'Remy Martin'. He is not commonly known by that name. He has not established that he has taken all reasonable steps to use the registered domain name for bona fide business activities. He has not shown any other nexus of his business with the disputed domain name.

*Therefore my finding on this issue is negative.*

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The domain is parked at Sedo website for sale purposes. The Respondent has not replied to the Notice of Arbitration sent by this panel. Anyone having legitimate interests would not waste a single opportunity to defend his legal rights, interests in domain name.

*Therefore my finding on this issue is affirmative.*

7. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out various aspects of malafide registration of the disputed domain name, registration of domain name without any authority and any bona fide business on the part of the Respondent. Such registration has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

*Therefore my finding on this issue is in affirmative.*

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

At present the disputed domain name is parked at Sedo website and is available for sale. If the same is used by the Respondent the registered domain name will definitely create confusion in the minds of internet users about its nexus with the Complainant due to exact reproduction of the persona name and registered trademark in its entirety in the domain name.

*Therefore my finding on this issue is affirmative.*

9. Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?

When this panel tried to visit the disputed domain name it was found that it is parked with Sedo website and is available for sale. It is beyond doubt that the Respondent has registered domain name for the purpose of selling it for valuable consideration, far excess in the legitimate out of pocket expenses required for registration of any .in domain name.

*Therefore my finding on this issue is affirmative.*

#### **IX] CONCLUSION AND BASIS OF AWARD: -**

From above discussion I have reached the conclusion that: -

- a. The Respondent does not have any registered trade mark / service mark in his name containing the words 'Remymartin' and hence does not have any legitimate interest in the same.
- b. The Registrant has not been commonly known by the disputed domain name.



- c. The Registrant is not making fair use of the disputed domain name for his bona fide business purposes, much less for non-commercial purpose.
- d. The Respondent / Registrant has completely failed to establish his nexus with the disputed domain name in any way.
- e. The Respondent has not bothered to respond / reply to legal notice of the Complainant or to the Notice of Arbitration. It is the primary principle of law that 'silence amounts to acceptance'. Thus all the allegations and contentions by the Complainant stand unchallenged and amount to have been accepted by the Respondent.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

- 01. The Complainant is entitled to the disputed domain name – www.remy-martin.co.in and hence the same be transferred in the name of the Complainant.**
02. No orders as to the costs of these arbitral proceedings.

Dated: - 29.11.2012  
Place: - Pune

  
(S.C.INAMDAR)  
SOLE ARBITRATOR