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ARBITRATION AWARD

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF
INDIA**

**.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure**

IN THE MATTER OF:

Rautaruukki Oyj
Suolakivenkatu 1,
00810 Helsinki,
Finland.

.....COMPLAINANT

VERSUS

Liqun Wang,
Domain Legal Services,
Tianmushan Road, 34,
Hangzhou,
Zhejiang,
Postal Code: 310028
China.

.....RESPONDENT

1 **The Parties:**

The Complainant is Rautaruukki Oyj
Suolakivcnkatu 1, 00810 Helsinki, Finland.
Represented through Shantanu Sood Advocate,
Zeus IP Advocates registered office No. C-4,
Jangpura Extension, New Delhi 1 10014

The Respondent is Liqun Wang, Domain Legal
Services, Tianmushan Road, 34, Hangzhou,
Zhejiang, Postal Code: 310028, China..

2• **The Domain Name and Registrar**

The disputed domain name <RUUKKI.CO.IN> is
registered with Directi Internet Solutions Pvt. Ltd.
dba Public Domain Registry.com

3. **Procedural History**

The Complaint was filed with the In Registry,
National Exchange of India (NIXI), against
Liqun Wang, Domain Legal Services, Tianmushan
Road, 34, Hangzhou, Zhejiang, Postal Code:
310028, China.. The NIXI verified that the
Complaint together with the annexures to the
Complaint and satisfied the formal requirements of
the .in Domain Name Dispute Resolution Policy
("The Policy") and the Rules of Procedure ("The
Rules").

- 3.1 In accordance with the Rules, Paragraph-2(a) and
4(a), NIXI formally notified the Respondent of the
Complaint and appointed me as a Sole Arbitrator
for adjudicating upon the dispute in accordance
with The Arbitration and Conciliation Act, 1996,
Rules framed there under. In Dispute Resolution
Policy and Rules framed there under on
24th September 2010. The parties were notified



about the appointment of Arbitrator on **24th**
September 2010.

3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on **24th**
September 2010 In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

3.3 The Respondent failed and/or neglected and/or omitted to file any response to the Complaint within 5 days as was granted to him by the notice dated **24th**
September 2010. The Respondent was again granted last and final opportunity to file its response within 3 days time by the notice dated **5th**
October 2010. However, the Respondent did not file any reply to the Complaint filed on behalf of the Complainant.

The Respondent however wrote to Complainant's attorney on October 19, 2010 for selling the disputed domain for consideration, which was forwarded to the arbitrator by e-mail of 21.10.2010.

3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

3.5 The present award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the rules.



4 **FACTUAL BACKGROUND**

4.1 The Complainant in these administrative proceedings is Rautaruukki Oyj, Suolakivenkatu 1, 00810 Helsinki, Finland.

The Complainant requests arbitration proceedings in accordance with the Arbitration and Conciliation Act, 1996, .In Dispute Resolution Policy and rules framed there under and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be fit and applicable to the proceedings.

4.2 The Complainant, Rautaruukki Oyj., is a globally renowned company which manufactures and supplies metal-based components and systems to the construction and engineering industries. It has active offices and operations in 27 countries around the world and its net sales in 2009 totalled ERU 2.0 billion. The company's share is quoted on NASDAQ OMX Helsinki (Rautaruukki Oyj: RTRKS). In China, the Complainant's office is located in Shanghai, which is one of the biggest industrial hubs in China and the world.

4.3 The Complainant uses the marketing name and trade mark Ruukki which was coined and adopted way back in 1970's and has three core areas where it specializes, the same being construction, engineering and metals goods, all of which are sold under complainant's RUUKKI trade mark and are sold around the world, including India and China.

4.4 The respondent has registered the disputed domain name "RUUKKI.CO.IN" on 25th April 2010 through the Registrar, Directi Internet Solutions Pvt Ltd., DBA Public Domain Registrv.com. The respondent has not submitted any response to the complaint as has been



filed by the complainant in the above proceedings despite being given two opportunities by the panel.

The Respondent however wrote to Complainant's attorney on 19 October 2010 for considering his offer for sale of the disputed domain name <ruukki.Co.in>.

5. Parties Contentions

A Complainant

5A(1) The Complainant is in the business of manufacturing and supplies of metal-based components and systems to the construction and engineering industries. The Complainant has applied / registered and used its RUUKKI Trademarks and variants thereof in several countries around the world, including India. The RUUKKI trademarks are registered in connection with a wide range of wares and services, and international classes thereof.

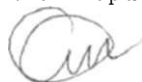
5A(2) The Complainant has annexed a list of registrations obtained by him in various jurisdictions such as European Union, United Kingdom, United States of America, Japan, China People Republic, Canada and Australia in respect of the mark RUUKKI.

The Complainant has also filed various trademark applications in India in Class(s) 6, 7 & 37 with the Trade Marks Registry in India.

5A(3) The Complainant is also the owner of number of domain names incorporating the mark RUUKKI including RUUKKI.COM and RUUKKI.EU. The Complainant was successful in getting the domain transferred by UDRP Process in respect of the domain name RUUKKI.TV The Complainant has further initiated complaints under UDRP and other National Domain Dispute Policies for transferring and/or

canceling the domains incorporating the mark RUUKKI by the third party.

- 5A(4) The Complainant on becoming aware of the domain name registration, contacted the Registrant by FED-EX on August 13th, 2010 asking them to cease and desist the use of the domain name and immediately transfer the said domain name to the complainant. The letter was returned undelivered as FED-EX informed that the address of the Registrant is non-existent. Therefore, the same was forwarded by email to the Registrant on August 18, 2010.
- 5A(5) On August 18, 2010, the complainant received a response from the registrant intimating us that domain was registered by one of their client and that he will revert to us after discussing with his client.
- 5A(6) On August 19, 2010 the Complainant received another response from the registrant informing us that they talked with their client and that the domain was registered for use in connection with their client's business and that they had already launched the website. Further, the complainant visited the domain www.ruukki.co.in and noted that a webpage in Chinese had been inserted. The Complainant asserts that it is apparent that the registrant contacted his client and instructed them to immediately insert some passive content therein.
- 5A(7) On August 20, 2010, the respondent sent an email wherein the complainant was sent an offer to buy the domain name. On September 8, 2010 the respondent again reiterated the offer to sell the domain to the complainant and this time intimated that the sale price for the same was USD 3000.
- 5A(8) The Complainant on 19 October 2010 i.e. after the initialization of this complaint under 1NDRP wrote to the complainant's attorney to consider his offer for sale of the Disputed Domain Name.



5A(9) The Complainant submits that it is apparent from the Registrant's conduct that he is a cyber squatter with no legitimate interest in the domain <ruukki.co.in> and that the registration has been acquired with a mala fide and dishonest intention to illegally profit from reputation and goodwill of the complainant and its trade mark / trade name RUUKKI.

B Respondent

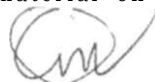
5B(1) The Respondent has been given two opportunities to file its response to the Complainant by the panel by its notice(s) dated 24th September 2010 and 5th October 2010.

5B(2) The Respondent has failed and/or neglected and/or omitted to file any response to the Complaint filed by the Complainant.

6 Discussions and Findings

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that, there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstances, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing.



Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

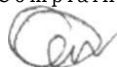
6.4 Under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.

The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.

The Complainant has filed evidence by way of Exhibits 1 to 13 with the Complaint.

The Respondent has not filed its reply or any documentary evidence.

6.5 The onus of proof is on the Complainant. As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the



trade mark, trade name and domain name <RUUKKI.CO.IN> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the annexures filed by the Complainant along with the Complaint

- 6.6 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.7 The decision of Hon'ble Supreme Court of India in the matter of Jahuri Sah Vs. Dwarika Prasad -AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof, (see Section 58 of the Indian Evidence Act, 1872).
- 6.8 The Panel therefore accepts case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.9 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant
- 6.10 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:
- (i) the domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
 - (ii) the Respondent has no rights or legitimate interests in respect of the domain names; and



(iii) the domain names have been registered and are being used in bad faith.

That being so, the Panel will now proceed to examine if the Complainant has otherwise discharged its onus to prove each of the three elements specified in paragraph 4 of the Policy.

A. Identical or Confusingly Similar


6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

6A.2 The Complainant owns trade mark rights in RUUKKI and RUUKKI formative marks in India and throughout the world. The domain name registered in connection with the .co.in extension is "RUUKKI". Thus, the Registrant's domain name is identical to a name, trade mark or service mark in which the Complainant has rights.

6A.3 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also find and hold that the disputed Domain Name RUUKKI.CO.IN is identical and/or deceptively similar to the earlier registered trade marks and Domain names of the Complainant. The whole of Complainants trade mark /domain name has been incorporated in the disputed domain name and there is bound to be confusion to deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name RUUKKI.CO.IN is identical and/or confusingly similar to the trademark RUUKKI of the Complainant.

B. Rights or Legitimate Interests

6B.1 The Respondent has no rights or legitimate interests in respect of the domain name.



6B.2 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

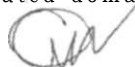
before any notice to the Registrant of the dispute, the Registrant use of, or demonstrate preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

(ii) the Registrant (as an individual, business, or other organization) have been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or

(iii) the Registrant is making a legitimate noncommercial 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.

6B.3 The Complainant submits that upon information and belief, the Registrant has not, prior to any notice of this dispute, used or made preparations to use the domain name in connection with a bonafide offering of goods or services to the best of complainant's knowledge no bonafide use of domain name has been made whatsoever. It had simply been parked at www.ruukki.eo.in until the Complainant wrote to the Registrant. Thereafter, on receipt of the Complainant's letter, Registrant uploaded passive content on the domain in an attempt to represent that the same is being legitimately used in connection with some business.

6B.4 The Complainant further submits that upon information and belief the Registrant has also not used the disputed domain name as a trademark or a service



mark in connection with any goods or services after the registration of the disputed domain name in its favour. The Registrant has also not registered the trademark "RUUKKI" in its favour in India.

6B.5 The Complainant further submits that upon information and belief, the Registrant is not commonly known by/ the domain name.

6B.6 The Complainant further submits that the Registrant is not licensed or otherwise authorized by the complainant to use the name. Therefore, the Registrant has no rights or legitimate interests in rights of the domain name.

6B.7 The Respondent did not dispute any of the contentions raised by the Complainant in its Complaint. The case set up by the Complainant is deemed to be admitted as not disputed by the Respondent. The Panel also find, on the basis of the material available on record, that the respondent has no legitimate right or interest in the disputed domain name. The respondent has failed to show any justification for the adoption, use or registration of disputed domain name.

6B.8 The Panel, therefore holds that the circumstances listed above demonstrates rights or legitimate interests of the Complainant in the domain name RUUKKI.CO.IN and holds that Respondent has infringed the rights of the Complainant by registering the Domain Name and has no legitimate right or interest therein.

C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith-

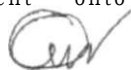


6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or the Registrant has 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 our documented out-of-pocket costs directly related to the domain name; or
- (ii) the Registrant 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 you have engaged in a pattern of such conduct; or
- (iii) by using the domain name, the Registrant has intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location".

6C.3 The Complainant submits that bad faith may be inferred by circumstances indicating the Registrant registered the domain name for the purpose of transferring the domain name to the complainant for valuable consideration.

6C.4 The Complainant further submits that notably, the Registrant gave no explanation as to the legitimate reasons he might have for the registration, use or non-use of the Domain name. The Registrant only uploaded content onto the domain after receiving the



Complainant's letter dated August 13, 2010. In addition, the Registrant showed no reluctance to transfer the domain name to the Complainant but instead wrote to the Complainant to drop an offer if they wanted to buy the said domain name and thereafter commenced use of the same. Further, the Registrant reiterated its offer of selling the said domain name to the complainant and quoted a price of USD 3000 for the same.

6C.5 The complainants further submits that the above sequence of facts conclusively constitute 'circumstances indicating that the Registrant 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 bears the name or is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name as mentioned in clause 6(i) of INDRP rules.

6C.6 The Respondent does not dispute any of the contentions raised by the Complainant. The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name RUUKKI.CO.IN was registered by the respondent in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.

6C.7 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. Decision

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the



facts and circumstances of the case, the panel directs
the

Transfer of the domain name RUUKKI.CO.IN to the
Complainant.



AMARJIT SINGH
Sole Arbitrator

Dated: 27th October, 2010.