



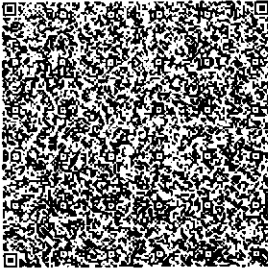
सत्यमेव जयते

# INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

Certificate No. : IN-DL95510262408408L  
 Certificate Issued Date : 26-Mar-2013 02:13 PM  
 Account Reference : IMPACC (IV)/ dl806203/ DELHI/ DL-DLH  
 Unique Doc. Reference : SUBIN-DL80620390609382248667L  
 Purchased by : AMARJIT SINGH ADVOCATE  
 Description of Document : Article Others  
 Property Description : 18, PUSA ROAD, NEW DELHI  
 Consideration Price (Rs.) : 0  
 (Zero)  
 First Party : AMARJIT SINGH ADVOCATE  
 Second Party : NA  
 Stamp Duty Paid By : AMARJIT SINGH ADVOCATE  
 Stamp Duty Amount(Rs.) : 100  
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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:**  
L'OREAL - France

.....Complainant

DING RIGUO - China

VERSUS

.....Respondent

Disputed Domain Name:

<shu-uemura.in>

# ARBITRATION AWARD

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy  
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**IN THE MATTER OF:**

L'OREAL

14 Rue Royale

75008 Paris

FRANCE

...Complainant

**VERSUS**

DING RIGUO

8F, No. 199 Shifu Road

This-domain-may-be-for-sale

318000 Taizhou

Zhejiang

China

.....Respondent

Disputed Domain Name:

<shu-uemura.in>

**1. THE PARTIES:**

The Complainant in this arbitration proceeding is L'OREAL, 14 Rue Royale, 75008 Paris, FRANCE.

The Respondent in the arbitration proceedings is DING RIGUO, 8F, No. 199 Shifu Road, Taizhou, Zhejiang 318000, CHINA.

**2. THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <shu-uemura.in> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Directi Web Services Pvt. Ltd., Directiplex, Morga Village Nagardas Road, Andheri (Eaqst), Mumbai, Maharashtra 400069, INDIA.

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3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against DING RIGUO, 8F, No. 199 Shifu Road, Taizhou, Zhejiang 318000, CHINA. The NIXI verified that the Complaint and the annexures to the Complaint and was satisfied that the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules") were complied with.

3.1 The Panel submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).

3.2 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 **13th December, 2012**. The parties were notified about my appointment as an Arbitrator on **13<sup>th</sup> December, 2012**.

3.3 In accordance with the rules, paragraph 5(c), the Respondent was notified by me about the commencement of arbitration proceedings on 13<sup>th</sup> December, 2012 and the due date for filing his response. The Respondent did not file any reply/response to the Complaint filed by the

Complainant and was further given final opportunity to file his response, if any, within seven days by my e-mail dated 23<sup>rd</sup> January, 2013.

- 3.4 The Respondent failed and/or neglected and/or omitted to file formal response to the Complaint within time as was granted to him by notices dated **13<sup>th</sup> December, 2012 & 23<sup>rd</sup> January, 2013.**

Therefore, the Panel has no other option in the interest of justice but to proceed with the matter on the basis of the pleadings, documents and material on record.

- 3.5 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.

4. **FACTUAL BACKGROUND**

- 4.1 The Complainant in these administrative proceedings is L'OREAL, 14 Rue Royale, 75008 Paris, FRANCE.
- 4.2 L'Oreal is a French industrial group specialized in the field of cosmetics and beauty. It was created in 1909 by a French chemist by the same name L'OREAL and is present in over 130 countries and markets over 500 brands. Among said brands, 23 are international trademarks. It markets more than

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2,000 products in all sectors of the beauty industry, such as hair color, styling aids, cosmetics, cleansers, and fragrances. L'Oreal employs 68,900 persons and is present in 130 countries.

4.3 L'Oreal markets inter alia professional products, consumer products, luxury products and active cosmetics. L'Oreal owns several international brands among which "SHU UEMURA" is one of them. The brand SHU UEMURA covers essentially luxury products.

4.4 SHU UEMURA focus is on hair beauty rituals inspired by Japanese tea ceremony. This brand takes its name from Mr. Shu Uemura who became famous in the world of make-up in 1958. The brand is marketed in the most prestigious hair salons.

4.5 The present dispute fall within the scope of INDRP and the Constituted Panel appointed by INDRP has the jurisdiction to decide the same. The Registrar of the disputed Domain Name has adopted the INDRP Rules, as per its Registrar Accreditation Agreement.

4.6 The complainant objects to the registration of disputed domain name <shu-uemura.in> in the name of the respondent and seek the relief of transfer thereof.

## 5. PARTIES CONTENTIONS

### 5A COMPLAINANT

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5A(1) The Complainant submits that SHU UEMURA conjures up the concept of makeup artist. Renowned for his masterful makeup artistry since 1958, SHU UEMURA helped pioneer the concept of the makeup artist, merging makeup and art through his bi-annual mode makeup collection and on-stage makeup performances, each of SHU UEMURA's products embraces elements of art, nature and science through original packaging, unique textures, key ingredients and ground-breaking product formulas. SHU UEMURA happens to be the name of a Japanese makeup artist and founder of the SHU UEMURA international Cosmetics line which bears its name. SHU UEMURA developed and launched his first cosmetics product in 1960. SHU UEMURA was well-known for its cleansing oil which left the skin cleaner than soap. SHU UEMURA developed a philosophy that the health of his customer's skin should be the most important aspect of cosmetics.

5A(2) The Complainant further submits that SHU UEMURA sold his controlling interest in his company to French cosmetics maker L'Oreal in 2004. However, he remained the creative force behind SHU UEMURA Cosmetics generated approximately \$100 million in sales from its stores worldwide. SHU UEMURA is present in 18 countries and in over 320 points of purchase. SHU UEMURA has 38 stores located in China.

5A(3) The Complainant is present worldwide and inter alia in China. L'Oreal has opened in particular a research centre in Pudong where it has conducted

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studies to create a range of shampoos and hair care products ideally suited to local hair types and cultural tradition.

5A(4) Complainant, L'Oreal is the owner of trademark SHU UEMURA protected throughout the world and in particular in China.

- International Trademark Registration SHU UEMURA No. 1030415 registered on February 1, 2010 and covering goods in classes 3 and 44;
- International Trademark Registration SHU UEMURA No. 1027071 dated November 26, 2009 and covering goods in class 3;
- Chinese Trademark No. 1347652 SHU UEMURA dated December 28, 1999, renewed and covering goods in class 3;
- Chinese Trademark No. 1369928 SHU UEMURA dated of February 28, 2000, renewed and covering goods in class 42;
- Chinese Trademark No. 7607289 SHU UEMURA dated August 10, 2009 and covering goods in class 3;
- Indian Trademark No. 1889383 SHU UEMURA dated November 27, 2009 and covering goods in class 3.

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5A(5) The Complainant submits that L'Oreal and its affiliates own many domain names consisting of trademark "SHU UEMURA".

- <shuuemuraartofhair.com> was created on January 23, 2007.

5A(6) Complainant became aware of the registration of the disputed domain name <shu-uemura.in> in the name of Respondent Ding RiGuo and made investigation and found that the said domain name used to resolve to a parking page, which displays commercial links and announcing the domain name was for sale. Currently, the domain name resolves to a page announcing the domain name is for sale. It is also still offered for sale at 3000 USD on Sedo's platform.

5A(7) Before introducing the present action, Complainant sent email and registered cease-and-desist letter dated June 19, 2012 to the Respondent based on its trademark rights, asking the respondent to transfer the impugned domain name. Despite several reminders, Respondent never replied. As no amicable settlement could be found, Complainant started the present procedure in order to obtain the transfer of the disputed domain name.

## **B. RESPONDENT**

5B(1) The Respondent was given an opportunity to file his/her response to the Complaint by the panel by its notices dated 13<sup>th</sup> December, 2012 & 23<sup>rd</sup> January, 2013. However, the respondent has failed to file any response within the prescribed time or to



seek any extension of time. The case of the complainant, therefore, remained unrebutted.

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 there under 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, while seeking registration of the disputed domain name.

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 circumstance, 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.

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- 6.4 In accordance with the principles laid down 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.
- 6.5 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.
- 6.6 The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the authenticity of the documents filed by the Complainant.
- 6.7 The onus of proof is on the Complainant. As the proceedings are 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 <shu-uemura.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/Exhibits filed by the Complainant along with the Complaint.

- 6.8 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.
- 6.9 The decision of Hon'ble Supreme Court of India in the matter of **JahuriSah 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).
- 6.10 The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.11 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.
- 6.12 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:

**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.

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- 6A.2 The Respondent registered the Disputed Domain Name on 29<sup>th</sup> April, 2012.
- 6A.3 The contention of the Complainant that by registering the impugned domain name <shu-uemura.in> by the Respondent, the likelihood of confusion between the trademark of the disputed domain name cannot be avoided is upheld by this panel.
- 6A.4 The Complainant is also the registered proprietor of the Trade Mark incorporation the word "SHU UEMURA" in various countries including China and India, and the Respondent has not challenged the said registrations in any manner.
- 6A.5 The addition of a ccTLD ".IN" is not sufficient to escape the finding that the domain is confusingly similar to the Trademark and does not change the overall impression of the designation as being connected to the Complainant's trademark. The disputed domain name includes the ccTLD <.in>. It has been persistently held that the addition of ccTLD suffixes does not circumvent the likelihood of confusion and that it should be disregarded to assess potential similarity between a domain name and a trademark (WIPO Case No. DC02012-0001, easyGroup IP Licensing Limited v. wang tao and Case No. INDRP/245, October 22, 2011, L'Oreal v. Corporate Domains - **Annex 21** et No. INDRP/125, February 14, 2010, Lego Juris A/S v. Robert Martin - **Annex 35**) merely because it is descriptive of the registry services.

6A.6 The disputed domain name reproduces Complainant's trade mark in its entirety. In many WIPO decisions, Panels considered that the incorporation of a trade mark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered trademark (WIPO Case No. D2010-1059, RapidShare AG, Christian Schmid v. Invisible Registration.com, Domain Admin and WIPO Case No. D2008-0705, ACCOR v. Lee Dong Youn, Tenneco Inc. v. Toni Li, Case No. INDRP/130, March 5, 2010; ITC Limited v. Travel India, Case No. INDRP/065, April 15, 2008 - **Annex 19**).

6A.7 The mere addition of the hyphen "-" in between "Shu" and "Uemura" does distinguish the domain name from the trademark of the Complainant. Previous Panels have found that the mere addition of a hyphen is insufficient to create a distinct mark [Case No. INDRP/370, July 28, 2012, Morgan Stanley v. Ding Riguo and Morgan Stanley Smith Barney Holdings LLC vs. ms-sb ms, FA 1299536 (Nat. Arb. Forum February 16, 2010) - **Annex 20**].

6A.8. The Complainant registered the Domain Name <shu-uemura.com> on 22/3/2003, which is much subsequent to the date of first adoption & use of the said mark by the Complainant in China.

6A.9 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name <shu-uemura.in> is identical and/or

deceptively similar to the earlier registered trade marks and Domain names of the Complainant. The whole of Complainant's trade mark /domain name has been incorporated in the disputed domain name and there is bound to be confusion and 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 <shu-uemura.in> is identical and/or confusingly similar to the Trademark of the Complainant.

6A.10 For all the above cited reasons, it is established that the Complainant has trademark rights in the SHU UEMURA trademark and that the disputed domain name is identical or at least confusingly similar to this trademarks. Therefore, the condition of Paragraph 4(a)(i) of the IN Policy is fulfilled.

**B. RESPONDENT HAS NO RIGHT OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME**

6B.1 The Respondents have no interest or legitimate right with respect to the Disputed Domain Name. Respondent is not affiliated with Complainant in any way nor has he been authorized by Complainant to use and register its trademark, or to seek registration of any domain name incorporating said mark. Since the disputed domain name resolved towards a parking page displaying commercial links, Respondent cannot refer to the "Oki Data" test to prove any authorization from Complainant (see WIPO Case No.D.2008-1940, MasterCard

International Incorporated v. Global Access – Annex 22).

- 6B.2. The complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.
- 6B.3 The trademark incorporating the word SHU UEMURA has not been licensed by the complainant to the respondent. Respondent is no way affiliated with Complainant. Complainant has not authorized or licensed Respondent to use and register the SHU UEMURA trademark, nor to seek registration of any domain name incorporating this trademark. In previous decisions, Panels found that in the absence of any license or permission from the Complainant to use such widely known trademarks, no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed (WIPO Case No. D2010-0138, LEGO Juris A/S v. DomainPark Ltd. David Smith, Above.com Domain Privacy, Transure Enterprise Ltd. , Host master, Annex 24)
- 6B.4 The fact that the domain has been put on sale by the respondent which in the absence of any response seems to be the only purpose for acquiring disputed Domain Name, in itself demonstrates that the

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Respondent has no rights or legitimate interest in respect of the disputed Domain Name.

6B.5 The respondent does not have rights or legitimate interests in the disputed domain name SHU UEMURA. Whereas Complainant's rights in a trademark predate Respondent's registration of the disputed domain name incorporating the trademark of the Complainant (Case No. INDRP/096, June 27, 2009, Compagnie Gervais Danone v. Digitech Software Solutions - **Annex 23**). Furthermore, the registration of the SHU UEMURA trademarks preceded the registration of the domain name for years (**Annexes 1, 15 and 16**).

6B.6 Furthermore, Respondent has never provided evidence of being known or recognized by the Disputed Domain Name. Previous Panels have considered that where Respondent has not provided evidence that it is known or recognized by the domain name, Respondent has no rights or legitimate interests in the domain name (Case No. INDRP/256, November 4, 2011, Citroen v. Hyderabad; Case No. INDRP/127, February 24, 2010, Accor v. Tang Wei; Case No. INDRP/118, November 26, 2009, Starbucks Corporation v. Mohanraj - **Annex 26**).

Therefore, this panel is satisfied that the respondent has no rights or legitimate interest in respect of the disputed domain name.

6B.7 Additionally, Complainant had registered and used various domain names consisting in its mark SHU



UEMURA long before Respondent registered the disputed domain name. Consequently, there can be no right or legitimate interest on Respondent's side (**Annexes 17** and Case no. INDRP/099, June 12, 2009, *Societe Anonyme des Eaux Minerales d'Evian (SAEME) v. Rajesh Aggarwal - Annex 27*).

6B.8 Respondent is not making a fair or legitimate non commercial use of the domain name. On the contrary it is making a commercial use of the domain name. Respondent used the domain name to direct Internet users to a page of pay-per-click links. Such links cannot constitute a bona fide use offering of goods and services (Case No. INDRP/100 May 4, 2009, *Ste des Produits Nestle v. Nescafe Limited* and Case No. INDRP/342, *L'Oreal v. Zeng Wei - Annex 28*).

6B.9 The term "SHU UEMURA" has no signification in Chinese, the language of the country in which Respondent is located.

6B.10 The Complainant attempted to contact the Registrant by sending a cease-and-desist letter by postal letter and e-mail. However, Respondent has never replied. Panels have repeatedly stated that when Respondent does not avail himself of his right to respond to Complainant, it can be assumed that Respondent has no rights or legitimate interests in the disputed domain names. If Respondent had a right or legitimate interest in connection with the disputed domain name, he would have vigorously defended its rights by quickly replying to



Complainant's cease-and-desist letter. In light of these circumstances, it clearly appears that Respondent does not have any legitimate interest with respect to the disputed domain name.

6B.11 The respondent has not rebutted claims of the complainant.

6B.12 Therefore, this panel is satisfied that the respondent has no rights or legitimate interest in respect of the disputed domain name.

**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:

6C.3 The bad faith in registering the impugned domain name by the respondent is apparent from the fact that the same has been registered for the sole purpose of sale as discussed in the preceding paragraphs. Numerous decisions support this proposition are in favour of the complainant.

6C.4 The registration of Domain Name incorporating a well known mark is strong evidence of bad faith. Various INDRP decisions and UDRP decisions support this proposition in favour of the Complainant.



6C.5 Further, the well-known character of Complainant's mark SHU UEMURA has been underlined by a WIPO Panel (WIPO Case No. D2012-0179, L'Oreal v. Zhao Ke, WIPO CASE No. D2011-1608, L'Oreal, Laboratoire Garnier et Compagnie, Lancome Parfums et Beaute et Compagnie v. Zhao Ke, Zeng Wei, Zhu Tao, Yang Yong, Ma Yun, Ye Genrong, Ye Li, ChinaDNS Inc., DomainJet, Inc., Hao Domains Services, Case No. INDRP/246, November 3, 2011, L'Oreal v. Corporate Domains and Case No. INDRP/245, October 22, 2011, L'Oreal v. Corporate Domains - **Annex 18**).

It is thus very unlikely that Respondent was unaware of Complainant's existence or trademark rights before registering the disputed domain name.

It has been held that the registration of a domain name containing a well-known mark is strong evidence of bad faith (Case No. INDRP/018, October 6, 2006, Becarrat SA v. Doreen Jungnickel/Darius Herman Domcreate; Case No. INDRP/051, November 5, 2007, NBA Properties, Inc. v. Rickson Rodricks - **Annex 34**).

The disputed domain name has been used for a page displaying pay-per-click links (**Annex 13**). Because of the distinctiveness of Complainant's SHU UEMURA trademark, it is reasonable to infer that Respondent registered the disputed domain name with full knowledge of Complainant's trademark. Where a domain name is found to be registered with

an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration (Case No. INDRP/125, February 14, 2010, Lego Juris A/S v. Robert Martin – **ANNEX 35**).

The reservation of the disputed domain name prevents Complainant to communicate in India and to Indian consumers via Internet using domain name with a cctld extension and a specific website dedicated to the complainant's presence and offering of goods in India. This evidences Respondent's bad faith in the registration of disputed domain name (L'Oreal v. JackSun, INDRP/343 May 17, 2012 **Annex 29**).

Even if Respondent was unaware of Complainant, which is unlikely in the present case, a quick trademark search or online search on Google using the keyword "SHU UEMURA" would have shown the existence of Complainant and its trademark rights (**Annex 36**). According to the Policy paragraph 3, it was Respondent's responsibility to conduct a trademark search before registering the disputed domain name. Respondent's failure to conduct this search is evidence of registration in bad faith (L'Oreal v. Jack Sun, INDRP/343 May 17, 2012 **Annex 29**).

Moreover, Respondent has not replied to any cease-and-desist letters and reminders Complainant sent (**Annex 14**). Such behavior has already been considered as an inference of bad faith by previous

panels (WIPO Case no. D2002-0787, Bayerische Motoren Werke AG v. (This Domain Is For Sale) Joshuathan Investments Inc. and WIPO Case No. D2011-1500, Crocs Inc. v. Alex Xie-Annex 37).

Additionally, it seems that Respondent has engaged in a pattern of conduct of registering domain names reproducing trademarks of third parties. It has been involved in INDRP proceedings (see Annex 20). This constitute evidence of bad faith pursuant to article 6 (ii) of the Policy.

Consequently, in view of the abovementioned circumstances, it is established that Respondent registered the disputed domain name in bad faith.

6C.6 The complainant inference that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic is also valid.

6C.7 The decision of WIPO Case No. D2000-1016 titled Playboy Enterprises International, Inc. Vs. Hector Rodriguez reads "People, who manifest an intent to traffic in domain names that incorporate well-known or famous trademarks, as the Respondents do here, simply do not expand their efforts with the sole intention of relinquishing those domain names for just their out-of-pocket registration costs. The goal of their efforts, simply put, is an expectation of receiving an adequate reward, i.e. sufficient profit, from this trafficking" transfer awarded.

6C.8 As previously indicated the domain name - <shu-uemura.in> resolved to a parking website displaying pay-per -click links (**Annex 13**). The use of the disputed domain name to divert Internet users and directing them to a website providing click through revenues to Respondent evidences bad faith. Respondent was taking undue advantage of Complainant's trademark to generate profits, Furthermore, both websites pointed by the domain name indicated that it was for sale. The use of a famous trademark to attract Internet users to a website for commercial gains constitutes use in bad faith pursuant to the Policy, paragraph 6 (Lego Juris A/S v. Robert Martin Case No. INDRP/125, February 14, 2010 - **Annex 35**).

Moreover, there is little doubt that many Internet's users attempting to visit Complainant's website have ended up on the web page set up by Respondent. Indeed, the disputed domain name is confusingly similar to Complainant's trademark and previous Panels have ruled that "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from Complainant's site to Respondent's site (Case No. INDRP / 156, October, 27, 2010, Morgan Stanley USA v. Bharat Jain U.S.A. and WIPO D2010-1318, L'Oreal SA V. :::: LinChaoJie, Guangxi NanNing IDEA Business Planning Co., Ltd - **Annex 38**).

Respondent has engaged in a pattern of conduct of abusive domain name registration and has already

been involved in a case of cyber squatting (**Annex 20**).

Respondent is also offering to sell the domain name for 3000 USD. This sum largely exceeds Respondent's out-of-pocket costs. It appears that the sole objective of Respondent was to sell the domain name to Complainant or competitors for considerable compensation which is the same of bad faith (The Metropolitan Life Insurance Company v. Mr. Bharat Jain, Case No. INDRP/196, February 17, 2011; Morgan Stanley USA v. Bharat Jain USA, Case No. INDRP/156 - **Annexes 38 and 39**).

In view of the above, it is established that the disputed domain name is also being used in bad faith.

Consequently, it is established that Respondent both, registered and used the disputed domain name in bad faith in accordance with Paragraph 4 (iii) and Paragraph 6 of the Policy.

6C.9 The bad faith use of the Disputed Domain Name is quite clear in this case, given the content on the Respondent's web site and his intent to sell the Disputed Domain Name to the highest bidder.

6C.10 The Respondents do 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 <**shu-uemura.in**> was registered


by the respondents in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.

6C.11 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 <shu-uemura.in> to the Complainant.

The Respondent is also directed to pay cost of Indian Rupees 50,000/- (Rupees Fifty thousand only) to compensate the Complainant towards the cost of proceedings.

  
**AMARJIT SINGH**  
Sole Arbitrator

Dated: March 22, 2013