



सत्यमेव जयते

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ARBITRAL AWARD  
IN REGISTRY  
C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)  
Before The Sole Arbitrator, Divya Balasundaram  
Disputed domain name - okcupid.in

In the matter of:

Humor Rainbow, Inc.

Versus

Yin Jun, China

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Disputed domain name - okcupid.in

In the matter of:

Humor Rainbow, Inc.  
P.O. Box 25458  
Dallas, Texas 75225  
United States of America

Complainant

-vs-

Yin Jun, China

Respondent

1. THE PARTIES

1.1 The Complainant in these proceedings is Humor Rainbow, Inc., a corporation incorporated under the laws of the State of New York in the United States of America, having its registered office at P.O. Box 25458, Dallas, Texas 75225, United States of America. The Complainant is represented by Swathi Sukumar, Counsel, D-10, Lower Ground Floor, Nizamuddin East, New Delhi 110 013.

1.2 Respondent in these proceedings is Yin Jun based in China.

2. DISPUTED DOMAIN NAME AND REGISTRAR

2.1 This dispute concerns the domain name okcupid.in which was registered on January 17, 2019 (the 'disputed domain name'). The Registrar with which the disputed domain name is registered is Name.com, Inc., 414, 14<sup>th</sup> Street, #200, Denver, Colorado 80202.

3. PROCEDURAL HISTORY

3.1 The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (.INDRP), adopted by the National Internet Exchange of India (NIXI).

3.2 NIXI vide its email dated September 17, 2019 requested availability of Ms. Divya Balasundaram to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure on the same day.

3.3 Arbitrator was appointed vide NIXI's email of September 23, 2019.

- 3.4 Arbitrator sent email on September 24, 2019 serving formal notice of the Complaint upon the Respondents and calling for a response within 15 days.
- 3.5 Having received no response from the Respondent within the stipulated timeframe, the Arbitrator addressed an email dated October 10, 2019 stating that the award would be passed ex-parte.
- 3.6 The language of these proceedings is English.

4. COMPLAINANT'S TRADEMARK RIGHTS AS SUBMITTED IN THE COMPLAINT

- 4.1 The Complaint is based on the Complainant's service mark "OKCUPID", in relation to its business of online dating applications. The Complainant states it is a part of the Match Group, the world's leading provider of dating products, operating a portfolio of brands, including OkCupid, Tinder, Match, PlentyOffish, Meetic, OurTime, Pairs, Twoo, and LoveScout24, each designed to increase its users' likelihood of finding a romantic connection. Through its portfolio of trusted brands, the Group provides tailored products to meet the varying preferences of its users. The Complainant (which for purposes of this Complaint includes its predecessors-in-interest) coined the mark OKCUPID in the year 2003, and has been using it since at least as early as 2004.
- 4.2 The Complainant is the first adopter and prior user of the trade name "OKCUPID" for online dating services in India and throughout the world. Since its adoption in 2003, the trade name "OKDUPID" has been associated with and recognized to be that of the Complainant. The Complainant first registered this mark in the United States in 2007, and the Complainant applied for registration of the said "OKCUPID" mark in Indian Classes 42 and 45 on 25.02.2016. The same was registered in favour of the Complainant under Classes 42 and 45 on 4<sup>th</sup> August, 2017. The Complainant has obtained registrations in various countries for its service mark "OKCUPID".
- 4.3 The Complainant has also registered the domain name <[www.okcupid.com](http://www.okcupid.com)> in its name, on 12<sup>th</sup> March 2003 with the registrar MarkMonitor Inc. The website is visited by a large number of users of the Complainant and is accessed daily from all over the world. Apart from the said website which is hosted and owned by the Complainant, the Complainant also hosts a mobile application under the mark "OKCUPID" which has been downloaded by over 10 million users as on 10<sup>th</sup> September 2019 from the Google Play Store alone.
- 4.4 The Complainant offers the following services under its mark "OKCUPID":

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- a. Computer services in the nature of customized web pages featuring user-defined information, personal profiles and information.
  - b. Computer dating services; internet based social networking introduction, and dating services; online social networking services.
- 4.5 The home page of the Complainant's website <www.okcupid.com>, demonstrates the range of services offered by the Complainant.
- 4.6 The immense goodwill and reputation earned by the Complainant is further evident from the fact that its user base has grown by leaps and bounds since its launch in 2004 and currently has a user base of over 10 million active users. The Complainant has a vast user base in multiple countries.
- 4.7 The Complainant has also invested substantial amounts for the purposes of advertising the brand "OKCUPID". The Complainant's "OKCUPID" service/brand has been the subject of many articles by a number of publications over the years.
- 4.8 By virtue of regular, continuous and extensive user of the trademark "OKCUPID" by the Complainant, efforts taken by the Complainant in popularizing its branch/mark and the services offered thereunder, and by reason of the quality and experience of the services provided by the Complainant, the trademark "OKCUPID" enjoys an extremely high level of goodwill and reputation across the globe. Consequently, the trademark "OKCUPID" has become distinctive of the Complainant and the services offered by it under the mark "OKCUPID". The Complainant's trademark "OKCUPID" enjoys the status of a well-known mark as defined under Section 2(zg) of the Trade Marks Act, 1999, has acquired a secondary meaning, and is thus protectable as such under the provisions of the said Act. The Complainant has acquired a global and trans-border reputation due to extensive use worldwide. Use of this mark by any third party will lead to confusion among the general public.

5. THE RESPONDENT

- 5.1 The Respondent has registered the domain name <www.okcupid.in>.
- 5.2 Around the month of July 2019, the Complainant became aware of the existence of the domain name www.okcupid.in. Upon accessing the web page from India, the screen initially flashes the message that the domain "okcupid.in" may be for sale for USD 2000. Subsequently, the user is redirected to the web page mediadiscovery.net.

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- 5.3 However, upon accessing the domain name www.okcupid.in from at least the United States, the user is redirected alternately to the webpages for www.dating.com and www.eharmony.com. Both these websites provide services which are in competition with the services provided by the Complainant under its "OKCUPID" mark.

6. LEGAL GROUNDS

- 6.1 The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.
- 6.2 The impugned domain name www.okcupid.in uses "okcupid" as the prominent and operative phase which is identical to the Complainant's registered and well-known trademark "OKCUPID". The only difference between the Complainant's and the Respondent's domain names is that the Registrant has used the <.in> extension, as opposed to the Complainant, who has used the <.com> extension.
- 6.3 As a consequence of the impugned domain name being identical to the registered trademark of the Complainant as well as to the website URL of the Complainant www.okcupid.com operated by the Complainant, ordinary users are likely to be confused by the presence of the impugned domain name on the internet and thus cause loss of business and reputation to the Complainant.
- 6.4 Previous panels have consistently held that incorporation in its entirety of a trademark without additions, subtractions or other modifications results in an identical domain name for the present purposes. The ".in" part of the domain name is immaterial for the purposes of comparison in this context.
- 6.5 In the present case, the mere fact that the Respondent's domain name uses the .in suffix is not sufficient to distinguish the disputed domain name from the Complainant's mark "OKCUPID". The Respondent's domain name is identical to the Complainant's registered and well-known mark.
- 6.6 The Respondent has no rights or legitimate interests in respect of the domain name(s).
- 6.7 The fact that the impugned domain name has been registered by the Respondent despite having no affiliation, past or present, with the Complainant also clearly suggests that the Respondent has no legitimate rights or interests in respect of the impugned domain name/URL.

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- 6.8 No details of the Respondent are known or available to the Complainant, and the same are not available on any public database. It is thus evident from the facts stated hereinabove that registration of the impugned domain name is a prime example of cyber-squatting.
- 6.9 The Respondent registered the impugned domain name on 19<sup>th</sup> January 2017, i.e., close to 16 years after registration of the Complainant's domain name [www.okcupid.com](http://www.okcupid.com). Further, the domain (when accessed from India) has only been parked, and has not been in use.
- 6.10 It is further pertinent to reiterate that the domain (when accessed from at least the USA) redirects the user to the Complainant's competitors' websites. Therefore, the registration of the impugned domain name is nothing but an attempt to ride upon the immense goodwill that has been generated by the Complainant over the years and to divert the existing and potential users of the Complainant's services to its competitors.
- 6.11 It is clear that the Respondent has only registered the impugned domain name <www.okcupid.in> with the object of diverting the Complainant's actual and prospective customers, and with an intention of making unlawful commercial gains either by passing off its business as that of the Complainant's or by selling the domain name to a third party in competition with the Complainant.
- 6.12 There is no evidence of 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. The Respondent has not been commonly known by the domain name as is evident from the website of the Respondent. To the best of the Complainant's knowledge, the Respondent has not sought to apply for trademark or service mark registration for the Complainant's service mark "OKCUPID".
- 6.13 Further, the Respondent's website is being used to advertise many third party links. Therefore the Respondent cannot claim any right or legitimate interest in the domain on the basis of the fact that it is involved in the business of outsourcing.
- 6.14 The domain name was registered and is being used in bad faith.
- 6.15 The Respondent has registered the impugned domain name in bad faith. It can be reasonably concluded that the Respondent was and continues to be fully aware of the Complainant's business and reputation, and that the impugned registration was made with the sole motive of encashing on the goodwill and reputation of the Complainant.



- 6.16 The fact that the impugned domain name has only been created as recently as 19<sup>th</sup> January 2017 and uses the Complainant's trademark OKCUPID clearly prompts the conclusion that the Respondent has purely done so for the purpose of monetary gain, and/or causing loss of business and reputation to the Complainant and therefore, the Respondent's registration and use of the impugned domain name is clearly in bad faith.
- 6.17 Further, the Complainant apprehends that using the domain name, the Respondent will attempt to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusing 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 the Respondent's website or location.
- 6.18 It appears that the Respondent has a history of cyber-squatting, although there is no conclusive way to assess this given the paucity of contact information of the respondent. The Complainant relies upon a decision of the WIPO Panel in LinkedIn Corporation v. yin jun, Case No. D2015-1070, <<https://www.wipo.int/amc/en/domains/search/text.jsp?case=D2015-1070>> where the same Respondent appears to have registered the domain name <linkedin.wang> which was ordered to be transferred to the Complainant in that case.

7. DISCUSSION AND FINDINGS

- 7.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant. The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 7.2 The Arbitrator finds that the Complainant has satisfactorily established all the elements necessary to maintain its complaint.
- 7.3 The disputed domain name is identical to Complainant's trade mark OKCUPID. The Complainant has established its prior trademark rights in the said mark. Mere addition of .in does not serve to differentiate the disputed domain from Complainant's trademark.
- 7.4 The Respondent is neither commonly known as OKCUPID nor has applied for any registration of the mark "OKCUPID" nor carries on any business under the said name. The Respondent was also not authorized or licensed by Complainant to use the domain name. There is no evidence of 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.

- 7.5 The Respondent has also clearly violated the provisions of Paragraph 3 of INDRP.
- 7.6 The Respondent registered the impugned domain name close to 16 years after registration of the Complainant's domain name [www.okcupid.com](http://www.okcupid.com).
- 7.7 Upon accessing the web page from India, it is indicated that the domain is parked for sale. Subsequently, the user is redirected to the web page [mediadiscovery.net](http://mediadiscovery.net). The impugned domain (when accessed from at least the USA) redirects the user to the Complainant's competitors' websites. The Respondent's website is being used to advertise many third party links.
- 7.8 The Respondent also appears to have a history of cyber-squatting, as stated in the Complaint relying upon the WIPO decision in *LinkedIn Corporation v. yin jun*, Case No. D2015-1070. The Arbitrator has gone through this decision and notes that as per Reverse WHOIS search, there are several other famous domains registered by the Respondent herein belonging to unrelated third parties.
- 7.9 The conduct of the Respondent from all of the above clearly demonstrates that the Respondent has adopted an identical domain name without any bonafide right or interest in the same and also in bad faith. This has been done only to benefit from the established rights and reputation of the Complainant in its OKCUPID mark. Further, the Respondent was given ample time to respond to the Complaint, but has not submitted any response till date.

## 8. DECISION

- 8.1 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name [okcupid.in](http://okcupid.in) be transferred to the Complainant.



Divya Balasundaram  
Sole Arbitrator

Date: October 15, 2019  
Place: New Delhi.