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RANJAN NARULA

R 784386

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

BHP Billiton Innovation Pty Ltd

Level 3, 509 St Kilda Road
Melbourne, VIC 3004
Australia

.....Complainant

Guan Rui

Liao Xia Gaoqudonglu 23
Mibu
Guangdong
US

.....Respondent

Disputed Domain Name: www.bhpbilliton.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is **BHP Billiton Innovation Pty Ltd** of 180 Lonsdale Street, Melbourne, VIC 3000, Australia. The Complainant is represented by its authorized representatives Griffith Hack of Level 3, 509 St. Kilda Road, Melbourne, VIC 3004, Australia who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Guan Rui of Liao Xia Gaoqudonglu 23, Mibu, Guangdong, US as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.bhpbilliton.in The Registrar is Directi Web Services Pvt. Ltd. The Registrant is Guan Rui, Liao Xia Gaoqudonglu 23, Mibu, Guangdong, US.

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the national Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence (on 23rd November, 2011), as required by NIXI.

The complaint was produced before the Arbitrator on December 14, 2011 and the notice was issued to the parties on December 14, 2011 via email address with a deadline of 10 days to Respondent to submit his reply to the arbitration. The Respondent did not submit any response. On December 30, 2011 the Arbitrator granted further opportunity to the Respondent to submit its response on or before January 05, 2012. However, no response was submitted by the Respondent within the stipulated time or thereafter. Therefore the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.



Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name; and
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The complainant in support of its case has made the following submissions

1. The Complainant is the world's largest diversified resourced Group which is extensively involved in constructions, energy, exploration and mining operations. The Complainant is the combination of a dual listed company comprising BHP Billiton Limited and BHP Billiton Plc.
2. The Complainant had an average annual turnover US\$50 billion in the year 2009 and is headquartered in Melbourne, Australia with major offices in London and supporting offices around the world. BHP Billiton operates through a website www.bhpbilliton.com and is the registrant of numerous domain names featuring the BHP Billiton mark such as bhpbilliton.biz, bhpbilliton.org, bhpbilliton.mobi, bhpbilliton.info, bhpbilliton.net etc.
3. The Complainant is the proprietor of the said trading name and mark BHP Billiton registered under the Trade Marks Act, 1999 under Registration No. 1536680 dated 2nd March 2007, in relation to products and services falling under classes 4, 6, 37, 40 and 42. A copy of the registration has been provided by the Complainant. The Complainant is also the owner of numerous trade marks in countries such as Australia, USA, EU, Canada, Singapore etc. The copies of registration have been provided by the Complainant.
4. The Complainant states that owing to the diverse nature of the company and the wide range of services, the said name and mark has gained tremendous reputation and goodwill and has become well known and has also acquired a secondary meaning connoting and denoting to the members of public, to the Complainant's said business alone. The said name and mark BHP Billiton has come to be exclusively associated and identified with the Complainant's business alone. Owing to the aforementioned reasons, the said name and mark BHP Billiton has become distinctive with the Complainant and has acquired a formidable and valuable reputation, goodwill and association amongst the members of trade and public. The Complainant contends that by virtue of the registration of name and mark BHP Billiton, they are entitled to the exclusive use thereof.
5. The Complainant is also the registrant and user of the domain name www.bhpbilliton.com from March, 2001. The said domain name / website of the Complainant attracts several potential clients and customers to the Complainant's business and is one of the most valuable business assets of the Complainant. Any use of an identical and / or deceptively similar domain name and / or trade mark is



bound to divert internet traffic and cause enormous losses including pecuniary loss to the Complainant.

5) **Respondent**

The Respondent has not filed any response to the Complaint though they were given opportunity to do so. The e-mails sent to their address have not been returned with any delivery failure notification thus indicating that the Respondent has received the mails and elected not to file its response. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

6) **Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark 'BHP Billiton' leads to the conclusion that the Complainant has superior and prior rights in the mark BHP Billiton. Thus it can be said a) the web users associate the word BHP billiton with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the www.bhpbilliton.in and c) they may believe it is an official website for the country India, of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the complainant has established the three conditions as per paragraph 4 of the policy:

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'BHP BILLITON'. The complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'BHP Billiton' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'BHP Billiton' trademark. Further, the Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration of the disputed domain name in favour of the complainant.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own right and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection



with a bonafide offer of goods or services. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'BHP Billiton'

(3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn. Further the Respondent is monetizing its domain name by advertising employment services in the same industry that the Complainant provides its services. Thus it is attracting internet traffic by riding upon the reputation of Complainant's domain name. In view of the above, it can be concluded that the Respondent is taking undue advantage of the mark 'BHP Billiton'.


Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'BHP Billiton' is identified with the Complainant's product or services, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

9. Decision:

The Respondent failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights.

The complainant has given sufficient evidence to prove extensive reputation and trade mark rights on the disputed domain name. Further, the Respondent's adoption and registration of the disputed domain name is in bad faith.

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.bhpbilliton.in is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.bhpbilliton.in be transferred to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

18 January, 2012