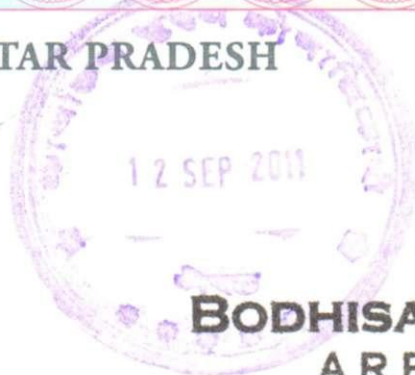




उत्तर प्रदेश UTTAR PRADESH

AU 801581



BODHISATVA ACHARYA
ARBITRATOR

(Appointed by IN Registry-National Internet Exchange of India)

Case No. Of 2011

ARBITRATION AWARD: DISPUTED DOMAIN NAME :< RADIOMARIA.IN >

In the matter of:
Associazione Radio Maria
Via Miliano, 12
22036 Erba (COMO)
Italy

Filed by its authorized representative attorney -

Sudhir D. Ahuja
D.P.Ahuja & Co.,
14/2 Palm Avenue,
Kolkata 700 019
INDIA
Email- litigation@dpahuja.com

...Complainant.

Vs.

Liu Jiapeng

Room 503, Unit 2

Fixing Lou Shaoshui Dong Road

Shaoyang City, Hunan Province

Shaoyang, CHINA 422000

Email: aucifer212@gmail.com

..... Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is Associazione Radio Maria, Via Milano, 12, 22036 Erba (COMO), Italy filed by its authorized representative attorney Sudhir D. Ahuja, D.P.Ahuja & Co.,14/2 Palm Avenue, Kolkata 700 019, INDIA .

Respondent in this arbitration proceeding is Liu Jiapeng, Room 503, Unit 2 Fixing Lou Shaoshul Dong Road, Shaoyang City, Hunan Province Shaoyang, CHINA 422000

Email: aucifer212@gmail.com

2. The Domain Name, Registrar & Registrant:

The disputed domain name is www.radiomaria.in

3. Procedural History:

The complainant, through its authorized representative, filed this complaint to NIXI regarding the disputed domain name www.radiomaria.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed **Mr. Bodhisatva Acharya** (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on November 12th, 2011 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on November 14th, 2011, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the January 10th, 2012 as Ex-parte.

4. Factual Background:

(a) The Complainant is an international, non-profit organization, representing the **Association of Radio Maria**, a catholic radio broadcasting service founded in 1983 in Erba, Province of Como, in the diocese of Milan. The World Family of Radio Maria was formed in 1998 out of its subsequent international growth in the 1990's and today has branches in 55 countries around the world.

(b) The Complainant is the owner of a number of domain names which support the complainant's several official websites for its audience and patrons from different countries and jurisdictions. Some of these domain names are:

radiomaria.org
radiomaria.al
radiomaria.nl
radiomaria.org.in
radiomaria.co.in



The complainant is the owner of several registrations for the trademarks **RADIO MARIA** and its variants worldwide. In India, the complainant is the registered proprietor of the **RADIO MARIA** trademark since 31 May, 2004. A list of world wide trademark registrations and pending applications for **RADIO MARIA**, together with some representative registration certificates, including that of Indian registered trademark number **1287078** for **RADIO MARIA**, and the complainant's name and trademark, **RADIO MARIO** is distinctive and globally well known. The disputed domain name <radiomaria.in> is registered in the name of Liu Jiapeng, the respondent herein and the disputed domain name is identical to the complainant's registered trademarks.

(c) On 25 July, 2011, the Complainant's counsels sent a cease desist letter to Liu Jiapeng, the Respondent herein, calling upon him to transfer the disputed domain to the complainant. The Respondent sent an email in reply under the pseudonym 'Alice', indicating USD3, 000 as his price for the transfer.

(d) Lastly the complainant filed this complaint for Arbitration proceeding and the complaint was produced before the Arbitrator on November 12th, 2011 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on November 14th, 2011, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the January 10th, 2012 as Ex-parte.

5. Parties Contentions:

(a) Complainant contends that

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

- (ii) The Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent gave no response and produced no reply.

6. Discussion & Findings:

(a) The Complainant is an association of 40 multilingual Radio Maria broadcast operations. As Radio Maria, the complainant operates approximately 1,500 terrestrial radio transmitters worldwide broadcasting The Complainant is the owner of several registrations for the trademarks **RADIO MARIA** and its variants worldwide. The disputed domain name <radiomaria.in> is registered in the name of Liu Jiapeng. There is strong likelihood that web browser looking for Radio Maria services in India would mistake the offending website. The ownership issue concerning that the trademark RADIO MARIA has been considered by the number of international arbitration panels, including the WIPO Arbitration and Mediation Panels, and decided in favor of the Complainant. A list of WIPO cases and decisions concerning disputed domain names containing "radio maria", that have been filed by the Complainant.

(b) The disputed domain name resolves to a dummy website parked with Sedo's Domain Parking. The website carries the legend, " *The domain radiomaria.in may be for sale by its owner!* ". The Respondent has made no use of the domain name in connection with a bonafide offering of goods and services, and is holding on to the domain name for dishonest purposes. Because the Respondent uses the domain name to support an essentially dormant website, Respondent does not use the domain name for any legitimate, non-commercial or fair use.



The Respondent does not use the mark/name **RADIO MARIA** as his Business name/corporate name or otherwise in course of trade, and neither does he use the said mark/name for any legitimate commercial purposes. The Respondent clearly did not independently arrive at "radiomaria" for its domain name. Respondent's registration and passive holding of the disputed domain name <radiomaria.in> fails to demonstrate any use in connection with a bona fide offering of goods or services.

(c) On 25 July, 2011, the Complainant's counsels sent a cease desist letter to Liu Jiapeng, the respondent herein, calling upon him to disputed domain name to the Complainant. The Respondent sent an email in reply under the pseudonym 'Alice', indicating USD3,000 as his price for the transfer. The complainant has neither authorized nor consented to the respondent's adoption and use of the complainant's well known and registered **RADIO MARIA** trademark. To the best use of the Complainant's knowledge, the Respondent is not engaged in activities related to spiritual/ religious broadcasting. The temporary page currently available on www.radiomaria.in indicates that the disputed domain has already been put up for sale. The page linked to <http://www.radiomaria.in> carries the slogans. "*This website is for sale*" and "*The domain radiomaria.in may be for sale by its owner!*"

The Complainant's trademark/name is well known around the world: The fact the Respondent has registered a domain name that is identical to it, indicates that the Respondent was aware of the value of the Complainant's trademark at the time of the registration of the disputed domain name. Certainly the Respondent's intention, by knowingly choosing a domain name consisting of the Complainant's trademark "**RADIO MARIA**", was clearly to take advantage of the reputation and fame of the Complainant's trademark. It is clear that the Respondent has acquired the domain name at issue to attract internet users for commercial gain.



7. Decision:

Hence the Arbitrator decides, 'the Disputed Domain Name www.radiomaria.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.radiomaria.in shall be transferred to the Complainant with immediate effect.



BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI

DATED: January 10TH, 2012,
PLACE: NEW DELHI,
INDIA.

