



हरियाणा HARYANA

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RANJAN NARULA

ARBITRATOR

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

In the matter of:

L'OREAL

14, Rue Royale

75008

Paris

France

.....Complainant

Bestsun Corporation

David Wong

138# feilong sanjia

Taizhou, Zhejiang

China - 318014

..... Respondent

Disputed Domain Name: www.shu-uemura.co.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is L'OREAL, 14 Rue Royale, 75008, Paris, France. The Complainant is represented by its authorized representatives Nathalie Dreyfus, Dreyfus & associates 78, Avenue Raymond Poincare, 75116, Paris France, who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Bestsun Corporation of David Wong, 138#, feilong sanjia, 318014, Taizhou, Zhejiang, China 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.shu-uemura.co.in. The Registrar is Directi Web Services Pvt. Ltd.

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, as required by NIXI.

The complaint was produced before the Arbitrator on December 10, 2012 and the notice was issued to the Respondent on December 11, 2012 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. On December 27, 2012 the Arbitrator granted further opportunity to the Respondent to submit its response on or before January 04, 2013. However, no response was submitted by the Respondent within the stipulated time of thereafter. In the circumstances 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;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- 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

- a) The Complainant, L'oreal, a French industrial group specialized in the field of cosmetics and beauty.
- b) The Complainant product is one of the most widely known and specialized in the field of cosmetics and beauty. It markets in all sectors of the beauty industry, such as professional products, consumer products, luxury products and active cosmetics. L'oreal owns several international brands among which SHU UEMURA covers essentially luxury products. This brand marketed in the most prestigious salons. SHU UEMURA was well-known for its cleansing oil which left the skin cleaner than soap. SHU UEMURA sold its controlling interest in his company to French cosmetics maker L'OREAL in 2004.
- c) Complainant is present worldwide and inter alia in China where Respondent is located. Complainant has opened in particular a research centre in Pudong where it has conducted studies to create a range of shampoos and hair care products identically suited to local hair types and cultural tradition. In 2010 L'oreal recorded another year of double growth in China.
- d) The Complainant's brand has also collaborated with famous film director Wong Kar-Wai for an advertising campaign. In 2012, SHU UEMURA also launched an advertisement campaign featuring a Chinese actor Shawn Dou.
- e) The Complainant brand is the object of advertising and promotion by partnership with famous designers like Karl Lagerfeld. The brand has also collaborated with famous film director Wong Kar-Wai for an advertising campaign has been filed as **Annexure 11**. In 2012, SHU UEMURA also launched an advertisement campaign featuring a Chinese actor Shawn Dou. A copy of which has been filed as **Annexure 12**. The well-known character of Complainant's mark has been underlined by a WIPO Panel. A copy of which has been filed as **Annexure 18**.
- f) The Respondent's domain name resolved to a parking website displaying pay-per-click links which has been filed as **Annexure 13**. The Complainant has alleged that use of the disputed domain name is to divert internet users and



direct them to a website providing click through revenues to Respondent evidences bad faith. Respondent was taking undue advantage of Complainant's trade mark to generate profits.

- g) The reservation of disputed domain name www.shu-uemura.co.in 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 evidence Respondent's bad faith in the registration of disputed domain name have been filed as **Annexure 29**.
- h) The trademark 'SHU UEMURA' forms an integral part of the Complainant's product. Since the trade mark 'SHU UEMURA' is its most valued intellectual property, the Complainant has taken utmost care to secure statutory rights in the same through trade mark registrations in numerous countries of the world including India.
- i) The Complainant is the registered proprietor of the trade mark 'SHU UEMURA' in various countries, with the registrations dating back to the year 1999 in Japan. Besides these, the copies of registration certificates in respect of the Complainant's trade mark have been filed as **Annexure 15 & 16**.
- j) In India, the Complainant's trademark 'SHU UEMURA' is registered under No. **1889383** in class 03, since November 27, 2009. Copies of certified extracts from the Registrar of Trade marks pertaining to Registration No. **1889383** have been filed as **Annexure-16**.
- k) A copy of WHOIS details in respect of the domain www.shu-uemura.co.in has been filed as **Annexure-1**.
- l) The Complainant has submitted that upon reviewing the impugned website www.shu-uemura.co.in, the Complainant was surprised to note that the same is being offered for sale. Printouts from the website operated by the Registrant under the domain name 'www.shu-uemura.co.in'. Further, the said domain is parked on Sedo.com, a well known site for trading in domain names. Sedo allows Registrants to simply 'park' the registered domain names without having to develop any website. Relevant printout reflecting that the domain is parked for sale at Sedo.com has been filed as **Annexure-13**. It is evident that the Registrant is blocking the Complainant from registering the said domain name with a view to reap illegitimate profits. The Registrant is unduly using as part of the disputed domain name, the mark 'SHU UEMURA' which is identical to the Complainant's corporate name and trade mark. The registrant has no rights or legitimate interests in respect of the said domain name and is operating with a view to make unjust pecuniary gains by offering the said domain for sale.



5) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. 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 3 of the policy.

6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'SHU UEMURA' leads to the conclusion that the Complainant has superior and prior rights in the mark 'SHU UEMURA'. Thus it can be said a) the web users associate the word 'SHU UEMURA' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the shu-uemura.co.in and c) they may believe it is an official website 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 which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the complainant.

- (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 'SHU UEMURA'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'SHU UEMURA' 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 'shu-uemura.co.in' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show interest in protecting his own rights 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. The Respondent has simply parked its domain for sale.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'shu-uemura.co.in'.


(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.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'SHU-UEMURA' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.shu-uemura.co.in is 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.shu-uemura.co.in be transferred from the Respondent to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

11 January, 2013