



उत्तर प्रदेश UTTAR PRADESH

IP 194628

**Dr. Bodhisatva Acharya**  
**ARBITRATOR**

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

**ARBITRATION AWARD**

DISPUTED DOMAIN NAME : < [www.annemeulemeester.in](http://www.annemeulemeester.in) >

In the matter of:

**Ann Demeulemeester**  
**Bogaertsheide 2**  
**B-2560 Kessel-Nijlen**  
**BELGIUM**

Filed by its authorized representative attorney -

**F.S. GROSER and BHARAT CH PRASAD**

**Groser & Groser**

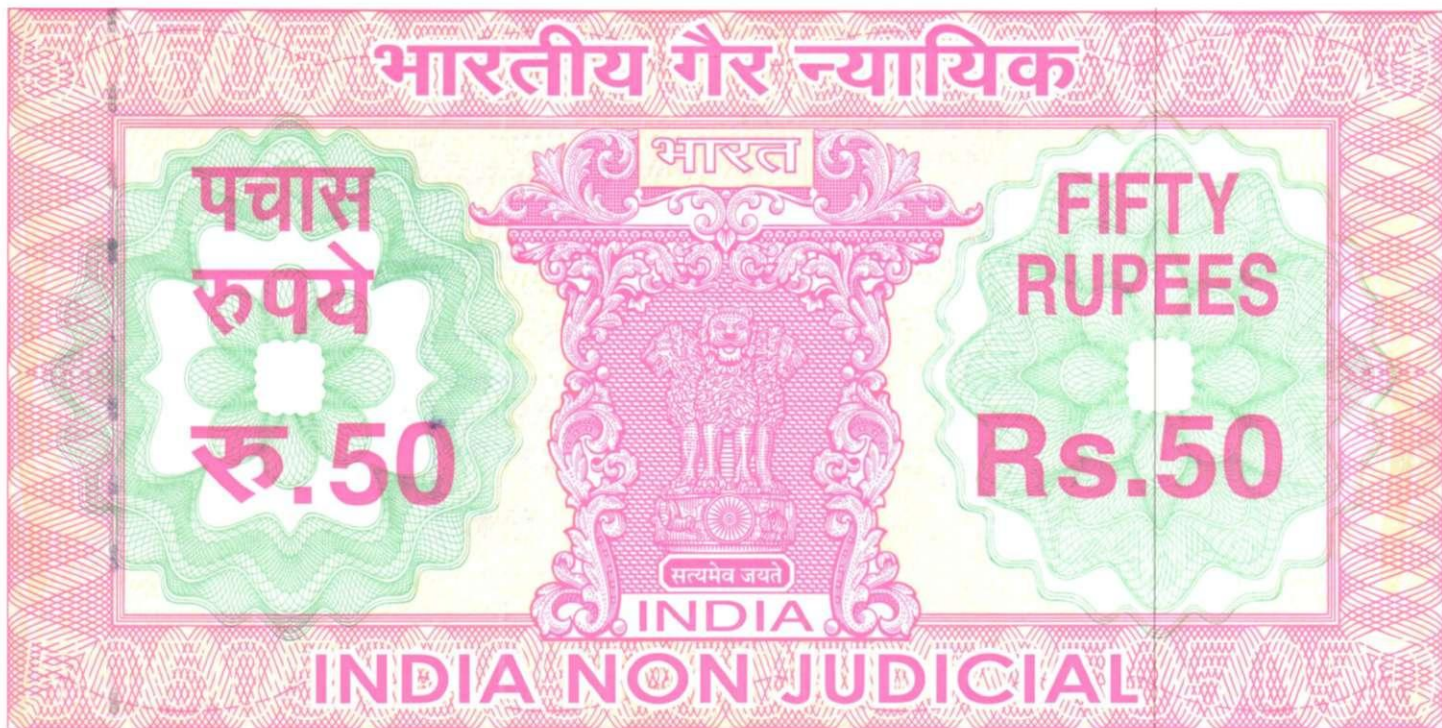
**D-1/5, DLF Qutab Enclave,**

**Phase-1 Gurgaon-122002**

**INDIA**

**Email: [groser@vsnl.com](mailto:groser@vsnl.com)**

.....Complainant.



उत्तर प्रदेश UTTAR PRADESH

Vs.

AP 194627

Zhaxia  
Pfister Hotel  
Milwaukee, WI 53214  
USA

..... Respondent.

## A W A R D

### 1. The Parties:

The complainant in this arbitration proceeding is Ann Demeulemeester, Bogaertsheide 2, B-2560 Kessel-Nijlen, BELGIUM filed by its authorized representative attorney F.S. GROSER and BHARAT CH PRASAD, Groser & Groser, D-1/5, DLF Qutab Enclave, Phase-1 Gurgaon-122002, INDIA .

Respondent Zhaxia, Pfister Hotel, Milwaukee, WI 53214, USA.

### 2. The Domain Name, Registrar & Registrant:

The disputed domain name is [www.anndemeulemeester.in](http://www.anndemeulemeester.in)

### **3. Procedural History:**

The Complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name www.anndemeulemeester.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed Dr. 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 25<sup>th</sup>, 2013 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on December 4<sup>th</sup>, 2013, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the February 1<sup>st</sup>, 2014 as Ex-parte.

### **4. Factual Background:**

- (a) The Complainant, Mrs. Ann Demeulemeester is a Belgian fashion designer selling clothing, boots and other products under her own name all over the world. The Complainant is one of the "Antwerp six", a fashion collective of six influential avant-garde fashion designers. Ann Demeulemeester own shops in Antwerp (Belgium), Tokyo, Hong Kong and Seoul. Ann Demeulemeester has being incessantly using and promoting her name as her trade name and trade mark. Her trade name and trade mark "ANNDEMEULEMEESTER" is mainly showcased at the annual Paris Fashion Week. Her collections are sold thirty countries worldwide. The history of the Complainant's trade name and trade mark "ANNDEMEULEMEESTER" dates to 1987. Such collections are available in chronological order and could be browsed on the Complainant's website, <http://www.anndemeulemeester.be>. The Complainant is a well-known fashion designer and command immense respect in the field of designer collections. The Complainant has a distinguished track record of excellent conditions in the field of fashionable clothing, boots and other goods which is evident from the fact that various newspapers and journals has interviewed the Complainant and written articles about her life and her fashion collections.
- (b) The Complainant's trade name/trade mark "ANNDEMEULEMEESTER" is distinctive, unique and is the name of the Complainant. A mere mention of the said trade name/trademark establishes an identity and collection with the Complainant and none else. The Complainant owns all the rights in her name which is her "trade mark". Therefore, the use by an unauthorized party of the said name either as a mark, name, and domain name, or in any other form whatsoever constitutes passing off/infringement and is a violation of the Complainant's rights in the said mark. Further, the use of the disputed



domain name by the Respondent amounts to misrepresentation and the Respondent by doing so is indulging as a cyber squatter. This is evidenced from the webpage of the disputed domain name wherein there is a clear and open offer of sale of the disputed domain name.

- (c) The Complainant considers her trade name/trade mark an important and an extremely valuable asset and thus in order to protect the same, has obtained registration of the trade mark "ANNDEMEULEMEESTER" throughout the world. In India, the mark "ANNDEMEULEMEESTER" is registered in classes 13, 14, 18 and 25 identified under the Registration No. 1654369 dated February 15, 2008. That the profile and popularity of the Complainant under the trade name/trade mark "ANNDEMEULEMEESTER" has been incessantly increasing since the date of adoption and use the mark. At present, the Complainant's trade name/trade mark is a name to reckon with and has acquired an enormous goodwill throughout the world, particularly in the arena of fashionable clothing, boots and other goods. The Complainant has spent a huge amount of money on the promotion and advertisement of her designer collections created by her under the registered trade name/trade mark "ANNDEMEULEMEESTER". The Complainant also owns domain name registrations of the "ANNDEMEULEMEESTER" in various countries with their respective country codes. Such domain name registrations belonging to the Complainant are as follows:

- (i) Anndemeulemeester.BE
- (ii) Anndemeulemeester.ASIA
- (iii) Anndemeulemeester.HK
- (iv) Anndemeulemeester.COM.TW
- (v) Anndemeulemeester.JP
- (vi) Anndemeulemeester.SG

- (d) Recently, the Complainant to her utter surprise and shock came to know that somebody has obtained a domain name registration for [www.Anndemeulemeester.in](http://www.Anndemeulemeester.in) (hereinafter referred to as "impugned domain name"). Further, the Complainant found that the respondent has mentioned on the impugned domain name that "The domain name Anndemeulemeester.in is listed for sale. Click here to acquire about this domain name." The Complainant immediately searched the WHOIS database for the impugned domain name and found that the impugned domain name is registered in the name of somebody name as Zhaxia. The malafide and devious intention of the Respondent is evident from the glaring fact that the impugned domain name registration is the verbatim duplication of the Complainant's name, her registered trade mark and the domain names owned by her. On June 29, 2013 the Complainant received an e-mail, sent from [indiadomainname@gmail.com](mailto:indiadomainname@gmail.com), offering the impugned domain name [www.anndemeulemeester.in](http://www.anndemeulemeester.in) for sale. Such offer from a person, without revealing his identity in the e-mail, could very well be understood to be sent by the Respondent or someone linked to him. Subsequently, on September

27, 2013 the Complainant received another e-mail from the same sender, reiterating his offer for sale of the impugned domain name. This repeated offer to sale the impugned domain name confirms that the domain name has been registered in bad faith and the Respondent is a cyber squatter.

- (e) Lastly the complainant filed this complaint for Arbitration proceeding and the Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on November 25<sup>th</sup>, 2013 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on December 4<sup>th</sup>, 2013, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the February 1<sup>st</sup>, 2014 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.

## **6. Discussion & Findings:**

- A.(i) A mere glance at the impugned domain name gives rise to enormous confusion as to its origin as the domain name used by the respondent is identical to the trade name/trade mark of the Complainant. The utmost malafide intention of the respondent is evident from the fact that not even a single letter differs between the impugned domain name and the trade name/trade mark of the Complainant. Thus, the use of the impugned domain name by the Respondent is a prima facie case of cyber squatting and trademark/name infringement.
- (ii) The name/mark "ANNDEMEULEMEESTER" is distinctive, unique and is the name of the complainant. The mere mention of the said name/mark establishes an identity and connection with the Complainant and none else.

Apart from extensive and long use of the mark "ANNDEMEULEMEESTER" and registration of such mark throughout the world, the Complainant is also the registered proprietor of the trade mark in India. Accordingly, the Complainant owns all the rights, including statutory rights in the said trade name/trade mark. Therefore, the use of the said name either as mark, name or domain name or in any other form whatsoever constitutes violation of the Complainant's rights. The Complainant has filed sufficient evidence, as annexure to this complaint, demonstrating her right over the name/mark and the tremendous reputation and goodwill attached to the trade name/trade mark "ANNDEMEULEMEESTER"

- (iii) It is also a well established that the specific top level domain names such as ".com", ".org", ".in" etc., may be disregarded when determining whether it is identical or confusingly similar to the trade mark in which the complainant has rights. Hence, the suffix ".in" in the impugned domain name, [www.anndemeulemeester.in](http://www.anndemeulemeester.in), does not contribute to distinguish the impugned domain name from the Complainant's trade mark and domain names. Therefore, in accordance with the meaning of Paragraph 4(i) of the Policy, the impugned domain name is identical to the Complainant's registered mark "ANNDEMEULEMEESTER".
- B.(i) The Respondent has no proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part to the impugned domain name. Further, the Respondent is not authorized or licensed by the Complainant to apply for registration or use her trade name/trade mark or to apply for registration or use the impugned domain name.
- (ii) The Respondent is not commonly known by the impugned domain name i.e. '[www.anndemeulemeester.in](http://www.anndemeulemeester.in)'. It is also submitted that in the WHOIS records the respondent is referred to by the name 'Zhaxia' It is, therefore, submitted that there is no publicly available evidence that establishes any connection between the Respondent and the impugned domain name.
- (iii) The Respondent, apparently, is in the business of registering identical or deceptively similar domain names belonging to important or famous individuals or entities and selling them. This is apparent from the contents of the impugned domain name, wherein it is clearly mentioned that "The domain [anndemeulemeester.in](http://anndemeulemeester.in) is listed for sale. Click here to inquire about this domain name." This itself is adequate evidence to show that the Respondent has no legitimate interests in the impugned domain name and apart from providing links to other sites, the Respondent has clearly indicated his intention to sell the impugned domain name.
- C.(i) The Respondent has registered the domain name without permission of the Complainant and provided links of other websites through the impugned domain name for commercial gain. Such act of the Respondent has resulted

in creating a likelihood of confusion with the complainant's registered trade name/trade mark as to the source, sponsorship; affiliation or endorsement of the impugned domain name includes links to sites offering the same/similar type of goods as the Complainant aggravates the likelihood of confusion and is corroborative evidence of bad faith.

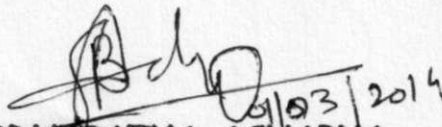
- (ii) The Domain name could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interest in the said domain name. This is pretty much evident from the contents of the impugned domain name where the Respondent has provided an open offer for its sale. Further, repeated offers have been made to the Complainant through an e-mail, indiadomainname@gmail.com, to sale the impugned domain name. Such e-mails have been sent on June 29, 2013 and September 27, 2013. Though the name of the sender is not disclosed in such e-mails, it is very likely that the e-mails have been sent either by the respondent or someone closely linked to him.
- (iii) Through the impugned domain name the Respondent may be able to represent itself as the Complainant or its authorized representative and cause damage to third party by entering into transactions or contacts with them under the garb of being associated with the Complainant. This can be extremely dangerous and prejudicial to public interest as well. Further, there is a potential danger of the Respondent selling the impugned domain name to third parties for use since any such sale to third parties could result confusion arising from unauthorized use by such third parties of the trade name/trade mark "ANNDEMEULEMEESTER" including, in respect of similar or dissimilar goods or services. Moreover, the Respondent can transfer or sell the domain name to some competing interest of the Complainant who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant. This will lead to complete tarnishment of the Complainant's image if valuable property like the domain name falls into the hands of competing interests.
- (iv) The respondent is fully aware of her proprietary rights in Complainant's trade name and trade mark "ANN DEMEULEMEESTER" and Complainant has already instituted several proceedings before the Arbitration and Mediation Centre of the world Intellectual Property Organization against certain dishonest adopters and cyber squatters of identical and/or deceptively similar domain names to save her rights for her Trade Mark and Complainant has produced the copies of some of the recent decisions issued by the Administrative Panel Decision of the arbitration and Mediation Centre of the world Intellectual Property Organization. The domain names that were in disputes and in respect of which decisions have been issued are (i) <ann-demeulemeester.com> (ii) <anndemeulemeester.net> and (iii) <anndemeulemeester.org>. It is worthy to note from the contents of the decisions that all these domain names were transferred in the name of Complainant. Ann Demeulemeester.

- D The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

## **7. Decision:**

Hence the Arbitrator decides the Disputed Domain Name **www.anndemeulemeester.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.anndemeulemeester.in** shall be transferred to the Complainant with immediate effect.

  
**Dr. BODHISATVA ACHARYA**  
**SOLE ARBITRATOR**  
**NIXI**

**DATED: March 1<sup>st</sup> , 2014,**  
**PLACE: NEW DELHI,**  
**INDIA**