



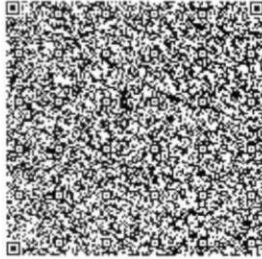
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL88082828254589N
Certificate Issued Date	: 02-Dec-2015 09:56 AM
Account Reference	: IMPACC (IV)/ dl861503/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL86150374221368212096N
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA

Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025

CDK Global, LLC v. Liheng

AWARD

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Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. The Parties

The Complainant is CDK Global, LLC, 1950 Hassell Road,
Hoffman Estates, IL 60169, United States of America.

The Respondent is Liheng, Just Traffic Supervision Consulting, Room 1326, Kexin Building, Hong Kong 999077. The e mail ID of the Registrant is shahuang@msn.com.

2. The Domain Name and Registrar

The disputed domain name is <CDKGLOBAL.IN>. The said domain name is registered with .IN Registrar d.b.a inregistry.com (R-123- AFIN).

The following details of the disputed domain name are available at the WHOIS lookup:

(a) Domain ID : D10024975 - AFIN

(b) Date of creation : 05th November 2015

(c) Expiry date : 05th November 2016

3. Procedural History

(a) A Complaint dated December 28, 2015 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian

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Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.

- (b) The National Internet Exchange of India appointed Dr. Vinod K. Agarwal, Advocate and Solicitor of the Supreme Court of England and Wales and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he was properly appointed. On 01st January 2016 the Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the National Internet Exchange of India.
- (c) In accordance with the Rules, the National Internet Exchange of India sent a copy of the Complaint to the Respondent through a courier. However, the courier agency has informed that the Letter could not be served on the Registrant due to “incomplete address and contact details”. Therefore, the case has to proceed ex-parte.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant’s activities

The Complainant is a Delaware Limited Liability Company. It provides integrated information technology and digital marketing solutions to the automotive retail industry. In 1972 the Complainant was formed as the Dealer Services Division of Automotive Data Processing (“ADP). In 2005, the Complainant acquired Kerridge Computer Company Limited which provided it with a multi-country Dealer Management Systems (DMS) platform in Europe, the Middle



East, Asia, Africa and Latin America. In 2010, the Complainant acquired Cobalt, a provider of automotive digital marketing solutions. In 2014, the Complainant became a separate, publicly-treated company via a spinoff from ADP.

Presently, the Complainant provides solutions in more than 100 countries. The Complainant's solutions automate and integrate critical workflow processes from pre-sale targeted advertising, marketing campaigns to the sale, financing, insurance, parts supply, repair and maintenance of vehicles, along with utilizing data analytics and predictive intelligence.

Respondent's Identity and Activities

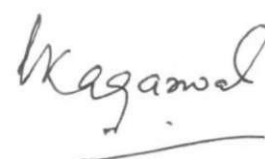
Respondent could not be contacted. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that it is one of the leading companies providing integrated information technology and digital marketing solutions. The Complainant has coined and adopted the term "CDK Global" as a trademark in the year 2014. The said trademark was coined with the alphabets "C", "D" and "K" for the reasons that these words represent three Automotive Data Processing Dealer Services'. "C" stands for Cobalt



Digital Marketing; “D” represents Dealer Services, and “K” represents Kerridge Computer Company.

The trademark “CDKGLOBAL” of the Complainant is registered in some countries including Australia, Brazil, Canada, China (including Hong Kong), the European Community, Japan, Mexico, New Zealand, Norway, Singapore, Switzerland, Taiwan and the United States of America.

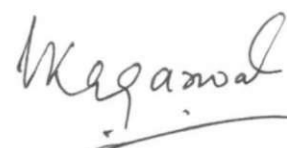
In India also 12 Applications dated 28th July 2014 are pending with the Registrar of Trademarks, Government of India for the registration of the trademark in various classes, such as, 09, 16, 35, 38, 41, 42 as follows:

“CDK GLOBAL”, and

- CDK
- GLOBAL
-

The Complainant is the owner of a number of domain names incorporating the word “cdkglobal”. Some such domain names are as follows:

- <http://www.cdkglobal.be/>
- <http://www.cdkglobal.dk/>
- <http://www.cdkglobal.ee/>
- <http://www.cdkglobal.fi/>
- <http://www.cdkglobal.fr/>
- <http://www.cdkglobal.de/>
- <http://www.cdkglobal.no/>
- <http://www.cdkglobal.nl/>
- <http://www.cdkglobal.uk/>
- <http://www.cdkglobal.za/> etc.

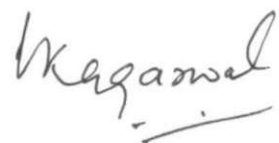


They have been in use for a very long time. Therefore, by virtue of long, continuous and exclusive use, the trademark has acquired distinctiveness and immense goodwill and reputation by virtue of its use world over. Further that, the Complainant is well known to its customers as well as in business circles as CDK GLOBAL all around the world. There is also a strong likelihood that a web browser looking for CDK GLOBAL products in India or elsewhere would mistake the disputed domain name as of the Complainant and will cause confusion and deception among the public at large.

Therefore, the disputed domain name is similar or identical to the registered trademark of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "cdkglobal". The name of the Registrant/Respondent is Liheng of Just Traffic Supervision Consulting. The Registrant does not have rights or legitimate interests in the disputed domain name and has not registered it as a trademark, service mark or company name anywhere in the World. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.cdkglobal.in> by the Registrant/Respondent is to mislead



the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

In the cases of *Bayer Aktiengesellschaft v. Henril Monsse*, WIPO Case No. D2003-0275; *Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, and *HSBC Holdings plc v. Hooman Esmail Zadeh*, Case No. 2/5/R2 (March 24, 2007) it has been held that the Respondent’s passive holding of the disputed domain name does not create any rights or legitimate interests and it is an evidence of bad faith registration and use of the domain name. .

B. Respondent

The Respondent could not be contacted. Hence, the Respondent’s contentions are not known.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used or adopted in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

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



- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

As per the WHOIS information, the Respondent has created the disputed domain name <www.cdkglobal.in> on November 05, 2014. Its expiry date is November 05, 2016.

According to the information submitted by the Complainant, the Complainant is the owner of trademark “CDK GLOBAL”. The trademark “CDK GLOBAL” is registered in certain countries of the world for the last many years. The applications for the registration of the said trademark are also pending in India.

The present dispute pertains to the domain name <www.cdkglobal.in>. The Complainant possesses a large number of other domain names with the word “cdkglobal” as indicated above. The Complainant is also the owner of trademark “cdkglobal”. Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Registrant/Respondent. The disputed domain name is very much similar or identical to other domain names and the trademark of the Complainant.

Therefore, I hold that the disputed domain name <www.cdkglobal.in> is confusingly similar or identical to the trademarks of the Complainant.

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B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, 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; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world or that the said domain name is being used in connection with bona fide offering of goods or services.

The name of the Complainant is CDK Global, LLC. The Respondent is known by the name of Liheng. It is evident that the Respondent can have no legitimate interest in the aforesaid disputed domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating the said name. Based on the evidence adduced by the Complainant, it is concluded



that the above circumstances do not exist in this case and that the Registrant/Respondent has no rights or legitimate interests in the disputed domain name.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion 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 its website or location.


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The contention of the Complainant is that the present case is covered by the above circumstances. The Respondent has intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's trademark. The Complainant has contended that the Registrant/Respondent has not mentioned correct and complete address. It is also apparent from the fact that the copy of the Complaint sent by the National Internet Exchange of India through courier on the address mentioned in the WHOIS record has been returned unserved due to incomplete address. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

Therefore, I conclude that the domain name was registered and used by the Registrant/Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.cdkglobal.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 31st January 2016