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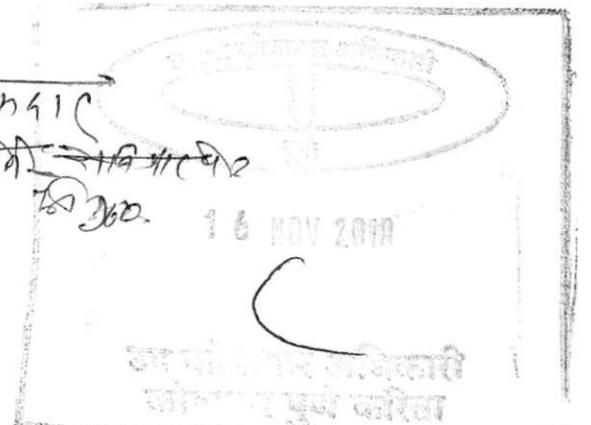
नाम विरिष विनाहरी इकाई

पता 208/1 विरिष विनाहरी इकाई - रावि मा. र. र.

हस्ता 360

श्री. जयश्री बेलरारे, स्टॅम्प व्हेंडर, ला.नं. - हवेली 1/36/9994

४२५ ब, शनिवार पेठ, पुणे-३०



AWARD

IN ARBITRATION

Confederation Nationale Du Credit Mutuel
88-90, rue Cardinet
75017 Paris
France

THE COMPLAINANT

AND

Zhao Ke
Hao Domains Services
Jinke Rad 2555. Sanghai
China. 201203

THE RESPONDENT

I] PRELIMINARY: -

- 1) M/s Confederation Nationale Du Credit Mutuel, having its office at 88-90, rue Cardinet, 75017 Paris, France **(The Complainant)** have filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name **creditmutuel.in (the disputed domain name / domain name)**..
- 2) Since the Complainant claimed to be the holder of trademark / service mark with the word **CREDIT MUTUEL**, it has disputed registration of domain name **creditmutuel.in'** in the name of **Zhao Ke, Hao Domains Services, Jinke Road 2555, Shanghai, China 201203 (The Respondent)**.
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 28th October 2010 with the instructions to file his say latest by 7th November 2010.
02. The Respondent failed to file his reply to the Complaint by 7th November 2010.
03. Thereafter the reminder was sent on 14th November 2010 to the Respondent to submit his say, if any, on the Complaint by allowing extension till 17th November 2010.
04. The Respondent sent mail only stating that he does not understand English and that the notice of arbitration etc. be sent in Chinese language. However he failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award.

III] SUMMARY OF THE COMPLAINT: -

- (A) The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -



- a) The Complainant is a registered proprietor of various trademarks in other countries, a list of which is provided by the Complainant. However the Complainant has no trademarks registered in its name in India.
- b) The Complainant is a political and central body for the Credit Mutuel Banking Group. It has 3100 offices in France through 18 regional bank federations. It is a major player in personal banking and corporate banking. It has also offices in Europe, U.S.A. & Asia. In Asia it has presence in India and notably in China.
- c) The search and investigations revealed that the Respondent has infringed many third parties trade mark rights like Omnis.in, Dailystar.in, Foxnews.co.in, Tucows.in etc. It is thus hard to imagine any good purpose or legitimate purpose or legitimate interests from the Respondent in registering the disputed domain name.
- d) Apart from the trademarks, the Complainant has also registered various domain names consisting the words Credit Mutuel all over the world which have been continuously used in commerce since their registrations.
- e) The domain name www.creditmutuel.in was registered on 26.10.2010 which is in violation of trademark rights created out of registered trademark 'credit mutuel'. Indeed the entire trademark has been reproduced in the disputed domain name. Hence it is confusingly identical to the Complainant's trademark.
- f) The Respondent has no rights or legitimate interests in respect of the disputed domain name since he / it is not related in any way to the Complainant's business nor any license has been granted to him/it to use the words credit mutuel.



- g) The Respondent has registered the disputed domain name in bad faith. Similarly the Respondent is offering this domain for sale.

- h) The Respondent is using the disputed domain name to divert internet users to a parking webpage on which several hyperlinks in French are displayed consisting for some of them of results in the field of banking, financial and insurance services which are provided by the Complainant's competitors. These hyperlinks could generate revenue to the benefit of the Respondent through pay per click domain parking solution. The Respondent thus intends to realize material benefits by diluting the fame of the Complainant's framework which is identically reproduced in the disputed domain name. The Respondent is obviously not making any legitimate non-commercial or fair use of the disputed domain name because such use could mislead consumers particularly Indian ones.

- i) The complainant has requested for transfer of disputed domain name in his favour along with costs for the same.

IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent has failed / neglected to file any reply or say.

ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of **submissions** of both the **parties** I have framed following issues. My finding on each issue is also mentioned against it respectively.



SR. NO.	ISSUE	FINDING
01	Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?	Yes
03	Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?	Not known
04	Whether the Registrant / Respondent has registered domain name in bad faith?	Yes
05	Whether the Registrant has commonly been known by the domain name?	No

VII] BASIS OF FINDINGS: -

(A) Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?

The complaint has been lodged by 'Confederation Nationale Du Credit Mutuel', a French association registered under the law of July 1st 1901. It has produced a list of various trade marks registered in its name. It has also furnished a list of various domain names registered in various countries.

Therefore my finding on the first issue is affirmative.

(B) Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?



The disputed domain name has been registered containing words 'credit mutuel' which not only identical to the trade marks of the Complainant but is exact reproduction of the same.

My finding on this issue is affirmative.

- (C) Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?

The Respondent has not bothered to file any say / reply to the complaint.

My finding on this issue is negative.

- (D) Whether the Registrant / Respondent has registered domain name in bad faith?

The Respondent has not made out his case by filing his say / reply to the complaint. Very importantly when one visits the disputed website there is a clear message appearing as 'This site is for sale'. There are several hyperlinks on the disputed website leading to many other business sites which are not at all connected with the business of the Complainant. The provision of such hyper links appears to be to gain commercially through some mechanism like pay per click. There is no nexus of the website to the business of the Complainant. The Complainant has its presence in China which is reportedly the country of origin of the Respondent. The site is being used for commercial gains and not being used as for non-profit making activities.

My finding on this issue is therefore affirmative.

- (E) Whether the Registrant has commonly been known by the domain name?

The name of the Respondent / Registrant is Zhao Ke, which has no similarity, nexus, or resemblance to the word credit mutuel.

My finding on this issue is therefore negative.



IX] AWARD: -

On the basis of findings and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name - creditmutuel.in and accordingly the same shall be transferred to the Complainant.

02. No order as to the costs.

Dated: -18.11.2010


(S.C.INAMDAR)
ARBITRATOR

