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BEFORE THE SOLE ARBITRATOR UNDER THE

.IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF

Infiniti Retail Limited.

Akruti Centre point

Next to Marol Telephone Exchange

MIDC, Andheri (East)

Mumbai – 400 093.

(Complainant)

v.

Prateek

53, New Haven

Mumbai

Maharashtra, India

Prateek.777@gmail.com

(Respondent)

THE PARTIES

The Complainant in this proceeding is Infiniti Retail Limited. , Akruti Centre point, Next to Marol Telephone Exchange, MIDC, Andheri (East), Mumbai – 400 093.

The complainant's authorized representative in the administrative proceeding is:

Anand & Anand, Meghmala Sharma

Address : First Channel, Plot No.17A, Sector 16A, Film City, Noida

Telephone : 91-120-4059300

Fax : 91-120-4243056

E-mail : meghmala@anandandanand.com

The respondent in this proceeding is Prateek, 53, New Haven, Mumbai, Maharashtra, India

THE DOMAIN NAME AND REGISTRANT

The disputed domain name is <www.croma.in>.

The Registrant is Prateek, 53, New Haven, Mumbai, Maharashtra, India.

PROCEDURAL HISTORY:

I was appointed as the Arbitrator by .In Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <www.croma.in>.

.In Registry has supplied the copy of the Complaint and Annexures to the Arbitrator.

In accordance to the Rules, on 10th March,2012, the Arbitrator sent an email to the parties informing them about his appointment as an Arbitrator.

Thereafter on 10th March, 2012, itself the Arbitrator sent an email to Complainant requesting them to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 10th March,2012, with the instructions to file his say latest by 26th March, 2012.



Thereafter, on 10th March, 2012, the Respondent through his email expressed his desire to settle the matter amicably and to proceed with the transfer process.

On 13th March, 2012, the Arbitrator received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Respondent. According to this mail copy of the complaint was duly sent to the Respondent through courier and email also.

On 14th March, 2012, the Arbitrator sent email to both the Complainant and the Respondent instructing them to follow the guidelines and instructions given by the tribunal and to mark the mails exchanged between the parties to the NIXI/ Arbitrator also. It was also instructed in the same email that the Complainant shall provide a service record of the Complaint sent to the Respondent through courier.

On 14th March, 2012, the Respondent sent an email stating that he is absolutely and unconditionally willing to amicably resolve the issue and surrender his disputed domain name.

On 15th March, 2012, the Complainant through an email informed the Arbitrator that the copy of the Complaint was sent on the Mumbai address of the Respondent which was returned due to insufficient address. The Respondent was asked by the Complainant to provide him with the complete address so that a hard copy of the Complaint could be served upon him but all in vain.

Respondent thereafter has neither sent any email nor has filed any response to the Complaint despite opportunities given.

That I have perused the record and Annexures / documents.

FACTUAL BACKGROUND:

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



The Complainant in the proceedings owns and manages India's first national, large format specialist retail chain for consumer electronics and durables, under the trademark/ service mark **CROMA**. Since the opening of the first CROMA store in the year 2006, it is submitted that the Complainant now has a well entrenched presence across India and has opened flagship stores in Mumbai, Navi Mumbai, Pune, Ahmedabad, Vadodara, Surat, Rajkot, Hyderabad, Bangalore, Delhi, Chennai and the National Capital Region.

The Complainant is the proprietor of the instant trademark and it is emphasized that the Complainant is often recognized and identified by a mere reference to the word CROMA. It is pertinent to note that the Complainant is a wholly owned subsidiary of Tata Sons, which is one of India's most trusted business houses and is the principle promoter and investment holding company of the TATA Group, which is India's oldest, largest and best-known conglomerates with a turnover of about Rs. 251,000 crores (about US\$ 60 billion). The Complainant owns and manages the CROMA retail operations in India while Woolworths, one of the world's leading retailers, provides technical and strategic sourcing support from its global network.

The Complainant's goods/services under their trademark "CROMA" are widely available on the internet on websites including the Complainant's own website www.cromaretail.com, wherein the Complainant gives exclusive coverage in relation to goods sold/services provided under the Complainant's trademark "CROMA". The Complainant has positioned itself as a market leader throughout India. It is submitted that the Complainant has expended a great amount of time, money and effort to promote and advertise the trademark CROMA in all and every manner possible. As a result the Complainant has established an impeccable reputation and goodwill under its trademark CROMA in India.

The Complainant has spent a considerable amount of money promoting its brand "CROMA" worldwide. The complainant has a huge annual turnover and many millions are spent on advertising and establishing the brand CROMA worldwide. The Complainant and its



predecessor in title have participated in various events (exhibitions etc), national and international since inception of which some of it were sponsored by them.

The Complainant is also the first to conceive, adopt, use and promote www.cromaretail.com and various other domain names. On account of extensive usage of the mark CROMA , the said mark is identified solely and exclusively only with the Complainant and none other. Further, the brand , Croma has gained a huge customer base Internationally and is identified, associated and recognized only with the Complainant. Therefore, adoption and/or usage of the mark CROMA by others would amount to not only dilution of the Complainant's rights over the distinct mark but also would result in confusion and deception by any unauthorized usages of others.

RESPONDENT:

The Respondent did not file a formal response in the proceedings, but in reply to the notification sent by the Arbitrator, sent an email dated 10th March,2012, which states:

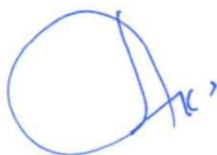
"Dear Sir,

I have no information regarding any arbitration matter on this domain name. I have no intention of causing any harm to any party through this. If there is any form of issue with this domain name please inform me so that it can be resolved amicably.

As you can see there is no content on the domain name and it has simply been parked on a domain marketplace. It can be removed from there if there is any violation in this which I am currently not aware of.

Regards

Prateek Jain"



The Respondent further sent an email dated 14th March, 2012, which states;

"Dear All,

Please find below the previous email sent by me to Mr. Singh as I had not received the copy of the complaint and I was not aware of this matter then:

Dear Sir,

I have no information regarding any arbitration matter on this domain name. I have no intention of causing any harm to any party through this. If there is any form of issue with this domain name please inform me so that it can be resolved amicably.

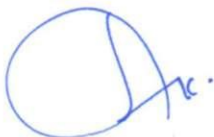
As you can see there is no content on the domain name and it has simply been parked on a domain marketplace. It can be removed from there if there is any violation in this which I am currently not aware of.

Regards

Prateek Jain

Additionally, I would like to add that I have no intention whatsoever of infringing on the trademark of the complainant. This domain was registered in 2009 for a different business that we were setting up whose activity was, by no means, related to or similar to Croma Retail. However, the idea was dropped due to which there has been no website set up on the domain name.

The page that the domain name is currently resolving to has neither been designed nor being hosted by us. It is resolving to the Sedo marketplace for domain names as I was informed by an associate that I can sell the domain name here as it is of no use to us any more. None of the content on the page is such which may cause the visitor to believe that this site is in any way related to the complainant's business. I am not aware if simply owning a domain name is



against the policies of NIXI. If such is in fact the case, I am willing to co-operate and act as may be suggested by NIXI to resolve this matter amicably.

Regards,

Prateek Jain”

It appears that the Respondent does not wish to contest the Complaint.

PARTIES CONTENTIONS:

Complainant:

The Complainant contends as follows:

The respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.

The respondent has no rights and legitimate interest in respect of the domain name.

The Respondent has registered and is using his domain name in bad faith.

DISCUSSIONS AND FINDINGS:

Rule 8 (b) of the INDRP Rules of Procedure provides that *“In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case”*.

As mentioned above fair opportunity has been given to the Complainant as well as the Respondent to present their case. From the emails exchanged it is clear that the Respondent does not wish to contest the Complaint and is willing and ready to amicably settle the matter and agreed to transfer domain name in question unconditionally in favor of the Complainant.

Rule 12 (a) of the INDRP Rules of Procedure provided that *“An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of*



Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable”

In the present circumstances, the decision of the Arbitrator is based upon the Complainant contentions and evidence and conclusion drawn from the Respondent's emails and his conduct not to file reply of the Complaint which makes clear that the Respondent does not wish to contest the Complaint and is willing and ready to cooperate with NIXI and to act as may be suggested by NIXI to resolve the matter.

Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark “CROMA”. The Complainant has to satisfy all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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.

BASIS OF FINDINGS:

The Registrant's Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complaint has rights:

The Complainant has stated **www.croma.in** is confusingly similar and identical to his trade mark **CROMA**. It is also stated by the complainant in his complaint that his mark is very well known and he has statutory and common law rights in it. The Complainant has submitted that his mark **CROMA** is registered and used in many countries including India where the respondent is located. Thus the Complainant has the right over the name **CROMA** and Respondents domain is also confusingly similar to it.

Thus the conclusion is that the domain name of the Respondent is identical and confusingly similar to the Trademark of the Complainant as the above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the intent and conduct of the Respondent make it clear that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

The Registrant has no rights or legitimate interests in the respect of the domain name:

It is clear that once a Complainant makes a prima facie case, then the burden shifts to the Respondent to provide evidences to establish rights or legitimate interests in the disputed domain name, which was held in the award of Croatia Airlines d.d. v. Modern Empire Internet Ltd WIPO case No. D2003-0455.

The Tribunal determines that the Complainant has made positive assertions and concrete evidences making a prima facie case showing that the Respondent does not possess rights or legitimate interests in the subject domain name, whereas the Respondent has failed to discharge the onus, which had shifted upon him as the Respondent has not responded to any of the allegations raised by the Complainant in its Complaint.

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i. *before any notice to the Registrant of the dispute, the Registrant'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;*
- ii. *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii. *the Registrant 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.*

a. While considering paragraph 7 (i) of the .IN Dispute Resolution Policy, "*before any notice to the Registrant of the dispute, the Registrant'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* ", the Complainant has contended that Respondent has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it.

The Tribunal is of the view that the Respondent has stated in his email dated 10th march, 2012, that "As you can see there is no content on the domain name and it has simply been parked on a domain marketplace.", which clearly reinstates that the Respondent is neither engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

b. While considering paragraph 7 (ii) of the .IN Dispute Resolution Policy, "*the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no service mark rights*", the Complainant has stated that Respondent is neither commonly known by the disputed name, nor it is a personal name. The Complainant has further contended that Respondent is not engaged in any business or commerce under the domain name.

The Tribunal concludes that the Respondent has not shown or given any evidences to prove that it is commonly known by the disputed domain name and it is absolutely understandable from the behaviour and intentions of the Respondent that he is no manner willing to challenge the Complaint of the Complainant.

Hence it is clear that the Respondent does not have any right or legitimate interest in the disputed domain name.

c. While considering paragraph 7 (iii) of the .IN Dispute Resolution Policy, "*the Registrant 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 Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name.

The Tribunal concludes that the above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexure establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

The Registrant domain name has been registered or is being used in bad faith:

The Complainant argues that the Respondent was aware of the Complainant's brand and tried to create a likelihood of confusion by registering domain name that is identical to the trademark in which the Complainant has rights. The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website of the Complainant.

The Tribunal is of the view that the above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has registered the disputed domain name in bad faith under INDRP paragraph 4(ii).

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint.

.IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.croma.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 18th day of April, 2012.



A. K. Singh
Sole Arbitrator
Date: 18/04/2012