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**NATIONAL INTERNET EXCHANGE OF INDIA  
121-123, ANSAL TOWER, NEHRU PLACE  
NEW DELHI-110 019**

**Huawei Technologies Co. Ltd. v. Webmaster JF Limited**

AWARD

The Parties

The Complainant is Huawei Technologies Co. Ltd. Bantian, Longgang District, Shenzhen - 518129, People's Republic of China.

The Respondent is Webmaster JF Limited, 204, Woodwich Road, Concept Office, London SE7 7QY, Great Britain

The Domain Name and Registrar

The disputed domain name <[www.huawei.co.in](http://www.huawei.co.in)> is registered with the Registrar - Direct Information Pvt. Limited, Bombay, India

### 3. Procedural History

A Complaint dated January 24, 2008 has been filed with the National Internet Exchange of India disputing the validity of registration of the aforesaid domain name.

The Complainant has made the Registrar verification in connection with the domain name at issue. The print out of e mail replies so received are attached with the Complaint (Annexure A). It is confirmed that the Respondent is listed as the registrant and the contact details for the administrative, billing, and technical contact for the disputed domain name are that of the Registrant.

The Exchange verified that the Complaint satisfied the formal requirements of the .IN Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

The Exchange appointed Dr. Vinod K. Agarwal, Advocate and Solicitor, Former Law Secretary to the Government of India, 812 Surya Kiran Building, Kasturba Gandhi Marg, New Delhi - 110 001 as the Sole Arbitrator to decide the domain name dispute. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

In accordance with the Rules, the Sole Arbitrator through a registered letter dated 3<sup>rd</sup> March 2008 formally notified the Registrant of the Complaint along with all its annexure. The Registrant was required to submit his defence within 15 days from the date of the receipt of the letter, that is, by 30<sup>th</sup> March 2008. The Registrant was informed that if his response was not received by Sole Arbitrator by that date, he would be considered in default and the arbitration proceedings will still continue. The Registrant did not submit any response.

### 4. Factual Background

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

Complainant's activities

The Complainant (Huawei) was established in 1988. The Complainant Huawei Technologies Co. Limited is a company incorporated in Shenzhen, People's Republic of China. The Complainant is a manufacturer and supplier of networking and telecommunications equipments. It provides

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fixed network, mobile network, optical network, intelligent network, data communications, software & services and terminals, etc. The Complainant also manufactures mobile phones. In 1996, the Complainant provided fixed-line network products to Hutchinson-Whampoa of Hong Kong. The Complainant has also entered into a joint venture with Siemens for developing TD-SCDMA products. It is submitted that the complainant's products are soled in over 100 countries. The Complainant is marketing its products under the trade/service name/mark "Huawei".

### **Registrant's Identity and Activities**

The Registrant did not reply to the Complainant's contentions. Hence, the Registrant's activities are not known.

## **5. Parties Contentions**

### **A. Complainant**

The Complainant contends that each of the elements specified in Article 4 of the Policy are applicable to this dispute.

In relation to element (i) that is, the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, the Complainant contends that in the telecommunications community of the world, it is known by the word "Huawei. The name "Huawei" is a distinctive, unique and invented mark. The Complainant's mark "HUAWEI" is registered as a trademark in many countries including China, South Africa, Hong Kong, Kenya, Argentina, Iraq, Turkey, Thailand, Algeria Morocco, Australia, Austria, United States, etc.

Thus, the disputed domain name <[www.huawei.co.in](http://www.huawei.co.in)> is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

In relation to element (ii), that is, the Registrant has no rights and legitimate interests in respect of the domain name, the Complainant contends that the Registrant (as an individual, business, or other organization) has never been commonly known by the mark HUAWEI. A domain name acts as the address of the company on the internet and can be treated as web address or a web mark just like a trade mark or service mark. Further, the Registrant is not making a legitimate or fair use of the said domain name for offering goods and services. The Registrant registered the domain name for the purpose of offering them for sale and creating confusion and misleading the general public and the customers of the Complainant.

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Regarding the element at (iii), that is, The Registrant's domain name has been registered or is being used in bad faith, the Complainant contends that the main object of registering the domain name <[www.huawei.co.in](http://www.huawei.co.in)> by the Registrant is to offer the said domain name for sale and to earn profit and 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 trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

### **B. Registrant**

The Registrant did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

The Rules instructs this Arbitrator as to the principles to be used in rendering its decision. It says 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 thereunder and any law that the Arbitrator deems to be applicable".

According to the .In Domain Name Dispute Resolution Policy, the Complainant must prove 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 Respondent 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;

The Complainant is already a holder of the domain name <[www.huawei.com](http://www.huawei.com)> for the last six years.

### **A. Identical or Confusingly Similar**

As has been stated above, the Complainant's trademark "HUAWEI" is registered in many countries. In India also, the Complainant is duly registered owner of the HUAWEI trade mark, with effect from 28<sup>th</sup> October 1997 in respect of Class 9 items, under No. 773291, namely, "stores



program controlled switching system telecommunications facility optical telecommunication apparatus radio apparatus for telecommunications including cellular trunking and cordless telephone, etc."

It is true that the Respondent has copied the complete word and not even a single letter differs between the disputed domain name and the corporate name of the Complainant. Therefore, the domain name is identical and confusingly similar to the mark of the Complainant. In support of its contentions, the Complainant has relied on the cases of *Reuters Ltd., v. Global Net 2000 Inc.* (WIPO Case NO. D2000-0441); *Altavista Company v. Grandtotal Finances Ltd.* (WIPO case No. D2000-0848); *Playboy Enterprises v. Mvie Name Company* (WIPO Case No. D2001-1201).

The present dispute pertains to the domain name <[www.huawei.co.in](http://www.huawei.co.in)>. It is very much similar to the trademark "huawei" of the Complainant. The Complainant has business interests in many countries and it uses the trade name HUAWEI in these countries. As such, consumers looking for HUAWEI may instead reach the Registrant's website.

Therefore, I hold that the domain name <[www.huawei.co.in](http://www.huawei.co.in)> is identical to and confusingly similar to the Complainant's trademark.

## **B. Rights or Legitimate Interests**

According to the Policy, the Registrant 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 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.

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The Registrant has not filed any response in this case. There is no evidence to suggest that the Registrant has become known by the disputed name 'huawei' anywhere in the world. Huawei is the name and mark of the Complainant. It is evident that the Registrant can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Registrant to use its name or trademark or to apply for or use the domain name incorporating said name.

In support of its contentions, the Complainant has relied on the decisions in *Gerber Products Company v. Laporte Holdings* (WIPO Case No. 2005-1277); *Aria Foods Amba v. Jucco Holdings* (WIPO Case No. D2006-0409); and *Bits and Pieces Inc. v. LaPorte Holdings* (WIPO Case No. D2006-0244).

Based on the default and the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Registrant has no rights or legitimate interests in the disputed domain name.

Therefore, I find that the Registrant 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 Registrant 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 bears the name or 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 Registrant 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 the Registrant has engaged in a pattern of such conduct; or
- (iv) By using the domain name, the Registrant has intentionally attempted to attract internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship,

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affiliation, or endorsement of the Registrant's website or location or of a product or service on its website or location.

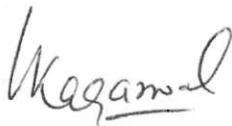
The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, Internet users to its web sites, by creating a likelihood of confusion with the Complainant's mark. The domain name could be used by the Respondent to extract huge sums of money from the complainant who has legitimate interest in the domain name. Further that, the Respondent is not using or doing any activity on the disputed domain name. The domain name apparently has link to other website offering different websites for sale.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Registrant in bad faith. As the Registrant has failed to rebut this presumption, I conclude that the domain name was registered and used in bad faith.

#### Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark 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.huawei.co.in](http://www.huawei.co.in)> be transferred to the Complainant.

From the Registrar verification submitted by the Complainant it appears that the disputed domain name was registered on February 16, 2006 and is due to expire on February 16, 2008. In other words, by now the registration of the disputed domain name of the Respondent must have expired. In that view of the matter, it must not be renewed after February 16, 2008 in the name of the earlier Registrant and the Complainant shall have the right for the registration of the said domain name.



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Vinod K. Agarwal  
Sole Arbitrator

April 15, 2007

*Due to typing error the date is shown as April 15, 2007. It is now corrected to April 15, 2008.*



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23/4/08