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

C 521256

Marie Claire Album v. Ms. Karen Flamm

AWARD

1. **The Parties**

The Complainant is Marie Claire Album, 10, Boulevard Des Freres Voisin, 92130 Issy Les Moulineaux, France.

The Respondent/Registrant is Ms. Karen Flamm, 605N, WOLF Rd. D1, Chicago 60162, United States of America.

2. **The Domain Name and Registrar**

The disputed domain name <www.marieclaire.in> is registered with .IN Registry.

3. **Procedural History**

The Complaint was filed with the National Internet Exchange of India on November 24, 2006. The Complainant has made the registrar verification in

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connection with the domain name at issue. The print out of email reply so received are attached with the Complaint. 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.

In accordance with the Rules, National Internet Exchange of India through an email dated 5th December 2006 formally notified the Registrant of the Complaint along with all its annexures. The Registrant was required to submit his defence within 15 days, that is, by 21st December 2006. The Registrant was informed that if his response was not received by that date, he would be considered in default. The Registrant did not submit any response. Accordingly, the Registrant's default was notified.

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.

4. Factual Background

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

Complainant's activities

The Complainant Marie Claire Album is a company incorporated in France. The Complainant is a publisher of women's monthly magazine 'Marie Claire'. It is published in 14 languages in various countries of the world including France, United Kingdom (copies printed 360,000 per month), United States of America (copies printed 940,000 per month), Australia (copies printed 118,000), India, etc. The said magazine is publishing material mostly in the fields of fashion and designing. It started publication in India in the year 1996. According to the Complainant, the magazine 'Marie Claire' enjoys wide circulation and has accumulated immense goodwill and reputation amongst the public across the world.

Registrant's Identity and Activities

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

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 it is known amongst readers and fashion designers worldwide as MARIE CLAIRE. 'MARIE CLAIRE' is the Complainant's corporate name, principal trade mark and domain name. The MARIE CLAIRE mark is registered in many other countries such as Argentina, Australia, Brazil, China, France, Hong Kong, Indonesia, India, Mexico, Nigeria, Philippines, Thailand, Turkey, etc. The said registration is in connection with the women's monthly magazine in the field of fashion and designing, boutiques, etc. The Complainant has also registered several domain names with the words 'marie claire', such as <www.marieclaire.com>, <www.marieclairemagazine.com>, <www.marieclaire.fr>, <www.marieclaire.co.uk>, etc.

The disputed domain name is <www.marieclaire.in>. Therefore, it is likely to be confusing with Complainant's distinctive mark MARIE CLAIRE.

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 not been commonly known by the mark MARIE CLAIRE. 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 sole purpose of creating confusion and misleading the general public and the customers of the Complainant.

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.marieclaire.in> by the Registrant is 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*".

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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;

A. Identical or Confusingly Similar

The Complainant's trademark MARIE CLAIRE is registered in many countries including Argentina, Brazil, Canada, China, Hong Kong, New Zealand, Korea, Malaysia, Taiwan, etc. The Complainant brings out women's monthly magazines also in different languages in these countries.

In India, the Complainant is duly registered owner of the MARIE CLARIE' trade mark, with effect from August 1, 1988, in respect of Class 16 items, namely, "Printed matters, newspapers, magazines, books, bookbinding materials, photographs, artist's material, etc.". The present dispute pertains to the domain name <www.marieclaire.in>. The disputed domain name is very much similar to the trademark of the Complainant.

The Complainant has business interests in many countries and it uses the trade name MARIE CLAIRE in these countries. As such, consumers looking for MARIE CLAIRE may instead reach the Registrant's website. Therefore, I hold that the domain name <www.marieclaire.in> is confusingly similar to

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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.

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 'marie claire' anywhere in the world. Marie Claire 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. 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. I, therefore, 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, 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 as to the source, sponsorship, affiliation or endorsement of its web sites. Further, the domain name apparently has link to other website offering different websites for sale.

The Complainant has also stated that the Registrant has parked the disputed domain name at <www.sedoparking.com> where the domain names are offered for sale. Further that the Registrant offered to sell the disputed domain name back to the Complainant at an exorbitant price.

The Complainant has on July 11, 2006 addressed a letter to the Registrant seeking cancellation/transfer of the disputed domain name. On July 12, 2006 the Registrant replied to the Complainant as follows: "Thank you for contacting me. Sister Marie Claire is an anglo Indian Nun and a saint in India, and also there is no Marie Claire company or any establishment in Indian Registry prior to I own and register this name from Mr. Renil Vijayan from saint Louis Mo for \$ 1,500. So I am sorry for the inconvenience it may cause to you or your company. I will definitely face any legal actions in India or in the United States regarding this dispute".

Since, no reply has been received from the Registrant in these proceedings, no cognizance can be taken of the aforesaid letter.

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

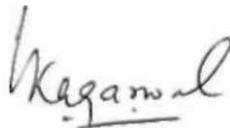
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name was registered and used in bad faith.

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.marieclaire.in> be transferred to the Complainant.

It further appears from the details of the Registry (Annexure 'G') that the said domain name was registered on 23rd February 2006 for a period of one year. Thus, the registration must have expired on 24th February 2007 unless renewed.



Vinod K. Agarwal
Sole Arbitrator

March 5, 2007