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ARBITRATION CASE NO.5 OF 2010

COMPANIES INC

IN THE ARBITRATION MATTER OF:-

THE MC GRAW-HILL

COMPLAINANT

VERSUS

YAN WEI

RESPONDENT

AWARD:

The present dispute relates to the registration of the domain name mcgraw_hill.in in favour of the Respondent.

The Complainant has filed the instant complaint challenging the registration of the domain name <mcgrawhill.in> in favour of the Respondent. Pursuant to the In Domain Name Dispute Resolution Policy (INDRP) and the rules framed there-under, the Complainant has preferred this arbitration for raising this dispute for redressal of its grievances.

In its complaint, the Complainant has stated that it is the owner of the well known trademarks "MCGRAW-HILL" and hold the said mark in at least 34 countries worldwide, for educational motion pictures and films strips books pamphlets, brochures newspapers, educational materials, information services, information relating to investment, radio and television broadcasting

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services, and educational and publishing services with wage dating back to 1909.

The complainant has placed on record its trademark registration detail in USA, EU, and UK, Australia in Classes 9, 16, 35, 36, 37, 38, 39, 40 & 41. The complainant has further stated that in India, it is known by the mark as "TATA MCGRAW-HILL", which enjoys the reputation of being on of the market leaders in publishing industry in India. The Complainant has also stated that it is the holder of domain names <mcgraw_hill.org>, "<mcgraw_hill.com>, <glancomcgrawhill.Com>, etc.

The complainant has filed this complaint that the Respondent has no right or legitimate interest in the said domain name and has parked the disputed domain name for sale, therefore the use of said domain name is not bonafide. It has contended that the Respondent is generating internet traffic to derive income and that such use is not recognized as bonafide use under the policy. It has also been contended that the respondent is not making any legitimate, non-commercial and fair use of the domain name. Further it is contended that the registration of domain name is in bad faith, therefore the said domain name be transferred to the Complainant.

I entered upon reference regarding the instant dispute on 2nd August 2010 and notice was sent to the Respondent calling upon for their response to the said complaint. However, even after granting considerable time to the Respondent, there has been no response. Accordingly, the Respondent is proceeded ex-parte.

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I have perused the records and have gone through the contents of the complaint. Although there has been no reply on behalf of the Respondent to the complaint, I shall deal with the complaint on the basis of its merits. Several grounds have been raised by the Complainant regarding the transfer of the domain name <mcgrawhill.in> in its favour.

Firstly I shall deal with the ground regarding the rights of the Complainant vis-a-vis that of Respondent's over the domain name <mcgrawhill.in>. The mark "MCGRAW_HILL" is a unique and distinct word and has acquired distinctiveness and is known to be a trademark owned by the complainant. It has been shown by the complainant that the use of the said mark has been for quite some time and that too for world over. The complainant has shown the various trade mark registration details world over. Although the Respondent has not appeared in these proceeding to present their case, but it is borne out from the records that Respondent has no bonafide or legitimate right over the mark "Mcgraw Hill". Merely dropping the by hyphen in the word cannot mean to be a mark different from the registered mark. This itself reflects the fact that the respondent wanted to create confusion the minds of the public. Hence the Respondent's action to register the said domain name is not bonafide as he has no right over the mark "mcgraw_hill."

Secondly as the Respondent's action to register the said domain name is not bonafide, therefore the said registration is done in bad faith. It is seen that the Respondent has parked the said domain name for sale. Therefore the Respondent, who has no legitimate right over the said domain name, has only registered with intention to sell the domain name as he had registered prior to the complainants, who are legitimate owner of the marks "MCGRAWHILL".

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Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the complainant has proprietary right over the mark "MCGRAW_HILL". Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant in its favour and direct the Registry to transfer the said domain name i.e. <mcgrawhill.in> in favour of the complainant.

Parties to bear their costs.



(NIKILESH RAMACHANDRAN)

ARBITRATOR

Dated 27th September 2010.