

1. The Parties

The Complainant is Meizu Technology Co. Ltd., Meizu Tech Building, Technology & Innovation Coast, Tangjia Bay, Zhuhai 519085, Guangdong, China

The Respondent is Virginia Cross, 4391 Bird Spring Lane, Kemah, Texas, U.S.A.

2. The Domain Name and Registrar

The disputed domain name is <www.meizu.in>. The said domain name is registered with INRegistry.

The registration details of the disputed domain name as contained in whois are as follows:

- | | |
|--------------------------|---|
| (a) Domain ID | : D9481603-AFIN |
| (b) Domain Name | : MEIZU.IN |
| (c) Sponsoring Registrar | : Webiq Domains Solutions Pvt. Ltd.,
(R131-AFIN) |
| (d) Date of creation | : 19 th May 2015 |
| (e) Expiry date | : 19 th May 2016 |

3. Procedural History

- (a) A Complaint dated December 22, 2015 has been filed with the National Internet Exchange of India. The Complainant has made registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint. It is confirmed that

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presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. 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.
- (c) In whois data, the Respondent has given the postal address as Virginia Cross, 4391, Bird Spring Lane, Kemah, Texas, United States of America. The National Internet Exchange of India sent a copy of the Complaint to the Respondent through courier for his response. However, it was returned by the courier with the remarks that the postal address is incorrect and incomplete.
- (d) Further, in accordance with the Indian Domain Name Dispute Resolution Rules, on January 29 2015 the Sole Arbitrator notified the Respondent along with a copy of the Complaint through the e mail address mentioned in Whois, that is, <kpmving@gmail.com. The Respondent was required to convey his response to the Complaint within 15 days from the date of receipt of the said letter and in any case latest by 15th February 2016. The Respondent was informed that if his response was not received by the Arbitrator by that date, the Respondent would be considered in default and the Arbitrator would still proceed to decide the dispute. No response has been received from the Respondent. Therefore, the case has to proceed ex-parte.

Vinod K. Agarwal

4. Factual Background

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

Complainant's activities

The Complainant is a company existing under the corporate laws of China with its registered office at Guangdong, Peoples Republic of China.

According to the Complaint, the Complainant provides MP3 Players and mobile phones known as smartphones. The Complainant has produced a series of smartphones commonly known as M8, M9, MX2, MX3 and MX5, etc. since 2003.

The Complainant is providing such services in many countries of the world including the United States of America and India.

Respondent's Identity and Activities

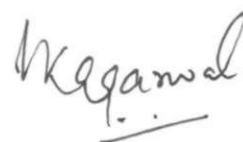
The Respondent has not submitted any response to the Complaint. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

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

In relation to element (i), the Complainant contends that since its



inception the Complainant has adopted MEIZU as trade name as well as trademark. Thus, the disputed domain name is identical to the name and trademark of the Complainant. Further that, the Complainant has been continuously using the “Meizu” as trade name, trademark, corporate name, business name, trading style, etc.

The Respondent has registered the disputed domain name <meizu.in> purposely with the motive or intention of obstructing the business of the Complainant, to obfuscate clients, prospective clients and other internet users and to cause negative impact on the reputation of the Complainant.

The trademark “MEIZU” of the Complainant is registered in some countries including the United States of America and India. In India, the said trademark was initially registered on September 24, 2008 in the name of Zhu Hai Mai Zu Electronic Technology Co. Ltd., 3F, No. 7, PingXI 5 Street, Nanping Technology Park, Zhuhai City, Guangdong, P. R. China. Subsequently, in March 2011, the name of registrant of the trademark “MEIZU” was changed to Meizu Technology Co. Ltd. The said trademark is registered in class 9. The Complainant is the owner of some other domain names incorporating the word “MEIZU”. Therefore, the Complainant is well known to its customers as well as in business circles as MEIZU all around the world.

It is further contended that in recent times, the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser



looking for MEIZU products in India or elsewhere would mistake the disputed domain name as that of the Complainant.

Therefore, the disputed domain name <meizu.in> is similar or identical to the registered trademark of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the name or mark “MEIZU” nor has applied for the registration of the mark “MEIZU” anywhere in the world. The name of the Registrant/Respondent is Virginia Cross. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.meizu.in> by the Respondent/Registrant is 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*”.

In the cases of *Alibaba Group Holding Limited v. Rickson Rodricks and Domaen com* [INDRP/073] it has been held that the domain name wholly incorporating a Complainant’s trademark may be sufficient to establish identity or confusing similarity; See also *Puneet Vatsayan v. Prajakt Raut* [INDRP/512]; *Amazon Technologies v. Mr. Harikishore* [INDRP/349] and *Pfzier v. NA* [WIPO D2005-0072].

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B. Respondent

The Respondent has not submitted any response. Hence, the Respondent's contentions are not known.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used or adopted in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a 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 that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

As per the whois information, the Respondent has created the disputed domain name <MEIZU.IN> on May 19, 2015. It will expire on May 19, 2016 unless permitted to extend it further.

According to the information submitted by the Complainant, the Complainant is the owner of trademark MEIZU. The trademark MEIZU is registered in certain countries.

The present dispute pertains to the domain name <MEIZU.IN>. The Complainant possesses a number of other domain names with the word "MEIZU". The Complainant is also the owner of trademark

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The name of the Complainant is Meizu Technology Co. Limited. The Respondent is known by the name of Virginia Cross. It is evident that the Respondent can have no legitimate interest in the aforesaid disputed domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

I, therefore, find that the Registrant/Respondent 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 Respondent 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 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 Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source,



sponsorship, affiliation, or endorsement of the Respondent'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. The Respondent has intentionally attempted to attract, for commercial gain, internet users to the disputed website by creating a likelihood of confusion with the Complainant's mark. The Respondent was aware of the Complainant's registration of the trademark "MEIZU".

Further that the Respondent registered or acquired the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the owner of the trademark or service mark (normally the Complainant or other interested buyers) for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name. Annexure 6-a attached to the Complaint indicates that the disputed domain name [meizu.in] is available for sale on Sedo site.

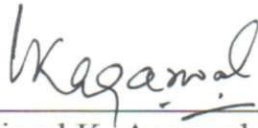
The complete address of the Registrant/Respondent could not be found and there is no response to the e-mail mentioned in the WHOIS record. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

Therefore, I conclude that the domain name was registered and used by the Registrant/Respondent in bad faith.

A handwritten signature in black ink, appearing to read "K. Kagan", with a horizontal line underneath.

7. **Decision**

In light of the foregoing findings, namely, that the domain name is confusingly similar to the 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.meizu.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 15th February 2016