



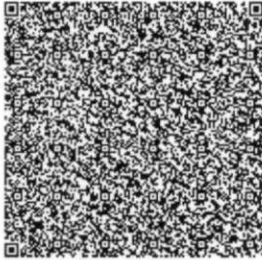
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate No.	: IN-DL78184528438153L
Certificate Issued Date	: 19-Oct-2013 11:00 AM
Account Reference	: IMPACC (IV)/ dl823103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL823103544634591283L
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: V K AGARWAL
Second Party	: NA
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100
	(One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6 B, 6th Floor, Uppals M 6 Plaza,
6, Jasola District Centre,
NEW DELHI – 110 025

Microgaming Software Systems Limited v. Mr. Ding RiGuo

AWARD

V K Agarwal

1. The Parties

The Complainant is Microgaming Software Systems Limited MGS House Circular Road, Douglas, IM1 1BL, Isle of Man

The Respondent is Mr. Ding RiGuo, 8F, No. 199 Shifu Road, Taizhou, Zhejiang 318000, China.

2. The Domain Name and Registrar

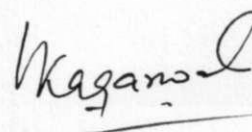
The disputed domain name is <www.microgamingin>.

The particulars of registration of the disputed domain name are as follows:

- | | |
|----------------------------|--|
| (a) Name of the Registrant | : Mr. Ding RiGuo |
| (b) Domain ID | : D7211610-AFIN |
| (c) Created on | : 10 th April 2013 |
| (d) Expiration date | : 10 th April 2014 |
| (e) Registrar | : Webiq Domains Solutions P. Ltd.
(R131-AFIN) |

3. Procedural History

- (a) A Complaint dated 04th September 2013 has been filed with the National Internet Exchange of India, New Delhi. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are annexed as Annexure A with the Complaint. It is confirmed that the Respondent is listed as the Registrant of the disputed domain name and provided the contact details for the administrative, billing, and technical contact. The National Internet Exchange of India 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 National Internet Exchange of India 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 accordance with the Rules, the Sole Arbitrator formally notified the Registrant/Respondent of the Complaint through a registered letter dated 17th October 2013. The Registrant/Respondent was required to submit his defence within 15 days. The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will be proceeded ex-parte.
- (d) No response has been received from the Respondent. Accordingly, the Respondent's default has been notified.

4. Factual Background

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

Complainant's activities

According to the Complaint, the Complainant M/s Microgaming Software Systems Limited was founded in the year 1994. It is a licensee of a number of registered trademarks consisting of or incorporating the word MICROGAMING. The said word is registered as a trademark in various countries including Australia, Canada, the European Union, Republic of South Africa, the United Kingdom, etc.

The owner of the MICROGAMING trademarks is M/s Neosoft Anstalt (the Licensor), Pflugstrasse 10/12, 9490 Vaduz, Liechtenstein. It is further stated in the Complaint that, "Under the exclusive license agreement, all benefits arising out of the use of the MICROGAMING trademarks by the Complainant inure to the benefit of the Licensor".

The activities covered by the said trademark include, inter alia, computer software for games of chance, gaming or casino style gaming, entertainment, gaming and online casino management services. The said online casino software is currently utilized by more than 100 online casinos across the world, including the Palace Group and Digimedia Limited.

The Complainant contends that the trademark "MICROGAMING" is an invented mark and is distinctive to the products and services of the Complainant. The long and continuous use of the said trademark has led to the exclusive association of the mark with the Complainant. Any use of the trademark/trading style MICROGAMING or any similar sounding and looking mark in relation to the same products and services would

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invariably result in an association of such mark and its corresponding products and services with the Complainant.

Respondent's Identity and Activities

The Respondent did not file any reply. 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 the trademark "MICROGAMING" is registered as a trademark in various countries. An illustrative list of the countries where the trademark "MICROGAMING" is registered is Australia, Canada, Republic of South Africa, United Kingdom, etc. In most of these countries, the said trademark "MICROGAMING" is registered in various Classes, such as, 9, 35, 41, etc.

The Complainant also owns domain names with the combination of word "MICROGAMING", such as <www.microgaming.com>; Thus, at the time Respondent registered the disputed domain name, the word "MICROGAMING" was well known as trademark and as part of the domain names of the Complainant.

The Complainant has stated that the Respondent/Registrant has registered the disputed domain name "microgaming.in" with an intention to trade upon the immense goodwill and reputation enjoyed by the Complainant in the famous trademark "MICROGAMING".

In relation to element (ii), the Complainant contends that the Registrant/Respondent (as an individual, business, or other organization) has not been commonly known by the mark or name "MICROGAMING". Further, the Registrant/Respondent is not making a legitimate non-commercial or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion, sponsorship, affiliation and misleading the general public

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.microgaming.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 name to promote competing or infringing products or for making profit by offering to sell it cannot be considered a "*bona fide offering of goods and services*".

The Complainant has further contended that the disputed domain name points to a website displaying pay-per-click links to the websites of other entities, a number of which are competitors of the Complainant. Accordingly, the Respondent's use of the disputed domain name is intended to divert consumers to the Respondent's website for financial gains.

Thus, the registrant/Respondent registered the disputed domain name in bad faith and for making profit out of the same by selling it to the Complainant or his competitors.

B. Registrant/Respondent

The Registrant/Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.microgaming.in> or any trademark right, domain name right or contractual right.

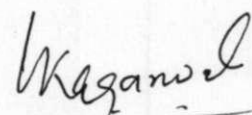
6. Discussion and Findings

The Rules instruct this Arbitrator as to the principles to be used 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 IN Domain Name Dispute Resolution Policy (INDRP), the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to paragraph 4 of the said 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 Registrant has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered and is being used in bad faith;

A. Identical or Confusingly Similar



As per the WHOIS information, the Registrant/Respondent has created the disputed domain name <www.microgaming.in> on April 10, 2013. The expiration date is April 10, 2014.

The Complainant is the Licensee of the trademark "MICROGAMING" in many countries, as indicated above. Further, the Complainant also owns domain names with the words "microgaming". The Registrant/Respondent has also used the same words. The addition of the word "in" is insignificant. Thus, the Respondent's domain name is phonetically, visually and conceptually identical to the trademark used by the Complainant as a Licensee.

In the case of *Farouk Systems Inc., v. Yishi*, WIPO Case No. D2010-0006 it has been held that the domain name wholly incorporating a complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the addition or deletion of other words to such marks.

Therefore, I hold that the domain name <www.microgaming.in> is confusingly similar to the Complainant's marks.

B. Rights or Legitimate Interests

According to paragraph 7 of the INDRP, the Registrant/Respondent 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 Respondent'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's response is not available in this case. There is no evidence to suggest that the Registrant/Respondent has become known by the

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disputed domain name anywhere in the world. There does not exist any relationship between the registrant/Respondent and the words "microgaming" used in the disputed domain name. Further that, the Respondent is not operating any activity on the website under the impugned domain "microgaming.in. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Registrant/Respondent has no rights or legitimate interests in the disputed domain name.

The arbitrator is of the view that the Registrant/Respondent registered the disputed domain name mainly for the purpose of misusing it, or transferring it to the Complainant or selling it in the market at a high price or for providing it to the competitor of the Complainant for valuable consideration.

Further, the Complainant has not licensed or otherwise permitted the Registrant/Respondent to use its name or to apply for or use the domain name incorporating the said name. The Registrant/Respondent is not offering any goods or services under the disputed domain name.

Therefore, the Registrant is not using the disputed domain name for bona fide offering of goods or services.

It has been held in the cases of *American Home Products Corporation v. Ben Malgioglio*, WIPO Case No. D2000-1602 and *Vestel Elektronik Sanayi Ve Ticaret As v. Mehmet Kahvect*, WIPO Case No. D2000-1244 that a passive holding of a domain name is an evidence of a lack of legitimate rights and interests in that name.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain name.

C. Registered and Used in Bad Faith

According to paragraph 6 of the Policy, 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

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Complainant, for valuable consideration in excess of the Registrant's 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 it has engaged in a pattern of such conduct; or
- (iii) 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 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. There are circumstances indicating that the Registrant/Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's name. Further that, The Registrant's/Respondent's registration of the domain name <www.microgaming.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The Complainant has stated that (as per Annexure I) both the WHOIS information relating to the disputed domain name and the website linked to the disputed domain name states that the disputed domain name "may be for sale". Further that, on May 07, 2013 the Complainant has given a cease and desist letter to the Respondent to which no response has been received.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Registrant/Respondent in bad faith.

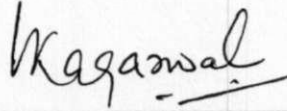
Therefore, I conclude that the domain name was registered and used by the Registrant/Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the name in which the Complainant has rights, that the Registrant/Respondent has no rights or legitimate interests in respect of

/s/ [Signature]

the disputed 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, as prayed by the Complainant, the disputed domain name <www.microgaming.in> may be transferred to the Complainant.



Vinod K. Agarwal,
Date: November 24, 2013