



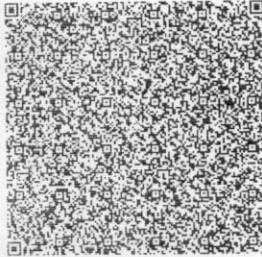
सत्यमेव जयते

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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure**

ARBITRATION AWARD

DATED: January 13, 2015

In the matter of:

PRADA S.A
23, Rue Aldringen
L-1118, Luxembourg
Luxembourg

Complainant

VS

Zhao Ke
Weihai Road 755
Shanghai 200041
China

Respondent

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is **PRADA S.A, 23, Rue Aldringen, L-1118, Luxembourg Luxembourg**
- (b) Respondent firm is: **Zhao Ke, Weihai Road 755, Shanghai 200041, China**. It has presence on internet with domain name of www.miumiu.co.in which is subject of dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.miumiu.co.in registered with the DOT IN Registry through the 1APi GmbH (R98-AFIN).
- ii. The registry NIXI is Flat no. 6B, Uppal, M 6 Plaza 6, Jasola District, New Delhi-110025
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



3. BRIEF BACKGROUND

FACTUAL AND LEGAL GROUNDS

PRADA SA. The Complainant is owner of trademark registrations for MIU MIU in several national jurisdiction.

The Prada brand dates back to the beginning of last century. In 1913, Mario Prada opened a luxury store in the Galleria Vittorio Emanuele II Milan, selling leather handbags, travelling trunks, leather accessories and beauty cases, luxury accessories and articles of value. Prada rapidly became a point of reference for European aristocracy and the most elegant members of the haute-bourgeoisie in Europe. In 1919, PRADA became an official supplier to the Italian Royal Family and over the Prada name gained increasing renown and prestige.

The Group saw a turning point in the development when Miuccia Prada, Mario's granddaughter, launched a partnership with the Tuscan businessman Patrizio Bertelli. In 1977, Patrizio Bertelli set up I.P.I. S.p.A. which obtained an exclusive license from Miuccia Prada to produce and distribute leather goods bearing the Prada brand name. The Following years, two families were gradually brought together within a single Group. In 1983, the Prada family opened a second store in the prestigious Via della Spiga in Milan. The Range was extended from leather goods include footwear, as well as men's and women's ready-to- wear apparel.

1993 led to the establishment of a new brand - MIU MIU designed for women who are particularly fashion forward and interested in trendy lifestyle. Named after Ms. Miuccia Prada, President and stylist of the company, Miu Miu was created as a brand with an autonomous identity from Prada and since 2005 the Group enhanced its independent identity largely. The group developed strong network of Directly Operated Stores, Italy (44), Europe (115), Middle East (2), North America (47), Japan (65) and Asia Pacific (115), accompanied by franchise stores and luxury department stores. Prada operates in over 70 countries. The Prada e-store was launched on 2010 while the Miu Miu e-store went online in 2011. Due to Complainant's substantial investments in advertising, marketing, sales worldwide, its consistent use of the trademark MIU MIU, its impressive clients, MIU MIU is a well-known trademark worldwide.

Respondent registered the disputed Domain Name on July 19, 2012 without Complainant's authorization. Domain Name is redirected to web page featuring several sponsored links to third party commercial web sites and companies competitors. In view unauthorized use of the domain Name, identical to the trademark MIU MIU, Complainant instructed its representative to serve Respondent with a cease and desist letter and reminders on 30 Nov 2012, 25 June 2013, 12 Aug 2013.



Following such last reminder, Respondent replied on the same date from the email address haodomains@gmail.com "8000US\$, thank you!" Respondent continued redirecting the Domain Name to a pay-per-click landing page and offering it for sale on sedo.co.uk. Complainant refused to pay and as last recourse Complainant filed present Complaint.

4. PARTIES CONTENTIONS:

A. COMPLAINANTS CONTENTIONS:

The domain name is identical to a trademark or service mark in which Complainant has rights:

Complainant submits that disputed Domain name incorporates Complainant's MIU MIU trademark in entirety, without any alteration which might distinguish Respondent's domain name from the mark. As such they are identical and confusingly similar. Disputed domain name is identical to the domain name <miumiu.com> under which complainant operates its official website and portal for promotion of the MIU MIU brand since its creation on November 09, 1997.

B. Respondent has no rights or legitimate interests in respect of the domain name:

Complainant submits that Respondent is not a licensee, an authorized agent of complainant, or in any other way authorized to use Complainant's trademark MIU MIU.

There is no evidence showing that Respondent, whose names indicated in the Who Is as "Zhao ke", might be commonly known by the Domain Name as an individual, business or other organization and "MIU MIU" is not the family name of Respondent.

The Domain Name has been redirected to web pages displaying several sponsored links, which generates revenues, via the pay per click system, to the Domain name holder. In addition, some of the links which direct users to third party web sites are also related to Complainant's competitors.

The subject Domain Name is also offered for sale on the web sites Sedo.co.uk and, even after having received a Cease and Desist letter from complainant's representative, Respondent offered for sale the Domain Name for an amount of 8000 USD.

C. The domain name was registered or is being used in Bad Faith

Complaint submits that MIU MIU has been intensively used as a trademark since 1992 and its advertisement plus sales worldwide make it a popular and known brand and respondent at the time could not have possibly ignored existence of Complainants as Identical to hithe brand he was registering. An additional circumstance evidencing bad faith at the time of the registration, Complainant



operates its international official's website under the domain name <miumiu.com>. In light of the creation of complainant's domain name since November 09, 1997 and the corresponding to the term "MIU MIU" in several gTLDs and ccTLDs, Respondent certainly knew or should have known of Complainant's prior rights. Indeed, the circumstances of the case suggest that Respondent's purpose is registering the Domain Name, which incorporate Complainant's MIU MIU mark in its entirety, was solely to capitalize on the reputation of complainant's mark.

Respondent is intentionally attempting to attract Internet users to its website by creating a likelihood of confusion with Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the website.

By redirecting the disputed Domain name to web pages displaying sponsored links, Respondents earns commission whenever an Internet user visits its web sites and clicks on one of the links.

Respondent not only offered for sale the Domain Name on the corresponding web site through a link to www.sedo.co.uk but is also demanding a considerable amount of 8000 USD to cease and Desist.

Complainant submits Respondent registered the disputed Domain Name primarily for the purpose of selling or otherwise transferring the domain name registration to Complainant for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name.

For all the foregoing reasons, it is apparent that the Domain Name was registered and is being used in bad faith.

B. Respondents Contentions

Not responded at all.

5. OPINION:

- I. **Issue:**
 - A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
 1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.



Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has origination since Year 1993 and is using the brandmark 'MIUMIU' since then, has a big customer base including the elite and has made massive efforts to promote the brand name 'MIUMIU' by consuming various resources available at his end and got National, International visibility, huge internet presence and wide media coverage too.

Word 'MIUMIU' has certainly acquired a popular Brand name across the length and breadth of Other Countries including Britain, USA, EUROPE, ASIA PACIFIC and India and a prominent place in internet electronic media. It has a reputation and goodwill of its own. It reflects status symbol.

On the basis of the records submitted by the complainant it's proved that the domain name 'miumiu.co.in' is related to the business and is derived from the name of the President and stylist of the Complainant Company and is being used for purpose related to his work.

It is confirmed that Complainant is extensive user of name 'MIUMIU'. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

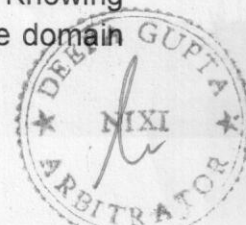
That trade mark 'MIUMIU' has been registered effectively in different places in the world as attached in the Annexures submitted. Respondent's registration of the infringing Domain with knowledge of the fame and public recognition of the 'MIUMIU' marks throughout global internet establishes that Respondent has registered the Infringing Domain Name to prevent the complainant from using its 'MIUMIU' mark and design as a domain name.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

Registrant failed to fulfill its responsibility to find out before registration whether the domain it is about to register violates the rights of a brand owner.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence at the various registries of internet, of the domain



name wishing to be registered and without understanding whether he has rights to register such a name or not, still the respondent proceeded with registration of the domain name in question to intentionally trade on MIUMIU, incorporated in its reputation, goodwill and trademarks & was purportedly using the name for business purposes though indirectly and illegitimately putting it for sale.

Respondent has not shown any fair or legitimate non-commercial use, but instead has just remained silent and non responsive and later demanded money for return of name. Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with 'MIUMIU' reputation and services to third party links on a portal site constitute bad faith use under the policy. It is very clear that the Respondent registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with or without permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that 'MIUMIU' is a registered and protected trademark of the Complainant.

Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the trademark 'MIUMIU', Internet users will apparently and reasonably expect it as an offer of the Complainant or authorized or affiliated enterprises under 'miumiu.co.in'.

The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

The logo 'MIUMIU' and similar domain names ,i.e., 'miumiu.com', 'ilovemiumiu.com' miucciaprada.it, miucciaprada.net, miumiu.asia, miumiu.at, miumiu.hu, miumiu.be, miumiu.biz, nanogenmiumiu.bz, miumiu.ch, miumiu.cz, etc were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'miumiu.co.in' and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant. The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.



This tribunal also holds that such misuse of the names should be checked in most efficient manner. That the complainant efforts to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.


As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name 'miumiu.co.in' be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 10,000/- on the Respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of **13 day of January 2015.**


 **Deepa Gupta**
Arbitrator