



उत्तर प्रदेश UTTAR PRADESH

BF 502137

BODHISATVA ACHARYA
ARBITRATOR

(Appointed by .IN Registry-National Internet Exchange of India)

Case No. Of 2012

ARBITRATION AWARD: DISPUTED DOMAIN NAME :< OSRAM.CO.IN >

In the matter of:

OSRAM AG
Hellabrunner StraBe 1
81543 München
Germany

Filed by its authorized representative attorney -

Legasis Partners
38 A/B Jolly Maker Chambers II,
Nariman Point, Mumbai-400021,
State of Maharashtra, India
Email: - Mustafa.safiyuddin@legasispartners.in

.....Complainant

Vs.

HUA AN HOLDINGS (H.K.) LIMITED
Room 14-05-301, West block, North
HONGKONG 999077
HK
Email: - domainbook@hotmail.com

..... Respondent

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is OSRAM AG, Hellabrunner StraBe 1, 81543 München, Germany **filed by its authorized representative attorney** Legasis Partners, 38 A/B Jolly Maker Chambers II, Nariman Point, Mumbai-400021, State of Maharashtra, India with Email: Mustafa.safiyuddin@legasispartners.in

Respondent in this arbitration proceeding is HUA AN HOLDINGS (H.K.) LIMITED, Room 14-05-301, West block, North, HONGKONG 999077, HK with Email: - domainbook@hotmail.com

2. The Domain Name, Registrar & Registrant:

The disputed domain name is WWW.OSRAM.CO.IN



3. Procedural History:

The complainant, through its authorized representative, filed this complaint to NIXI regarding the disputed domain name www.osram.co.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed **Mr. Bodhisatva Acharya** (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on 2012 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on November 3rd, 2012, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the December 31st, 2012 as Ex-parte.

4. Factual Background:

- (a) The Complainant's company name is "OSRAM" the further part "AG", indicates the legal status of the Complainant as a so called "Aktiengesellschaft", (AG), a German joint stock company. The Complainant belongs to the OSRAM group which was founded in Germany in 1919. The Complainant is an international company, with its headquarters in Munich. OSRAM is one of the two largest lighting manufacturing companies in and well-known around the world. The historical advancement shows that the company OSRAM has developed to a strong, big and prospered company. The Complainant has traded under the name "OSRAM" since its foundation, having become the most relevant of its trademarks. On April 17, 1906 the OSRAM brand was registered as a trademark for "electrical incandescent and arc lamps".



- (b) The Complainant has registered more than 500 "OSRAM" trademarks and service marks in over 150 countries and regions. Moreover, the Complainant owns over 100 international "OSRAM" trademarks.

In India, the Complainant has 10 registered "OSRAM" trademarks, which comprise the following:

"OSRAM", Register No. 1344760, protected for international class 11,
"OSRAM", Register No. 713815, protected for international class 11,
"OSRAM", Register No. 1250222, protected for international classes 35, 37, 42,
"OSRAM", Register No. 612620, protected for international class 11,
"OSRAM", Register No. 1084250, protected for international class 11,
"OSRAM", Register No. 713814, protected for international class 11,
"OSRAM", Register No. 580830, protected for international class 9,
"OSRAM", Register No. 554017, protected for international class 11,
"OSRAM", Register No. 554019, protected for international class 11,
"OSRAM", Register No. 554018, protected for international class 11,

The Complaint is based on these national Indian trademarks which are all used for products and in relation to trademark No. 1250222, for services, which are related to lamps and lighting products.

- (c) Lastly the complainant filed this complaint for Arbitration proceeding and the complaint was produced before the Arbitrator on, 2012 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on November 3rd, 2012, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the December 31st, 2012 as Ex-parte.

5. Parties Contentions:

- (a) Complainant contends 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; and
 - (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.
- (b) Respondent contends that

The respondent gave no response and produced no reply.

6. Discussion & Findings:

- (i) The disputed domain name in this proceeding is in its relevant distinguishing part identical to marks owned by the Complainant and the Complainant's company name. The inclusion of the generic wording does not impact the consumer perception that the disputed domain name is confusingly similar to the Complainant's trademark.
- (ii) It is the finding of the arbitrator that the Respondent is not holder of a trademark "OSRAM" or any similar trademark and the Respondent does not use the trademarks "OSRAM" and the domain at issue in connection with a bona fide offering of goods or services. The Respondent is not an authorized dealer, distributor or licensor of the complainant, nor is the Respondent in any way associated with the Complainant. The Respondent is in no way authorized or affiliated with the Complainant. Additionally, the Respondent is not making a legitimate non-commercial or fair use of the domain name.
- (iii) The Respondent certainly must have had knowledge about the worldwide well-known Complainant, but he, the Respondent, is not an official dealer of OSRAM-products. He uses the domain, which includes the world wide well-known trademark OSRAM, to mislead consumers who are searching for OSRAM-products to his website

with mainly competing products presenting websites. The Respondent uses the dispute domain name **OSRAM.CO.IN** that is virtually identical to the well-known Complainant's registered trademark "OSRAM" clearly indicates a bad faith intent. The Respondent uses the disputed domain name at issue to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's company name and its trademark OSRAM. The Respondent has not attempted to make any bona fide use of the disputed domain name. The registration of a domain name incorporating another's famous mark does not confer any rights or legitimate interests in the domain name to the Respondent.

- (iv) Due to the extensive international use of the Complainant's "OSRAM" trademarks the said trademarks have become internationally "well-known", having provided the Complainant (in its prior legal form as a GmbH) numerous evidences of such notoriety. In the WIPO cases DR02005-004-OSRAM GmbH v. web4COMM SRL Romania (osram.ro) No.D2008-0083-OSRAM GmbH V. Ocean Grenier (osram-led.com), No. D2008-1032-OSRAM GmbH v. Transure Entrprise Ltd. (osramonline.com), No. 2008-1033- OSRAM GmbH v. Texas International Property Associates - NA NA (osram-opto.com), No. D2008-1045-OSRAM GmbH v. sinclare vabalon (osramslyvania.com), No. D2008-1046- OSRAM GmbHv. Emmanuel Jourel (osram.com), No. D2008-1578-OSRAM GmbH v. Jae Gyu Park (osramled.com), No. D2009-0010-OSRAM GmbH v. Transure Enterprise Ltd. (osramlighting.com), No. D2009-0692-OSRAM GmbH v. Yuri a Ivanov (osram.tel), No. D2009-0827-OSRAM GmbH v. Sinian Lan, Landone (osramhid.com) and No. D2010-0091-OSRAM GmbH v. limingshu (aosram.com) the panel confirmed that the name/mark OSRAM is a very distinctive identifier of the Complainant and its products.

- (v) The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

7. Decision:

Hence the Arbitrator decides, 'the Disputed Domain Name www.osram.co.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.osram.co.in shall be transferred to the Complainant with immediate effect.


Dr. BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI

DATED: December 31st, 2012,
PLACE: NEW DELHI,
INDIA.