



हरियाणा HARYANA

M 670165

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

**Panda Security SL**

Gran Via Don Diego Lopez De Haro,  
448001, Bilbao,  
Spain

.....Complainant

**Anna Beaulieu**

Oversee Investments Inc.  
77, Massachusetts Avenue  
Cambridge – 02139, Massachusetts,  
USA

..... Respondent

Disputed Domain Name: [www.pandasecurity.in](http://www.pandasecurity.in)

**AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is Panda Security SL, of Gran Via Don Diego Lopez De Haro, 448001, Bilbao, Spain. The Complainant is represented by its authorized representatives Chetan Chadha c/o Chadha & Chadha of F-46, Himalaya House, 23 KG Marg, New Delhi – 110001.

The Respondent in this arbitration proceeding is Anna Beaulieu, Oversee Investments Inc. 77 Massachusetts Avenue, Cambridge – 02139, Massachusetts, USA as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name is [www.pandasecurity.in](http://www.pandasecurity.in). The Registrar is Webiq Domains Solutions Pvt. Ltd., 102, Osia Friendship, 4<sup>th</sup> Gaothan Lane, Off J P Road, Opp. Ram Mandir, Andheri (W), Mumbai, Maharashtra.

The Registrant is Anna Beaulieu, Oversee Investments Inc. 77 Massachusetts Avenue, Cambridge – 02139, Massachusetts, USA.

### **3) Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on October 03, 2013, and the notice was issued to the Respondent on October 08, 2013 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Arbitrator also directed the Complainant to provide by email copy of complaint and Annexures to the



Respondent which was duly complied. The Respondent did not submit any response. The Arbitrator granted further opportunity to the Respondent to submit its response on or before November 01, 2013. However, no response was submitted by the Respondent within the stipulated time of thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

**Grounds for administrative proceedings:**

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions:**

- a) Panda Security SL is a market leader for providing software security solutions. The company was founded in the year 1990 in Bilbao, Spain under the name 'Panda Software'. In the year 2007, it underwent a brand change and adopted the current name 'Panda Security'.
- b) Complainant has its US headquarters in Florida and EU headquarters in Spain. The complainant's products are available in more than 23 languages and millions of users located in 195 countries around the world.
- c) The Complainant has a direct sales presence in over 55 countries through an extensive network of subsidiaries and franchise and has since then bought out 8 of the franchises it has in the key market. The Complainant has also launched the first cloud-based antivirus under its flagship corporate name 'Panda Security'; and is currently celebrating 20 years of providing global security solutions through its wide range of products in the market.
- d) Complainant is the owner of a number of domain names which support the Complainant's several dedicated and official websites for its consumers and other visitors from different countries and jurisdictions. Some of the domain names areas follows:

[www.pandasecurity.com](http://www.pandasecurity.com) and  
[www.pandasecurityusa.com](http://www.pandasecurityusa.com)

The Complainant is the registrant and user of several domain names and trademarks comprising the PANDA SECURITY mark.



- e) The Complainant submits that the overwhelming success of the Complainant's mark as being synonymous with the security sector has resulted in Complainant gaining extensive goodwill and reputation in the said mark/name worldwide and in India.
- f) The Complainant submits that the Respondent has registered an identical domain name [www.pandasecurity.in](http://www.pandasecurity.in) with the .in Registry. It is further submitted that the domain name incorporates the Complainant's well-known prior used mark 'Panda Security' and prior registered domain [www.pandasecurity.com](http://www.pandasecurity.com). The complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known trademark in any manner.
- g) The Complainant submits that on account of its extensive use and popularity of the domain name / trademark 'Panda Security' across the world, the Panda Security mark/name is well recognized. It is further submitted that the Respondent has adopted the phonetically, visually and conceptually identical to the Complainant's well-known and highly distinctive trademark and domain name 'Panda Security'. The Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant's trade mark/ domain name 'Panda Security'.
- h) The disputed domain name is identical with the Complainant's corporate name and trade mark. There is strong likelihood that a web browser looking for Panda Security goods/services in India would mistake the offending website [www.pandasecurity.in](http://www.pandasecurity.in) for the Complainant's India specific website, and once there, would be directed to the other links on this website in search of service and product offerings of the Complainant.
- i) The Complainant's submits that the Respondent's domain name/ web-site does not have any active content and has been merely blocked/registered with an intention to attract internet traffic and benefit from the sale of a famous domain name. The web-site contents 'sponsored listings' only and therefore there is no legitimate business internet of the Respondent's in blocking/registering the said domain name. Therefore, the sole purpose of registering the domain name [www.pandasecurity.in](http://www.pandasecurity.in) by the Respondent is to derive illegal profits.
- j) The Complainant further submits that it will suffer incalculable harm and injury to its goodwill, reputation and business in general if the Respondent is allowed to maintain its domain name [www.pandasecurity.in](http://www.pandasecurity.in). The loss and damage will not only be to the Complainant's reputation but also result in confusion and deception among the trade and public who have no reason to consider that an identical domain name with only ccTLD being different does not belong to the Respondent. Thus the web user likely to visit the Respondent's website assuming it to be sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant. The trade and public may also assume that there exists a connection between the Complainant and the



Respondent which is likely to further harm the reputation enjoyed by the Complainant.

- k) The Complainant submits that the word/domain name "Panda Security" is a unique combination of words and is highly distinctive in nature, particularly in relation to providing software security solutions. It is further submitted that the adoption and use of an identical name by the Respondent cannot be a co-incidence and is in bad faith.
- l) The Registration of the domain "pandasecurity.in" is a clear case of cyber squatting with intention to take advantage of Complainant's substantial reputation and its prominent presence on the internet in order to confuse public by creating an impression of authorization from Complainant, divert business, tarnish the reputation and goodwill of the Complainant and the said mark and unduly gain in all aspects to the detriment of the Complainant.
- m) The Complainant sells their product through its subsidiaries and affiliates in India, hence, has gained tremendous reputation in the India market. Therefore, it is obvious that the Respondent was aware of the Complainant's trade mark rights in the 'Panda Security' mark/name and its adoption of an identical domain [www.pandasecurity.in](http://www.pandasecurity.in) is in bad faith.
- n) The Respondent website has a tagline which says "Buy the domain – The domain Pandasecurity.in may be for sale by its owners!". This announcement confirms the fact that the Respondent does not use the domain name legally with a bona fide intention or without the motive of illegally gaining profit. Respondent is using the domain for profits accrued out of commission from diversion of Internet traffic.

#### **5) Respondent**

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

#### **6) Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark 'PANDASECURITY' leads to the conclusion that the Complainant has superior and prior rights in the mark 'PANDASECURITY'. Thus it can be said a) the web users associate the word 'PANDASECURITY' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the [www.pandasecurity.in](http://www.pandasecurity.in) and c) they may





believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant. In addition, the Respondent by providing incomplete address of Respondent at the time of registration, which is evidence from non-delivery of courier containing the Complaint (as per the report provided by NIXI dated October 30, 2013 from Blue Dart Express), violated clause 3 (a) of .IN Domain Dispute Resolution policy.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has common law rights, and rights on account of prior and longstanding use of the mark 'PANDASECURITY'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'PANDASECURITY' mark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'PANDASECURITY' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain. The Respondent even demanded considerable compensation for transfer of the domain name and the amount asked was much higher than reasonable cost and expenses incurred for registering and maintain the domain name.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. The Respondent has simply parked its domain for sale and is using the website to generate revenue.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.pandasecurity.in'.



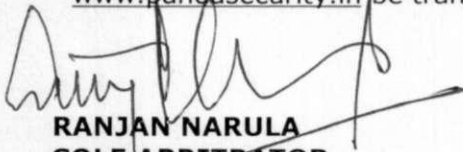
- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn. Further by offering the domain for sale and providing a wrong address for registration shows bad faith.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'PANDASECURITY' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

**7. Decision:**

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.pandasecurity.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.pandasecurity.in be transferred from Respondent to the Complainant.



**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**November 22, 2013**