

दिल्ली DELHI

AC 133906

**NATIONAL INTERNET EXCHANGE OF INDIA**

**Incube Business Centre, 5<sup>th</sup> Floor,  
18, Nehru Place,  
NEW DELHI – 110 019**

**E. Remy Martin v. Marie R. Dempsey,**

**AWARD**

**1. The Parties**

The Complainant is E. Remy Martin, 20, rue de la societe vinicole,  
16100 COGNAC, France

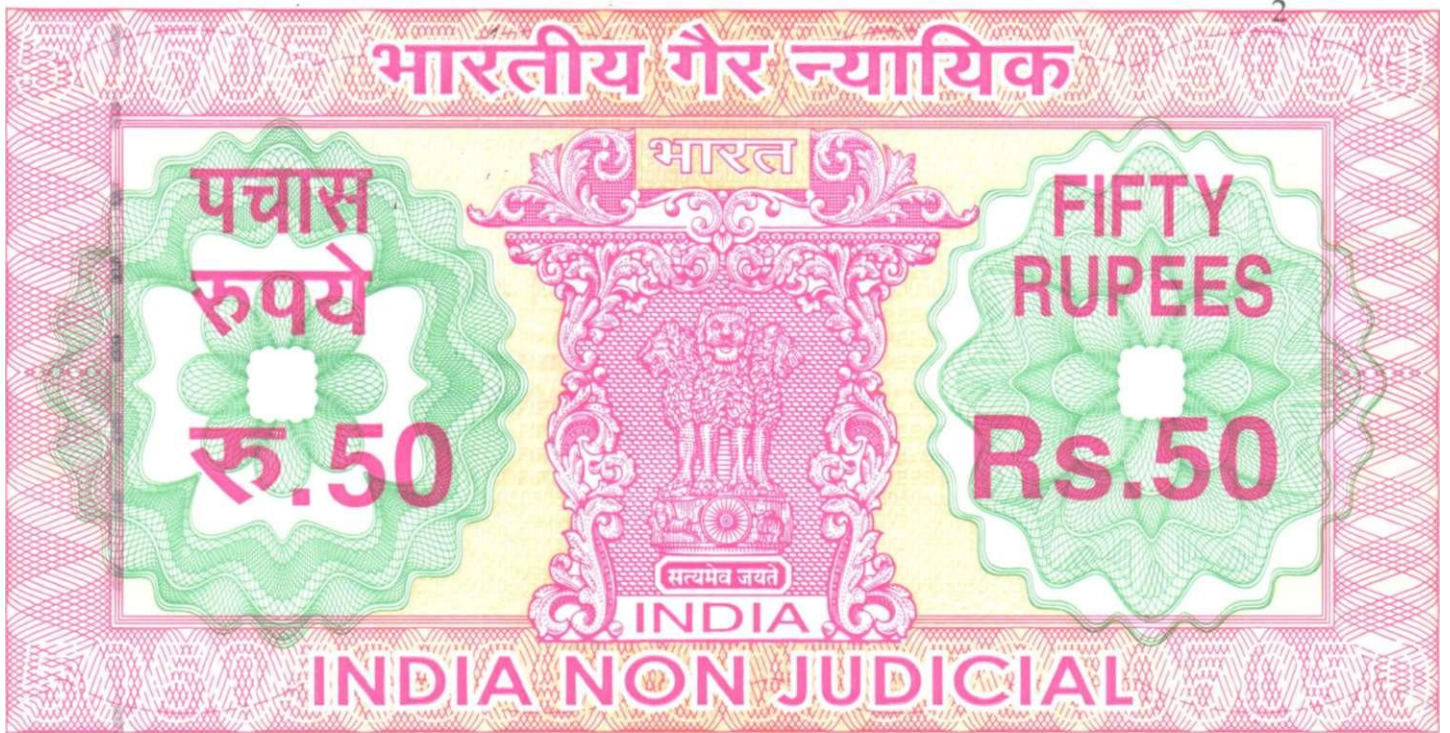
The Respondent is Ms. Maria R. Dempsey, 4056 Woodside Circle K7,  
Fort Walton Beach, Shanghai 32547, USA

**2. The Domain Name and Registrar**

The disputed domain name is <www.remymartin.co.in>. The said domain name is registered with Directi Internet Solutions Pvt. Limited d/b/a PublicDomainRegistry.com, India.

*Kagawel*





दिल्ली DELHI

AC 133907

### 3. Procedural History

- (a) A Complaint has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that 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 on November 7, 2012. 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 Respondent of the Complaint on e mail address keepwalking07@gmail.com. The Respondent was required to

*Wagawal*

submit his defence within 15 days. The Respondent was informed that if his response was not received he would be considered in default and the matter will proceed ex-parte. No response has been received from the Respondent.

#### **4. Factual Background**

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

##### **Complainant's activities**

In these proceedings the Complainant is E. Remy Martin of France. The Complainant, founded in 1724, is the producer of world famous cognac (an alcoholic drink) known by its brand name "REMY MARTIN". According to the Complainant, the brand enjoys remarkable growth in many countries or the world including Cambodia, Japan, Singapore, Taiwan and Vietnam.

##### **Respondent's Identity and Activities**

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 its name is E. Remy Martin. The term "REMY MARTIN" is known specially in relation to E. REMY MARTIN. It has no meaning whatsoever in English or in any other language. The Complainant was founded in 1724. The disputed domain name is <www.remymartin.co.in>. Thus, the disputed domain name contains the complete name of the Complainant. The addition of the words "co" or "in" or non-use of the word "E" is insignificant. The word "Remy Martin" is registered as trademark/service mark of the Complainant in many countries.

*Kazamul*





## **B. Respondent**

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.remymartin.co.in> or any trademark right, domain name right or contractual right. Therefore, the Respondent has no legal right or interest in the disputed domain name.

## **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 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 <www.remymartin.co.in> on October 14, 2011. The expiration date is October 14, 2012. In other words, the registration of the disputed domain name has already expired.

According to the Complainant, the trademark “REMY MARTIN” is registered in many countries of the world, such as, France, India, etc. It is registered in Class 33.

The present dispute pertains to the domain name <www.remymartin.co.in>. The Complainant possesses a large number of other domain names, as mentioned above, with the word “remymartin”. The Complainant is also the owner of trademark

*Kagansal*

“REMY MARTIN” or “remy martin”. Most of these domain names and the trademarks/certification marks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is very much similar or identical to these domain names and the trademarks/service marks of the Complainant.

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

## **B. Rights or Legitimate Interests**

The 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 Respondent 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; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent 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 Respondent’s response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name. Remy Martin is the name and mark of the Complainant. The trade mark “REMY MARTIN” has acquired unique importance in due course of time and is associated with the Complainant. A mention of the said



trademark establishes an identity and connection with the Complainant. The Respondent is known by the name of Maria R. Dempsey. It is evident that the Respondent can have no legitimate interest in the 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.

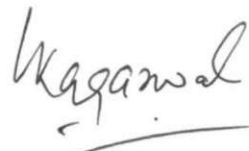
The decision in the case of *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, (WIPO Case No. D2003-0455 relied upon by the Complainant support its contentions that the, “Complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP”.

I, therefore, find that the 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.

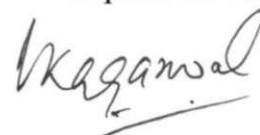
The contention of the Complainant is that the present case is covered by the above circumstances. The Respondent's registration of the domain name <www.remymartin.co.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant. Further, according to the Annexure 5 attached to the complaint, there are circumstances indicating that the Respondent has offered the disputed domain name <remymartin.co.in> for sale on internet for Euros 6,500. The Complainant contends that this price is considered far in excess of the out of pocket expenses for registering the disputed domain name.

In support of its contentions, the Complainant has relied on the decisions in the cases of *Ferrari S.p.A. v. American Entertainment Group Inc.*, (WIPO Case No. D2004-0673) and *Air Group v. Pat Reinhardt*, (WIPO Case No. D2000-0482).

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 Respondent in bad faith.

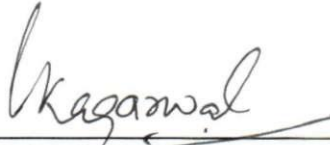
## 7. Decision

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

A handwritten signature in black ink, appearing to read 'K Agarwal', written over a horizontal line.

Vinod K. Agarwal

Sole Arbitrator

Date: December 10, 2012