



தமிழ்நாடு தமில்நாடு TAMILNADU

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21 JUN 2013

**D. SARAVANAN**  
Advocate, Arbitrator & Mediator  
"Orient Chambers", No. 90 (Old No. 73),  
4th & 5th Floor, Armenian Street,  
Chennai - 600 001.

AL 581600  
P.S. SHANMUGA SUNDARAM,  
STAMP VENDOR,  
L No B4 / 109 / 88  
HIGH COURT CAMPUS,  
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN  
.IN REGISTRY  
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: WWW.RIOTGAMES.IN

Riot Games Inc.  
2450 Broadway Santa Monica,  
California 90404 USA  
[bsinger@dglaw.com](mailto:bsinger@dglaw.com)  
Rep. by its Authorized Representative:  
Lall And Sethi Advocates,  
D-17, South Extension- II  
New Delhi- 110 049  
[info@indiaip.com](mailto:info@indiaip.com)

Versus

...Complainant

Thomas Lee,  
Trading as HOKAR Group,  
Haizhu District, Guangzhou  
Guangdong- 510288, China

...Respondent

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### 1. The Parties:

The complainant is an American Publisher of games having principal place of business at 2450 Broadway Santa Monica, California 90404 USA.

The respondent is Mr. Thomas Lee trading as Hekar Group in Haizhu District, Guangzhou, Guangzhou, Guangdong 510288 China.

### 2. The Domain Name and Registrar:

The dispute domain name : <RIOTGAMES.IN>

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The disputed domain name is registered with National Internet Exchange of India (NIXI).

### 3. Procedural History:

28.05.213	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
30.05.2013	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
11.06.2013	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
21.06.2013	Due date for filing response.
26.06.2013	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

### 4. Factual Background

The complainant is a an American Publisher of games having principal place of business at 2450 Broadway Santa Monica, California 90404 USA

#### 4.1 The Complainant:

#### 4.2 Complainant's Activities:

The Complainant is an American publisher of games in Santa Monica, California. It is subsidiary of Tencent Holdings in interactive entertainment. It was founded in 2006 and launched the stand- alone title League of Legends as its first title in October 2009. The complainant was founded by Brandon Ryze Beck and Marc Tryndamere Merrill with the goal of being a player focused game development studio. The complainant obtained around US\$1 million from venture capital firms to create League of Legends. During the first months, the French servers of League of Legends





were based at group OVH, following the multitude of the players, the complainant opened its own servers for a better autonomy. In later rounds of funding, the company raised \$8 million in capital from venture capital firms Benchmark Capital and Firstmark Capital. In early 2011, the Chinese company Tencent Holdings invested in a majority stake in Riot Games valued at \$400 million. The deal allowed the complainant to maintain independent operations and its existing management team.

#### 4.3 Complainant's Trading Name:

The Complainant is the owner of the trade mark RIOT GAMES (word and device). The complainant is also incorporated and is trading under the name Riot Games, Inc. The complainant has the exclusive rights to use the aforesaid trade marks inter alia in respect of the goods and services for which the said trade marks are registered worldwide and applied for registration in India.

The complainant is the registered proprietor of the trade mark RIOT GAMES in various countries of the world, viz.,

Jurisdiction	Mark	Registration No.	Registration Date	Class
European Community	RIOT GAMES	008243495	28.01.2010	9, 28, 38, 41
Hong Kong	RIOT GAMES	302297520	27.06.2012	9, 41
Hong Kong	RIOT GAMES	302294613	25.06.2012	9, 41
Mexico	RIOT GAMES	1319820	30.05.2012	38
Mexico	RIOT GAMES	1319819	30.05.2012	9
Mexico	RIOT GAMES	1319822	30.05.2012	38



Mexico	RIOT GAMES	1319821	30.05.2012	9
New Zealand	RIOT GAMES	961005	25.06.2012	9, 41
New Zealand	RIOT GAMES	961006	12.03.2012	9, 41
Philippines	RIOT GAMES	4-2012-501620	29.11.2012	9, 41
Russia	RIOT GAMES	476189	06.12.2012	9, 38, 41
Russia	RIOT GAMES	474409	12.11.2012	9, 38, 41
United States	RIOT GAMES	4,109,440	06.03.2012	9, 38, 41
United States	RIOT GAMES	4,233,498	30.10.2012	9, 38, 41
World Intellectual Property Organization	RIOT GAMES	1140783	11.07.2012	9, 41

The complainant has registered its trade mark RIOT GAMES in India also, viz.,

Mark	Application No.	Application Date	Class
RIOT GAMES	2354936	27/06/2012	9
RIOT GAMES	2354938	27/06/2012	41
RIOT GAMES	2354939	27/06/2012	9
RIOT GAMES	2354940	27/06/2012	41

#### 5. Respondent's Identity and activities:

According to WHOIS search database and CHECKDOMAIN database, the respondent in this administrative proceeding is Thomas Lee trading as Hoka Group



having communication address at Haizhu District, Guangzhou, Guangdong 510288, China.

## 6. Dispute

The dispute arose when the respondent registered and used the domain name **WWW.RIOTGAMES.IN** seeking the transfer of domain name.

## 7. Parties contentions:

### A. Complainant:

#### I. The domain name is identical to complainant's trade mark RIOT GAMES:

- i. The disputed domain name RIOTGAMES.IN is identical to the complainant's trade mark, trade name and domain name.
- ii. When the respondent registered the disputed domain name, the complainant had already registered its trade mark and was in use of the its trade mark and trade name RIOT GAMES.
- iii. The Complainant's trade mark RIOT GAMES is well known trade mark and the respondent cannot claim or show or demonstrate that he was not aware of the complainant's trade mark.
- iv. The respondent registered the disputed domain name on 18.03.2013 whereas the complainant is in use of its trade mark RIOT GAMES since 2006. This itself substantiates that the complainant has superior power over the respondents alleged domain name.
- v. The Complainant also relies on judgement in **Yahoo! Inc. Versus Akash Arora & Anr (1999 PTC (19) 210 Delhi)** wherein Delhi High Court granted injunctive relief to Yahoo! Inc against the defendants who were attempting to use domain name 'yahooindia.com' for internet related services.





**II. Respondent has no rights or legitimate interests in respect of the domain name RIOTGAMES.IN:**

i. The fact that the complainant is in use and ownership of the trade mark RIOT GAMES since 2006 and that the trade mark RIOT GAMES is well known all over the world itself shows that the complainant is the rightful owner of the disputed domain name and that the respondent cannot demonstrate its rights or legitimacy over the disputed domain name.

ii. Also the respondent and the complainant are in no way connected with each other or known to each other and that the complainant has not given any license or permission or authorization to the respondent to use or own the disputed domain name.

iii. Since the complainant's trade mark is well known and that the respondent has no rights in this mark, the only reason the respondent could have wanted to register the domain name is to trade upon the fame of the Complainant's mark by selling the disputed domain name for substantial commercial gain, in violation of section 4(b) of the policy.

iv. The complainant relies on **Guerlain S.A. versus Peikang** (WIPO Case No. D2000- 0055) and **Veuve Clicquot Ponsardin versus The Polygenix Group Co.** (WIPO Case No. D2000- 0403) wherein it was held that bad faith is found where a domain name is so obviously connected with such a well known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The complainant also relies on **Charles Jourdan Holding AG versus AAIM** (WIPO Case No, D2000- 0403), **Caravan Club versus Mrgsale, NAF and CBS Broadcasting Inc. versus World Wide Webs, Inc,** (WIPO Case No. D2000- 0834).

**III. The registration and usage of domain name RIOTGAMES.IN by the respondent is in bad faith:**

i. The complainant states that the respondent has no legitimate interests in the disputed domain name.



- ii. The unauthorized association of the respondent with the complainant's trade mark for the purpose of selling it itself shows the bad faith of respondent.
- iii. The complainant states that on March 19, 2013, the complainant received an email from [shawn@gehid.com](mailto:shawn@gehid.com) offering to sell the disputed domain name. This itself evidences that the respondent is using the disputed domain name in bad faith.
- iv. The complainant states that the respondent registered the domain name in order to prevent the complainant from reflecting the mark in a corresponding domain name, provided that the respondent is engaged in pattern of such conducts.
- v. The complainant states that the respondent has intentionally attempted to attract the internet users to the respondent's website by creating likelihood of confusion with the complainant's trade mark as to the source, sponsorship, affiliation or endorsement.
- vi. The complainant states that no content has been put up in the disputed domain name riotgames.in and when the internet users log in, it leads them to a totally different page which does not relate to respondent's business or website.
- vii. The complainant states that its trademark is being advertised on the impugned website which clearly shows that the respondent is trying to ride on the goodwill of the complainant and take undue gains.

#### **B. Respondent:**

In spite of repeated notice and notice of default, the respondent did not submit any response.

#### **8. Discussion and Findings:**

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and





Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on 26.06.2013.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The respondent's domain name is identical to the trademark RIOT GAMES;
- (ii) Respondent has no rights or legitimate interests in respect of the domain name RIOTGAMES.IN; and
- (iii) The registration and usage of domain name RIOTGAMES.IN by the respondent is in bad faith.

**(a) Identical or confusing similarity:**

- i. The Arbitral Tribunal finds that the trade mark **RIOT GAMES** is identical to respondent's domain name. The sole intention of the Respondent is to derive benefit from the good will and reputation of the Complainant's brand and mislead members of public.
- ii. The respondent's unwarranted registration of the impugned domain name with NIXI identical to Complainant's trade mark is clearly an offence under laws of India. The Tribunal also observes that the impugned domain name was registered recently on 18.03.2013 whereas the complainant is the rightful owner of the trade mark since 2006. The trade mark RIOT GAMES being the well known all over the world clearly shows the dishonest intention of the respondent.
- iii. The adoption of impugned domain name by the Respondent is dishonest, fraudulent and bad faith.
- iv. The Arbitral Tribunal also goes through the judgment in **Yahoo! Inc. Versus Akash Arora & Anr (1999 PTC (19) 210 Delhi)** cited by the complainant and is satisfied that by adopting deceptively similar domain name, the respondent had copied the source code of the complainant's prior created website.



The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy

**(b) Respondent's Rights or Legitimate Interests:**

i. The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii. Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii. The Arbitral Tribunal find that there is no evidence on record to show that Respondent is known by the disputed domain name or that he has used the disputed domain name in connection with a bona fide offering of goods or has any rights in the disputed domain name.





iv. The respondent has failed to show any justification for the adoption, usage or registration of disputed domain name.

v. The Arbitral Tribunal thus holds that the circumstances listed above demonstrate rights or legitimate rights of the complainant in the domain name and holds that the respondent has infringed the rights of the complainant by registering the trademarks of the complainant.

vi. The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

**(c) Registration and Use in Bad faith:**

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, 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 the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered RIOTGAMES.IN mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

(ii) The Arbitral Tribunal observes that the Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical to registered trademark of the Complainant. The Respondent has no affiliation or connection or any kind of relationship with the Complainant. Registration of a domain name that is identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.



(iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

(iv) The Arbitral Tribunal after going through the judgements in *Telstra Corporation Limited versus Nuclear Marshmallows* (Case No. WIPO D2000- 0003) and *Veuve Clicquot Ponsardin versus The Polygenix Group Co* (WIPO Case No. D2000- 0163), is satisfied that mere registration by the respondent of the disputed domain name is further evidence of the respondent's bad faith.

(v) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

#### 9. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name < RIOTGAMES.IN > be transferred to the Complainant.

Dated at Chennai (India) on this 8<sup>th</sup> July, 2013.

(D.SARAVANAN)  
Sole Arbitrator

