



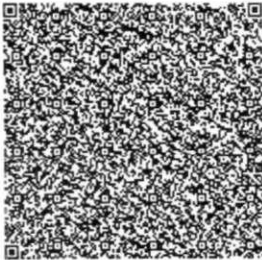
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL07839740914945M
Certificate Issued Date	: 10-Jan-2014 03:43 PM
Account Reference	: SHCIL (FI)/ dl-shcil/ TIS HAZARI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL DL-SHCIL13309805627640M
Purchased by	: SANJAY KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SANJAY KUMAR SINGH
Second Party	: NA
Stamp Duty Paid By	: SANJAY KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR,
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (ANDRA)
ROCA Sawterio SA --- Complainant
vs
Vishal Ambasara --- Respondent

Sanjay Kumar Singh

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

ROCA Sanitario S.A,
Avenida Diagonal 513,
Barcelona 08029,
Spain

Through its authorized representative

Ranjan Narula Associates,
Intellectual Property Attorneys,
Vatika Towers, 10th Floor,
Block-B, Sector-54, Gurgaon 122002,
National Capital Region, Haryana, India.
E-mail: rnarula@indiaiprights.com

COMPLAINANT

Versus

Vishal Ambasana
SA Graphic
306, Sorath Plaza
Bhaktinagars Station Road no.2
Rajkot, Gujarat, 360002
E-mail: sagraphic@gmail.com

RESPONDENT

I. THE PARTIES

A. THE COMPLAINANT:

1. The Complainant in this administrative proceeding is ROCA Sanitario S.A, Avenida Diagonal 513, Barcelona 08029, Spain through its authorized representative Ranjan Narula Associates, Intellectual Property Attorneys, Vatika Towers, 10th Floor, Block-B, Sector-54, Gurgaon 122002, National Capital Region, Haryana, India, E-mail: rnarula@indiaiprights.com

B. THE RESPONDENT

The Respondent (amended) in this administrative proceeding is

Vishal Ambasana
SA Graphic
306, Sorath Plaza
Bhaktinagars Station Road no.2
Rajkot, Gujarat, 360002
E-mail: sagraphic@gmail.com

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III. THE DOMAIN NAME AND REGISTRAR:

This dispute concerns the domain name: "www.rocatiles.in"

IV. FACTUAL BACKGROUND:

1. The Complainant has stated in the complaint that ROCA Sanitario S.A. was formerly known as Compania Roca Radiadores, S.A., and is a company registered under the laws of Spain and has its head office at Avenida Diagonal 513, Barcelona 08029, Spain.
2. The Complainant has stated in the complaint that it is a part of the Roca Group, which was founded in 1917 by the Roca brothers. The Roca Group was initially engaged in the production of cast iron radiators. The manufacture of the first cast iron baths in 1925 and the launch of Vitreous China in 1936 were landmarks in the expansion of the Roca Group in the Bathroom market. Roca subsequently entered the Air Conditioning and floor and wall tile markets in 1963 and 1980 respectively. The Roca Group diversified into four sectors and comprising of:
 - (i) Roca Sanitario (Bathroom Fittings)
 - (ii) Roca Ceramica (Ceramic Tiles)
 - (iii) Roca Calefaccion (Heating) and
 - (iv) Clima Roca York (Air-Conditioning).
3. The Complainant has stated in the complaint that it started exporting goods from Spain in the early 1960s, by venturing into the markets of both Europe and the Middle East and it produces vitreous china, brass mixers, bath tubs (steel, cast iron, acrylic), hydro- massage baths, saunas, furniture, chrome-metal WC accessories, shower trays, sinks (steel, fireclay, silacryl), mini-pools, mirrors, hydro-massage columns, bath and shower enclosures, seats and covers. The Complainant has relied on the excerpt of the Complainant's registration in the Company Register of Spain along with English translation annexed as Exhibit B. The Complainant has relied on the copy of the book released on the occasion of completion of 75 years of the Complainant detailing their history and growth which the complainant has annexed as Exhibit C. The Complainant has relied on the Copy of the translation into English

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of the relevant extracts of the book published by the Complainant Company commemorating its 75th Anniversary which the complainant has annexed along with the affidavit as Exhibit D.

4. The Complainant has drawn the attention to its business activities in relation to Ceramic Tile Division. The first Ceramic Plant, situated in the Barcelona suburban area, was originally used to manufacture ceramic floor tiles, the so called prestigious Gres Diamante. The next step was manufacturing wall tiles, also with single firing techniques. In 1998, a new Ceramic Plant started production close to Castellon, Spain considered to be the most advanced in the ceramic tile sector. It is home to the production of, amongst others, the Rock & Rock porcelain tile range. In 1999, it opened the first fully automatic warehouse in the ceramic industry in Spain. The Complainant has also stated that its Ceramic Tile Division operates in more than 50 countries and is engaged in manufacturing, distributing, and marketing of high quality ceramic and porcelain tile under four brands ROCA, Incepa, Laufen and USCT, A wide range of ceramic products with an excellent quality, allows Complainant to offer not only complete interior decorating for bathrooms but also material for the whole house, for interior and exterior use, ideal for domestic, industrial or public fittings. The level of quality is determined by industrial processes of the highest precision, to achieve optimum wear resistance, retention of glazes and decorative effects, colour fastness, precision in formats, and perfect flatness in every single item produced. The product range offers solutions for all types of uses, from the rustic elements to the high resistance floor tiles, covering single colours, marble, decorated tiles and complements. The Complainant has annexed the details of its business activities in respect of Ceramic Tile Division provided on its websites www.rocatile.com and www.rocatilegroup.com and extracts from its website www.rocatile.com and www.rocatilegroup.com as **Exhibit E**.

5. The Complainant has stated in the complaint that as part of the Roca Group, the Complainant has reinforced its International presence through establishing its own companies in the European, American,

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Asian and African continents. Sourcing its raw materials not only from Spain and Europe but also from all over the world, the Roca Group including the Complainant produces over 26 million pieces of products worldwide. Based on its international strategy of exports and management of commercial networks, the Roca Group has an international business network spanning more than 80 countries including operating 45 factories in 18 different countries. This structure has allowed the group to operate on a global scale, acting as a local manufacturer in different markets. The Complainant operates fully-owned production centres and sales subsidiaries in Germany, Argentina, Austria, Brazil, Bulgaria, China, France, Greece, Holland, Hong Kong, Italy, Morocco, Poland, Portugal, the UK, Spain, Czech Republic, Switzerland, Turkey and the US. The Complainant is considered a European market leader in bathroom products and also enjoys a high international ranking.

6. The Complainant has stated in the complaint that as per the market report prepared by Consult GB, which is a renowned independent consulting group based in the UK, the Complainant is rated as the number 1 seller in the Eastern European markets and the number 3 seller in the Western European markets. As per the latest available issue of the Ceramic World Review, the Roca Group is listed as the largest manufacturer of sanitary ware in the world. The Complainant is one of the top leaders in sanitary ware sector in China. The Complainant has stated that it is part of a group of companies, known worldwide for its commercial activity. The Complainant has annexed copy of Ceramic World Review issues for the years 2007 to 2011 as **Exhibit F**.
7. The Complainant has annexed copy of the relevant extracts from the European Bathroom Product Markets (2007 and 2008 Update) 14 Country East European International Synthesis & 16 Country West European International Synthesis prepared by BRG Consult showing the market share of the Complainant in Eastern and Western European as **Exhibit G**.
8. The Complainant has stated in the complaint that it has a dedicated design department where the products are created. The information

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obtained from monitoring socio-cultural habits, market research and investigation of materials and technology is analysed regularly. The data so obtained serves as the basis for subsequent phases of project development, engineering, and formal aesthetic solutions. The Complainant conforms to international standards and its ISO 9001 accreditation dates back to 1997. The Complainant's environmental policy has also been accredited by certifications such as the ISO 14001 and EMAS. Thus the products of the Complainant are the result of meticulous research and development and are also in conformity with international standards. In addition to above the Complainant is also actively engaged in promoting and sponsoring international design contests amongst young designers linked with sanitary ware sectors to encourage new concepts and designs. The complainant has been conferred with various awards over the years for manufacturing products of highest quality for example Designer Kitchen and Bathroom Awards, Designer week Awards and Lighting Design Awards. The Complainant has annexed extracts from its website www.roca.com depicting its awards as Exhibit H. The Complainant has annexed the copy of the brochure depicting that it was awarded the Spanish National Design Award in the year 2002 as Exhibit I.

10. The Complainant has further stated in the complaint that during 2003, Roca Corporacion Empresarial - the parent company of the Roca Group achieved a consolidated turnover of \$ 2.06 billion, 49% of which comes from markets apart from Spain. The company bagged a net profit of 97 million Euros (\$126 million) and scored a profit margin over sales of 6.2%. As of 2011 the company employed about 18,000 people worldwide. Since the 1980s, the company has invested approximately 2% of its turnover in research and development to enhance its innovative capacity even further in order to attain greater technological independence and the advances from research & development have been included in both new and existing products and extend to all four lines of the group's business, including that of the Complainant. The Complainant is considered one of the world's leading firms in its segment. The worldwide sales turnover of the Complainant and its affiliate companies is given below:-

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<u>PERIOD</u>	<u>SALES TURNOVER (in rupees)</u>
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2000	3151 crores
2001	3378 crores
2002	3517 crores
2003	3576 crores
2004	3890 crores
2005	4132 crores
2006	10711 crores
2007	11717 crores
2008	11191 crores
2009	9269 crores
2010	9779 crores
2011	10933 crores
2012	10991 crores

The aforementioned sales turnover of the Complainant clearly indicates the reputation enjoyed by the Complainant world over.

11. The Complainant has stated in the complaint that it is considered one of the world's leading brand in its industry/sector. The complainant has submitted copies of the invoices of the Complainant showing the sales made by it in countries such as Hong Kong, U.S.A, U.K., New Zealand, Australia, Singapore, Pakistan, etc. collectively as **Exhibit J** and has placed reliance on the same.
12. The Complainant has stated in the complaint that it has carefully and painstakingly built up an admirable reputation worldwide for itself and for this purpose it has invested substantial amounts of money in advertising its products manufactured and marketed under the trademark ROCA. In addition the complainant has been advertising its products under the trade mark ROCA in international magazines, brochures, catalogues, Internet and other print and visual media. The complainant has given the expenditure Incurred by it on advertising

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as under:-

<u>YEAR</u>	<u>EXPENDITURE (In rupees)</u>
2000	83 crores
2001	91 crores
2002	94 crores
2003	90 crores
2004	107 crores
2005	106 crores
2006	112 crores
2007	119 crores
2008	126 crores
2009	337 crores
2010	350 crores
2011	388 crores
2012	377 crores

13. The Complainant has stated in the complaint that it has been very active in launching new products each year and does the same with huge promotion, presentations before the press, etc. The Complainant has been engaged in a lot of promotional activities for its brand and trade mark ROCA by sponsoring contests relating to bathroom vision, presentations of its products for particular seasons before the press, distributing promotional material, etc.
14. The Complainant has stated in the complaint that the reputation and fame of the Complainant has grown and spread due to its participation in various fairs around the world as well. At such fairs and exhibitions held in several countries all over the world, the trade mark ROCA is prominently displayed and exposed to thousands of participants of the said exhibitions/fairs. Large numbers of persons from India also attend such fairs/exhibits and they carry with them the image and reputation associated with the Complainant and

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Complainant's products. The Complainant has been participating in fairs/exhibitions since 1989 and these include:

- Sirnac, Lisbon (Portugal -1989
- Balimat, Paris(France)1989,1993
- Concreta, Porto (Portugal)-1991,1993
- Cersaie, Bolorua (Italy)-1991, 1993
- Expo 92, Seville (Spain)-1992
- SKi Lisbon (Portugal)-1992, 1992, 2000
- Construmat. Barcelona (Spain)-1995-1997
- ISH, Frankfurt (Germany)-1995,1997
- IFH, Frankfurt (Germany)-1998
- Mostra Convegno, Milan (Italy)-1998, 2000, 2002
- Budma, Poznan (Poland)-1998
- Salles De Bains, Paris (France)-2000, 2002
- Tektonika, Lisbon (Portugal)-2002
- SHK, Essen (Germany)-2002
- Ambiente, Bilbao (Spain)-2002
- KBB, Birmingham (U.K)-2002
- Hangzhou Exhibition, China-2003, 2004, 2005, 2006, 2007
- Ningbo Exhibition, China-2004, 2005, 2006, 2007, 2008
- 100% design London 2010
- Construmat 2011
- Cersaie 2012
- HIWC 2012
- ISH 2013

15. The Complainant has stated in the complaint that in India, Roca Bathroom Products Private Limited is the Complainant's subsidiary having its registered office at 4th Floor, KGN Towers, 62, Ethiraj Salai, Egmore, Chennai 600105. Tamil Nadu. It was incorporated on 12th August 1983. The Complainant has annexed the extract from the website of Ministry of Company affairs indicating the presence of Indian subsidiary of the company Roca Bathroom Products Private Limited as **Exhibit K.**

16. The Complainant has stated in the complaint that it is the owner of websites www.rocatile.com. www.rocatilegroup.com, www.roca.com

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and www.roca.in which are accessible from world over and are available for use by users globally, including those in India. The Complainant has annexed webshots from its aforesaid websites www.rocatile.com, www.rocatilegroup.com, www.roca.com and www.roca.in as **Exhibit L**. The registration details of the above domain names in favour of the Complainant are as follows:

<u>DOMAIN NAME</u>	<u>REGISTRATION DATE</u>
www.rocatile.com	6 th December 2007
www.rocatilegroup.com	6 th December 2007
www.roca.com	6 th December 2007
www.roca.in	5 th March 2005

The complainant has annexed as Exhibit – M the copy of WHOIS Webshots indicating that the domain names are registered in its favour and has placed reliance on the same.

17. The Complainant has stated in the complaint that additionally it is the owner of a number of domain names comprising of the mark ROCA which supports it several dedicated and official websites for its consumers and other visitors from different countries and jurisdictions. The complainant has given some of the domain names in the complaint which are as under:

<u>DOMAIN NAME</u>	<u>REGISTRATION DATE</u>
roca.biz	6 th April 2004
roca.in	15 th March 2005
roca.mobi	13 th June 2006
rocagroup.info	19 th March 2007
roca.asia	28 th November 2007
rocatilegroup247.com	6 th December 2007
roca247.com	6 th December 2007
rocadesigncenter.com	6 th December 2007
baxi-roca.com	6 th December 2007
baxiroca.net	6 th December 2007
premiosdisenroca.com	6 th December 2007
roca-aqecimento.com	6 th December 2007
roca-calefaccion.com	6 th December 2007
roca-calefaccion.net	6 th December 2007
roca-heating.com	6 th December 2007
roca-heating.net	6 th December 2007
roca-russia.com	6 th December 2007
roca-tile.com	6 th December 2007
roca-heating.com	6 th December 2007
wellnessbyroca.com	6 th December 2007
roca.net	18 th May 2008

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rocasphere.com
rocaonline.com
rocaonline.net
rocaportal.com
atc-roca.com

5th June 2008
28th October 2008
28th October 2008
28th October 2008
12th November 2008

The complainant has annexed as Exhibit-N the copy of WHOIS report indicating that the above domain names are registered in its name and has placed reliance on the same.

18. The Complainant has stated in the complaint that the trade mark ROCA is an arbitrary trademark and is to be provided the highest degree of protection under the trademark law in India in favour of the Complainant. Since inception the Complainant has been continuously using the mark ROCA both as a trade mark as well as trade name. Due to the superior quality of the Complainant's ROCA branded goods, the extensive promotional and advertisement activities undertaken by the Complainant and the tremendous sales achieved world over, the ROCA trade mark has achieved a distinction of being famous and well known trade mark. The Complainant has spent enormous money on promotion of its ROCA products in India. The Complainant has given the details of advertising and promotional expenditure incurred by it in India for the Fiscal Years 2007-08, 2008-2009 and 2009-2010 as under:

PERIOD	EXPENDITURE (in rupees)
2007-08	473 Lakhs
2008-09	2644 Lakhs
2009-10	3551 Lakhs
2010-2011	3312 Lakhs
2011-2012	2999 Lakhs

19. The Complainant has stated in the complaint that in India, the Complainant is registered proprietor of the ROCA trademark since 1979 as detailed below:

<u>Trade Mark</u>	<u>Registration No.</u>	<u>Registration No.</u>	<u>class</u>	<u>Validity</u>
ROCA	34782	28/03/1979	11	28/03/2017

The complainant has annexed as Exhibit-O, the copy of registration certificate and online status of its ROCA trademark Registry's website

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<http://www.ipindia.nic.in/> mentioning the validity of the ROCA mark and has placed reliance on the same.

20. The Complainant has stated in the complaint that additionally, it is the owner of *several* worldwide registration of the ROCA and ROCA & Design trade marks in various jurisdictions namely Spain, Australia, Brazil, Chile, Costa Rica, Denmark, Germany, Egypt, France Hungary, Italy, U.S.A. and U.K. The Complainant enjoys the registration of the ROCA trade mark in more than 120 countries. The Complainant has annexed list of worldwide trademark registrations and pending applications for ROCA mark as Exhibit P. The Complainant has also annexed copy of few worldwide registration certificates of ROCA mark as Exhibit- Q. The Complainant has stated in the complaint that on account of extensive use and numerous registrations of the ROCA mark worldwide, it is *exclusively* associated with the Complainant and is a well-known trademark.
21. The Complainant has stated in the complaint that due to the immense reputation of the Roca Group, the trade mark ROCA is well known in India, especially in the sanitary-ware sector. The Complainant initiated sale of its sanitary ware products under the mark ROCA in India in the year 1998. The Complainant increased sale of its sanitary ware products under the mark ROCA extensively in India in the year 2002. The Complainant supplied 1500 bathtubs to the company Sterling International, to equip the Gazer Hotel in Sinnar, Tal, Maharashtra in the year 2002. In August 2004 it supplied 350 washbasins to Hotel Excelsior Ltd, New Delhi. In May 2005 it supplied a number of pieces of different models and products (bathtubs, washbasins, shower trays, etc.) to Mahima Marketing Corporation, to equip some apartments in Mumbai. The Complainant has recently appointed a distributor in India, Hydro Jetair Industries Ltd., in Delhi, to whom it has been supplying products since November 2005. The Complainant and the ROCA trademark are well known in India because of the worldwide reputation and goodwill as well as extensive high value activities in India. The complainant has annexed copies of the invoices showing sale of products by the Complainant to Indian customers in India since 1998 as Exhibit R. The complainant has also annexed Copy of the relevant extracts of the GB Consult in respect of Bathroom Product Markets in

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India during the year 2003 as Exhibit S.

22. The complainant has further stated in the complaint that it has a very strong presence in India and the Indian population at large is very much aware of the Complainant's ROCA branded goods through its network of dealers and distributors spread throughout the country. Furthermore, a large number of Indians travelling overseas are also exposed to the Complainant's ROCA branded products through television, magazines, in-flight catalogues/magazines, etc. Furthermore, there are a large expatriate population of Indians residing in the UK, Europe, Australia, South Africa China and the Middle East where the Complainant's goods are sold freely. Many Indian families have relatives and friends residing in these countries where the Complainant's goods are sold and advertised. By virtue thereof, and otherwise, the international reputation enjoyed by the Complainant's trademark/name and house mark ROCA has spilled over to India. Further to the collaboration between the Complainant and the Parryware business of Murugappa Group, the Complainant has further strengthened its presence in India.
23. The complainant has further stated in the complaint that apart from the sale of the products of the Complainant under the trademark ROCA, the reputation and goodwill of the ROCA trademarks spilled over into India much before it started selling products directly. Being a very popular and well known company around the world with its advertisements and brochures appearing and distributed in various countries around the world, the reputation of the Complainant had spilled into India ages ago. The complainant has further stated that the trademark ROCA is exclusively associated to Complainant and its parent group and the goodwill and reputation in the said trademark accrues in favour of the Complainant.
24. The Complainant has also stated in the complaint that by virtue of prior adoption, long and continuous use of the trade mark / trade name / domain name ROCA by the Complainant Since 1917 coupled with the registrations of the trademark ROCA in many countries Including India, the Complainant has the sole and exclusive right to manufacture and market sanitary ware products bearing the trademark ROCA. On account

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of its extensive use since 1917 and popularity of the domain name/trade mark/trade name ROCA across the world, it is well recognized by different strata of society. The members of the trade and public exclusively associate the mark/name ROCA with the business of the Complainant and none else.

25. The Complainant has stated in the preceding paragraphs of the complaint that it owns the intellectual property in the trade mark and domain name ROCA including its trade mark registrations and domain names registrations and is the registrant and user of several domain names containing the ROCA mark.

V. RESPONDENT:

1. The Complainant has stated in the complaint that the Respondent has registered virtually identical domain name www.rocatiles.in with .IN Registry. It is further submitted that the aforesaid domain name incorporates the Complainant's well-known, prior used mark / trade name ROCA and contains the Complainant's domain name www.rocatile.com in its entirety. It has been submitted that the Respondent has merely added the letter's 's' to the Complainant's domain name www.rocatile.com to arrive at the domain name www.rocatiles.in . The Complainant has stated in the complaint that it is the owner of the domain name www.rocatile.com since 6th December 2007 and has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered, well known trade mark ROCA in any manner.
2. The Complainant has stated in the complaint that on account of extensive use and popularity of the domain name / trade mark / trade name ROCA across the world, the ROCA mark / name is well recognized. Its use has been popularized by the Complainant; therefore the Respondent can have no plausible reason for adoption of a virtually identical domain name which is phonetically, visually and conceptually identical to the Complainant's well-known trade mark / trade name and domain name ROCA. The Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant in its trade mark / trade name / domain name ROCA.

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3. The Complainant has stated in the complaint that the on perusal of the contents of the website www.rocatiles.in, it seems the Respondent is engaged in manufacturing and marketing of tiles which directly conflicts with Complainant's business activities. As discussed in the preceding paragraphs, the Complainant is manufacturing ceramic tiles under the ROCA mark and has specifically designed the websites www.rocatile.com and www.rocatilegroup.com. The Complainant has stated that in any case, its goods and the goods offered by the Respondent under the identical mark ROCA through www.rocatiles.in will be sold in the same shop, same class of customers and under the said circumstances confusion and deception is inevitable. The Complainant further has stated that it is obvious that apart from confusing internet users looking for the Complainant's goods it intends to attract internet traffic to its website to render legitimacy to its business. The Complainant further has stated that the Respondent has adopted the virtually identical domain name www.rocatiles.in in respect of identical business activities purely to make illegal profit. The Respondent has made no use of the domain name in connection with a bona-fide offering of goods or services, and is holding on to the domain name in bad faith to *derive* monetary gains. The Respondent should not be allowed to continue with the aforesaid illegal activities and the said domain name should be transferred to the Complainant. The Complainant has annexed the Webshots from the Respondent's website www.rocatiles.in as Exhibit T and has relied on the same.
4. The Complainant has further stated in the complaint that the disputed domain name contains ROCA mark which is identical to the Complainant's corporate name/ registered trademark and domain name www.rocatile.com. There is strong likelihood that a web browser looking for Complainant's goods in India would mistake the Respondent's website www.rocatiles.in for the Complainant's website, and once there, would be directed to the other links on this website in search of goods offered by the Complainant.
5. The Complainant 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.rocatiles.in, the loss and

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damage will not only be to the Complainant's reputation but also result in confusion and deception among the trade and public who would purchase the Respondent's goods/services assuming it to be sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant. Thus the web users are likely to visit the Respondent's website assuming it to be sourced, sponsored, affiliated, approved, authorized or endorsed by the Complainant. The Complainant has stated that the trade and public may also assume that there exists connection between the Complainant and the Respondent which is likely to further harm the reputation enjoyed by the Complainant.

6. The Complainant has stated in the complaint that it is a settled proposition of law that where there is copying, dishonesty ought to be presumed and in the present case, copying by the Respondent is evident from its subsequent adoption of an identical domain name.
7. The Complainant has stated in the complaint that the intention of the Respondent is primarily to encash the goodwill and reputation enjoyed by the Complainant in its prior used domain name/ corporate name/ trade mark ROCA. The Respondent ought to be clearly aware of the existence of prior trade mark / domain name rights in favour of the Complainant when it registered the domain name www.rocatiles.in. The Complainant has contended that subsequent registration of an identical domain name for identical business activities by the Respondent cannot be a coincidence. The Complainant has contended that the registration of the identical domain name by the Respondent is in bad faith and intended to derive monetary and commercial gain. The Complainant has submitted that in the circumstances, the present case is clearly that of cyber-squatting. The Complainant has further submitted that use of a virtually identical domain name by the Respondent is likely to mislead/divert consumers and also tarnish the reputation of the corporate name and ROCA trade mark of the Complainant.

VI. CONTENTION OF THE COMPLAINANT:

- A. The Complainant has submitted in the complaint that it has satisfied all three conditions in paragraph 4 of the Policy and is therefore entitled to transfer of the domain name in its favour. The domain name**

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www.rocatiles.in is identical or confusingly similar to www.rocatilegroup.com the corporate name, trademark and domain names www.rocatile.com, www.roca.com and www.roca.in in which the Complainant has rights.

The Complainant has stated in the complaint that the Respondent has applied for the domain name that contains Complainant's prior used corporate name and prior registered trade mark ROCA. Additionally the domain www.rocatiles.in is virtually identical/similar to Complainant's domain name www.rocatile.com, www.rocatilegroup.com, www.roca.com and www.roca.in. The Complainant has established its prior rights in the trade name / trade mark ROCA and the domain names www.rocatiles.com and www.roca.com and www.roca.in. The Complainant has stated in the complaint that it has filed sufficient evidence to show that it has trademark rights in the ROCA mark. The Complainant has submitted that the first condition is clearly satisfied.

B. The Respondent has no rights or legitimate interest in the domain name www.rocatiles.in for the following reasons:

- i The Complainant has stated in the complaint that the domain name www.rocatiles.in was registered by the Respondent on 14th February 2013. At this time, the Complainant domain name and trade mark ROCA had widespread use as a trade mark in several parts of the world including India. The complainant had also registered the domain name www.rocatile.com on 6th December 2007, www.rocatilegroup.com on 6th December 2007, www.roca.com on 6th December 2007 and www.roca.in on 15th March 2005 and enjoys considerable reputation in ROCA mark and domain names. The Complainant's trade mark ROCA is registered since 1979 in India. The Complainant has further stated in the complaint that its corporate name comprises of the word ROCA. Given the long and extensive use and promotional initiatives undertaken by the Complainant, it is incomprehensible that the Respondent was not aware of the Complainant's goodwill and reputation associated with its ROCA branded goods particularly when the Respondent use of the domain name is for the same business as the Complainant. The Complainant has contended that it is obvious

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that the Respondent was aware of the Complainant's prior trade mark rights in the ROCA mark/name and its adoption of domain www.rocatiles.in is in bad faith.

- ii. The Complainant has stated in the complaint that ROCA is not a natural word nor a common name, nor one which is a common or natural descriptor for the use which is being made of the domain name. The trademark ROCA is an arbitrary trademark and is to be provided the highest degree of protection under the trademark law in favour of the Complainant. The Respondent's purpose in selecting the domain name comprising of ROCA word was plainly to use the fame of the ROCA mark to generate web-traffic and to confuse internet users visiting the Respondent's site when looking for the Complainant and their famous suite of goods.
- iii. The Complainant has stated in the complaint that the Respondent has adopted virtually identical domain name in respect of identical business activities in order to attract internet users to the web site, by intentionally misleading them and creating a likelihood of confusion with the Complainants' trademark ROCA as to the source sponsorship, affiliation, or endorsement of the website. Such use by the Respondent is neither a *bona fide* offering of goods or services nor a legitimate non-commercial or fair use of the Domain Name.

C. The Complainant submits that the domain name was registered and being used by the Respondent in bad faith due to following:

- i. At the time of registration of the domain name by the Respondent i.e., on 14th February 2013, the Complainant's mark ROCA and domain names comprising of ROCA word were well-known and registered. The Complainant is prior user / prior registered proprietor of the trade mark ROCA and prior owner of the registration of domain name www.rocatiles.com, www.rocatilegroup.com www.roca.com and www.roca.in and therefore, the popularity and registration of ROCA mark / name and domain names was a constructive notice to the Respondent of Complainant's rights in the ROCA mark and domain name. The Complainant has contended that the adoption of an identical

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mark/domain name by the Respondent is in bad faith.

- ii. The Complainant's mark ROCA is an arbitrary mark and highly distinctive in nature. Therefore, there cannot be any plausible reason for adoption of an identical mark/domain name by the Respondent. The Complainant submits that the adoption and use of a virtually identical domain name www.rocatiles.in by the Respondent cannot be a co-incidence and is in 'bad faith'. The Respondent has actual notice of the prior rights in the ROCA mark/name of the Complainant as they were put on notice of Complainant rights by virtue of cease & desist letter dated June 19, 2013 addressed to M/s. Roca Digital Wall tiles Classic Ceramics. The Respondent in its reply dated June 29, 2013 made false assertions and claims. Thus use of the ROCA mark by the Respondent is in bad faith and at their own risk.
- iii. The business activities carried out by the Respondent through the domain name www.rocatiles.in are illegitimate and only to divert internet traffic by using Complainant's well known / established trade mark /domain names. Thus, it is obvious that the registration of the 'domain name www.rocatiles.in by the Respondent is in bad faith.

The complainant has prayed that domain name "www.rocatiles.in" be transferred in favour of the Complainant and costs be also awarded in the matter.

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "www.rocatiles.in"
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.

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6. On 24-12-2013, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *SEVEN* days from receipt of the notice.
7. On 31-12-2013, I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *FIVE* days from receipt of the notice.

However the respondent did not file any reply to the complaint nor did he file any supportive document /evidence. On 06-01-2014 I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *FIVE* days from receipt of the notice.

On 06-01-2014 I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *FIVE* days from receipt of the notice.

On 06-01-2014 I received the intimation / e-mail from the respondent from the e-mail id of the respondent sagraphic@gmail.com . The contents of the e-mail dated 06-01-2014 sent by respondent are reproduced as under:

"I introduce myself as Vishal R. Ambasana – partner of SA Graphic Rajkot. We are a design company and handle the graphic communication for various companies.

Same way we are also graphic designers for Roca tiles – Morbi (Gujarat). We have received your email regarding "www.rocatiles.in".

We purchased the domain on behalf of the client Roca Tiles. We have forwarded the same thing to client and they are replying you before your given deadline.

I would like to know the further process if we finalize to surrender than what would be the final process for the same.

Are we able to get the amount of shifting charges or not? As we are working in graphic industry and unknown to terminologies of legal notice. Thanks for guiding us in advance."

Graphically yours

vishal ambasana

sa graphic

306, sorath plaza,

bhaktinagars station road no. 2,

Rajkot - 360 002

Singh 120 High

0281 - 2468027

GST TIN No. 24090704014

CST TIN No. 24590704014

SA Graphic

Bank of India

Account no. 312120110000035

IFSC Code: BKID0003121

Bhaktinagar SSI Branch, Rajkot

8. There upon the complainant was asked to submit the response to the e-mail dated 06-01-2014 sent by respondent so that the arbitration proceedings could be completed within statutory period.
9. On 07-01-2014 I received the e-mail from complainant stating that:

"We note that Vishal R. Ambasana claims to be the graphic designer of client Roca Tiles and has taken the stand that he purchased the domain name www.rocatiles.in on behalf of Roca Tiles.

As per 'Definitions' clause of INDRP Rules, Respondent means registered holder of a .IN domain-name against whom a complaint is initiated. Further, as per Rule 2(iii) of INDRP Rules, the complaint shall be served on the Respondent as per details provided in the WHOIS records.

Accordingly, INDRP complaint has been correctly filed against Vishal R. Ambasana (Respondent) since it is reflected as the owner of the domain name www.rocatiles.in in the WHOIS records. The compliant has been served on the email address of the Respondent provided in the WHOIS records. In the circumstances, we humbly submit that no further time should be granted for Respondent to file his response. This seems to be a ploy to buy time. The learned Arbitrator may also note that the Respondent failed to provide any reply to the earlier emails dated 24-12-2013 and 31-12-2013. Thus we request that they may be proceeded ex parte and the complaint be decided based on materials on record.

In case the Respondent is willing to voluntarily transfer the domain name, we require the authorisation code of the domain name www.rocatiles.in to initiate the transfer process.

Our client is not willing to pay 'shifting charges' sought by the Respondent. The adoption of ROCA as part of the disputed domain name clearly reflects bad faith on part of the Respondent and amounts to infringement of our client's rights in the mark/name ROCA.

We request for an early action in this matter."

Singh

On 09-01-2014 I received the response from the respondent from his e-mail id sagraphic@gmail.com . The contents of the e-mail dated 09-01-2014 sent by respondent are reproduced as under:

"Greetings for the day!

Please provide us the Registrar details so that we can provide you the Authorization code to transfer the domain.

Thanks

Graphically yours

**vishal ambasana
sa graphic
306, sorath plaza,
bhaktinagars station road no. 2,
Rajkot - 360 002
0281 - 2468027
9825044944**

**GST TIN No. 24090704014
CST TIN No. 24590704014**

**SA Graphic
Bank of India
Account no. 312120110000035
IFSC Code: BKID0003121
Bhaktinagar SSI Branch
Rajkot**

10. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has not provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name. The domain name "**www.rocatiles.in**" is identical and confusingly similar to Complainants' trademark ROCA. The Respondent has adopted virtually identical domain name in respect of identical business activities in order to attract internet users to the web site, by intentionally misleading them and creating a likelihood of confusion with the Complainants'

Singh for High

trademark ROCA as to the source sponsorship, affiliation, or endorsement of the website. Such use by the Respondent is neither a *bona fide* offering of goods or services nor a legitimate non-commercial or fair use of the Domain Name. The complainant has established that he has right in the trademark and further the respondent has got registered his domain name "**www.rocatiles.in**" in bad faith. In the facts and circumstance stated above the award is hereby passed as per law of the land and taking into consideration the e-mails of the respondent received from his e-mail id sagraphic@gmail.com whereby he has conceded to transfer the domain name.

11. Further It has been held in M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of word 'net' in one of them would not make them dissimilar. It is held in above case that in modern time's domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

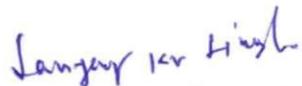
RELIEF

In view of above facts and circumstances of the complaint and law of the land as discussed above I hold that the domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "**www.rocatiles.in**" to him, as it has established its bonafide rights in trademark. Hence I direct that the Domain name be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 18-01-2014.


(Sanjay Kumar Singh)
Arbitrator