



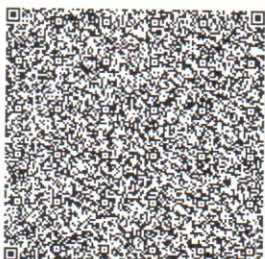
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL77006665599608N
Certificate Issued Date	: 09-Mar-2015 03:40 PM
Account Reference	: IMPACC (IV)/ dl839203/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL83920350871333157309N
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA

**Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025**

Sproxil, Inc v. Bright Simons

AWARD

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Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. The Parties

The Complainant is Sproxil, Inc., 1035 Cambridge Street, STE 21E, Cambridge MA 02141, United States of America

The Respondent is Mr. Bright Simons of mPedigree Network Limited, 1 Rosicrucian Link East Legon, Accra, Ghana 0000

2. The Domain Name and Registrar

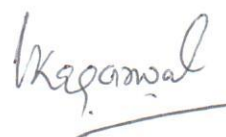
The disputed domain name is <www.sproxil.in>. The said domain name is registered with INRegistry.

The registration details of the disputed domain name as contained in whois are as follows:

- | | |
|--------------------------|---------------------------------|
| (a) Domain ID | : D7797297-AFIN |
| (b) Domain Name | : SPROXIL.IN |
| (c) Sponsoring Registrar | : Enom Inc (R46-AFIN) |
| (d) Date of creation | : 23 rd October 2013 |
| (e) Expiry date | : 23 rd October 2015 |

3. Procedural History

- (a) A Complaint dated February 03, 2015 has been filed with the National Internet Exchange of India. The Complainant has made registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure B. It is confirmed that presently 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. 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 whois data, the Respondent has given the postal address as Bright Simons of mPedigree Network Limited, 1 Rosicrucian Link East Legon, Accra, Ghana 0000. In accordance with the Indian Domain Name Dispute Resolution Rules, on 06th March 2015 the Sole Arbitrator notified the Respondent, along with a copy of the Complaint, through a registered postal letter. The Respondent was required to convey his response to the Complaint within 15 days from the date of receipt of the said letter and in any case latest by 31st March 2015. The Respondent was informed that if his response was not received by the Arbitrator by that date, the Respondent would be considered in default and the Arbitrator would still proceed to decide the dispute. No response has been received from the Respondent. Therefore, the case has to proceed ex-parte.

4. Factual Background

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

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Complainant's activities

The Complainant is a company existing under the corporate laws of Delaware, U.S.A. with registered office at 16192 Coastal Highway, Lewes, Delaware, 19958, U.S.A.

According to the Complaint, the Complainant provides brand protection services. The Complainant's Mobile Product Authentication solution helps ensure purchased goods are not stolen or counterfeit by allowing consumers to verify product genuineness within seconds through a text message. It is widely used by pharmaceutical companies to curb the counterfeit drugs. The Mobile Product Authentication solution is also used for automotive aftermarket parts, personal care products and electrical cables.

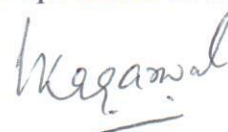
The Complainant is providing such services in many countries of the world including the United States of America, Africa (Ghana, Nigeria and Kenya) and Asia (India). In fact, to provide the said services in India, in the year 2011 the Complainant has established an Indian subsidiary by the name of Sproxil Brand Protection Solutions Private Limited having its registered office in the State of Maharashtra, India.

Respondent's Identity and Activities

The Respondent has not submitted any response to the Complaint. 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 since its inception the Complainant has adopted SPROXIL as trade name as well as trademark. Thus, the disputed domain name is identical to the name and trademark of the Complainant. Further that, the Complainant has been continuously using the "Sproxil" as trade name, trademark, corporate name, business name, trading style, etc.

The Respondent mPedigree Limited Network also has similar operations in India and therefore, the Respondent is a direct competitor of the Complainant. The Respondent has registered the disputed domain name purposely with the motive or intention of obstructing the business of the Complainant, to obfuscate clients, prospective clients and other internet users and to cause negative impact on the reputation of the Complainant.

The trademark "SPROXIL" of the Complainant is registered in some countries including the United States of America, the European Union, China and Ghana in Class 42. In India, the products of the Complainant are sold under the trademark "Sproxil" since June 2011.

The Complainant is the owner of some other domain names incorporating the word "SPROXIL". Such domain names are <www.sproxil.com> registered on October 13, 2008 and <www.sproxil.us>. Therefore, the Complainant is well known to its customers as well as in business circles as SPROXIL all around the world.

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It is further contended that in recent times, the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for SPROXIL products in India or elsewhere would mistake the disputed domain name as that of the Complainant.

Therefore, the disputed domain name is similar or identical to the registered trademark of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "Sproxil" nor has applied for the registration of the mark "Sproxil" anywhere in the world. The name of the Registrant/Respondent is Bright Simons. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the customers of the Complainant and the general public using internet facilities.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.sproxil.in> by the Respondent/Registrant is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known mark to promote competing or infringing products cannot be considered a *"bona fide offering of goods and services"*.

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In support of its contentions, the Complainant has relied on the decisions in the cases of *Alibaba Group Holding Limited v. Rickson Rodricks and Domaen com* [INDRP/073] wherein it has been held that the domain name wholly incorporating a Complainant's trademark may be sufficient to establish identity or confusing similarity; *Puneet Vatsayan v. Prajakt Raut* [INDRP/512]; *Amazon Technologies v. Mr. Harikishore* [INDRP/349] and *Pfzier v. NA* [WIPO D2005-0072].

B. Respondent

The Respondent has not submitted any response. Hence, the Respondent's contentions are not known.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used or adopted 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

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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.sproxil.in> on October 23, 2013.

According to the information submitted by the Complainant, the Complainant is the owner of trademark SPROXIL. The trademark SPROXIL is registered in certain countries.

The present dispute pertains to the domain name <www.sproxil.in>. The Complainant possesses a number of other domain names with the word “sproxil” as indicated above. The Complainant is also the owner of trademark “sproxil”. Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Registrant/Respondent. The disputed domain name is very much similar or identical to other domain names and the trademark of the Complainant.

Therefore, I hold that the domain name <www.sproxil.in> is confusingly similar or identical 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

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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 Registrant/Respondent has no rights or legitimate interests in the disputed domain name.

Sproxil Inc., is the name of the Complainant. The Respondent is known by the name of Mr. Bright Simons. It is evident that the Respondent can have no legitimate interest in the aforesaid disputed 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.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain name. *Ullas*

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:

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- (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 has intentionally attempted to attract, for commercial gain, internet users to the disputed website by creating a likelihood of confusion with the Complainant's mark.

The Respondent was aware of the Complainant's registration of the trademark "Sproxil". Further that, the Respondent was put on the email and cease and desist notice dated November 06th, 2014. However, the Respondent continued to use the disputed domain name and hence the use of the Complainant's trademark "Sproxil" in

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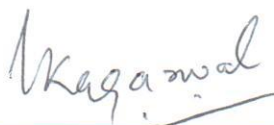
the disputed domain name by the Respondent is in bad faith.

The complete address of the Registrant/Respondent could not be found and the e mail address mentioned in the WHOIS record is also not correct. 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 Registrant/Respondent in bad faith.

7. Decision

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



Vinod K. Agarwal
Sole Arbitrator

Date: 31st March 2015