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NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025

Wacom Co. Ltd., v. Liheng

Wacom

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AWARD

1. The Parties

The Complainant is Wacom Co. Ltd., 2-510-1, Toyonodai, Kazo-shi, Saitama 349-1148, Japan.

The Respondent is Mr. Liheng, Just Traffic Supervision Consulting, Room 1326, Kexin Building, HK – 999077, Hong Kong.

2. The Domain Name and Registrar

The disputed domain name is <www.wacom.in>. The said domain name is registered with IN Registrar d.b.a. inregistrar.com (R123 – AFIN)

The details of the disputed domain name contained in Annexure F of the Complaint are as follows:

- | | |
|----------------------|----------------------------------|
| (a) Domain ID | : D6868209 - AFIN |
| (b) Date of creation | : 10 th November 2012 |
| (c) Expiry date | : 10 th November 2014 |

3. Procedural History

- (a) A Complaint dated October 14, 2014 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 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.

V. K. Agarwal

- (c) In accordance with the Rules the National Internet Exchange of India tried to formally notify the Complaint to the Respondent through the e mail address - shahuang@msn.com. However, the said attempt did not succeed. 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:

Complainant's activities

The Complainant is a company existing under the corporate laws of Japan. The Complainant was established in the year 1983. The Complainant derived its name WACOM from the English words WORLD COMPUTER by adding 'WA' which means 'harmony' in Japanese.

According to the Complaint, the Complainant is a supplier of pen and multi-touch sensor components for Smartphones, Tablets, e-books, etc. The Complainant's brand forms part of the digital pen and multi-touch components incorporated into notebook PC plus digital pen components incorporated into smart phones. The Complainant was the first to introduce a cordless pen tablet in the world market. Further, the Complainant has also received many awards and recognition in various countries of the world for its products.

According to the Complaint, since its inception the Complainant has adopted WACOM as trade name as well as trademark.

Respondent's Identity and Activities

The Respondent could not be contacted. 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 trademark "WACOM" is registered/applied for registration in many countries of the world, such as, Argentina, Australia, Bangladesh, Brazil, Bulgaria, Canada, Chile, China, Croatia, Cuba, Hong Kong, Indonesia, Israel, Japan,

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Korea, Malaysia, Mexico, Norway, Peru, Russian Federation, Saudi Arabia, Singapore, South Africa, Switzerland, Thailand, Turkey, United Arab Emirates, United States of America, Venezuela, etc. in Classes 9, 41 and 42. A detailed list of such companies is given in Annexure – C. According to the Complaint, the earliest registration dates back to April 19, 2002 in Japan.

The Complainant's trademark "WACOM" is also registered in India since May 2006 in the following Classes: (i) Class 9 – Coordinate input apparatus; digitizers; computer input tablets; computer input touchpanels; computer input apparatus; software for computer input; computers; electronic machines and apparatus. (ii) Class 41 – Organization, management or arrangement of seminars concerning computers, and (iii) Class 42 – Computer programming. Complainant's subsidiary in India was incorporated on October 19, 2010 under the name and style of Wacom India Private Limited.

The Complainant is also the owner of a number of domain names incorporating the word "WACOM". Some such domain names are <www.wacom.com>; <www.wacom.net>; <www.wacom.co.uk>; <www.wacom.ru>; <www.wacom.jp>; <www.wacom.dk>; <www.wacom.hk>; <www.wacom.cu>; <www.wacom.co.in>; <www.wacom.asia>; <www.wacm.us> etc. According to the Complaint, the Complainant offers its products for sale through its websites and its websites play an important role towards the same. Further that, the Complainant is well known to its customers as well as in business circles as WACOM all around the world.

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 "WACOM". The name of the Registrant/Respondent is Mr Liheng. 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 general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.wacom.in> by the Respondent/Registrant is to mislead the general public and the customers

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of the Complainant. Further that, the disputed domain is merely a standard ad-referral sponsored link website. The Complainant has contended that the Respondent entity JUST TRAFFIC SUPERVISION CONSULTING is a habitual squatter and has registered about 628 different domains in its name.

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*”.

In the cases of *Bayer Aktiengesellschaft v. Henril Monsse*, WIPO Case No. D2003-0275; *Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, and *HSBC Holdings plc v. Hooman Esmail Zadeh*, Case No. 2/5/R2 (March 24, 2007) it has been held that the Respondent’s passive holding of the disputed domain name does not create any rights or legitimate interests and it is an evidence of bad faith registration and use of the domain name.

B. Respondent

The Respondent could not be contacted. 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 being used in bad faith and for the purposes of trafficking;

M. Kaganwal

A. Identical or Confusingly Similar

As per the whois information, the Respondent has created the disputed domain name <www.wacom.in> on November 10, 2012. It was due to expire on 10th November 2014. In other words, by the time of delivery of this Award, the registration of the disputed domain name has already expired.

According to the information submitted by the Complainant, the Complainant is the owner of trademark WACOM. The trademark WACOM is registered in the countries mentioned above.

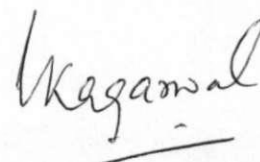
The present dispute pertains to the domain name <www.wacom.in>. The Complainant possesses a large number of other domain names with the word "wacom" as indicated above. The Complainant is also the owner of trademark "wacom". Most of these domain names and the trademark have been created by the Complainant 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.wacom.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 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.

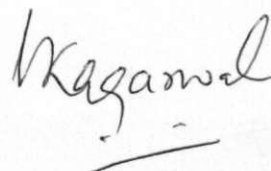
Wacom Co. Ltd., is the name of the Complainant. The Respondent is known by the name of Mr. Liheng. The Respondent is not operating any active website under the disputed domain "wacom.in". It is evident that the Respondent can have no legitimate interest in the aforesaid disputed domain name. Further, 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 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.

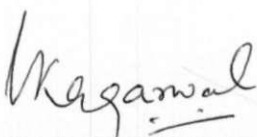
The contention of the Complainant is that the present case is covered by the above circumstances. The Respondent has registered the disputed domain name with the sole purpose of monetizing the same. Further that, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark.

The Complainant has contended that the complete address of the Registrant/Respondent could not be found and the e mail address mentioned in the WHOIS record also appears to be incomplete and bogus. 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 trademark 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.wacom.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 24th November 2014