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INDRA ARBITRATION

SOPRASTERIA GROUP V. XU XIANTAO

DOMAIN NAME. www.soprabanking.in

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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: RODNEY D. RYDER

SOPRA STERIA GROUP v. XU XIANTAO

ARBITRATION AWARD

Disputed Domain Name: www.soprabanking.in

The Parties

The Complainant in this arbitration proceeding is Sopra Steria Group, a company organised and existing under the laws of France having its principal place of business at ZAE Les Glaisins, 74940 Annecy-le-Vieux, France; represented by Herbert Smith Freehills Paris LLP.

The Respondent in this arbitration proceeding is Xu Xiantao, Zheda Road 38, Hangzhou, Zhejiang 310027, China, as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

The Domain Name and Registrar

The disputed domain name is www.soprabanking.in. The said domain name is registered with Webiq Domains Solutions Pvt. Ltd.

Details of the disputed domain name

The dispute concerns the domain name www.soprabanking.in. The said domain name was registered on July 02, 2014. The particulars of the said domain name are as follows:

Registrant: Xu Xiantao
Registrant Address: Zheda Road 38, Hangzhou, Zhejiang 310027, China
Registrant Phone: +86.87951349
Registrant Email: domainmi@163.com

Procedural History [Arbitration Proceedings]

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Rodney D. Ryder as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

In this matter, the arbitration proceedings commenced on May 10, 2016. The request for submission with a complete set of documents was dispatched to the Respondent. The Respondent was advised several times about the commencement of the arbitration proceedings. The last date to submit a response was May 31, 2016. The Respondent did not reply or submit a response or communicate with NIXI or the Arbitral Tribunal.

Grounds for the administrative proceedings

1. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The disputed domain name has been registered or is/are being used in bad faith.

Parties Contentions

Complainant

The Complainant in his complaint, interalia, contended as follows:

The Respondent's domain name is identical or confusingly similar to a name, trademark or service in which the Complainant has rights.

The Complainant, based on various trademark registrations of the mark 'SOPRA' and 'SOPRA BANKING SOFTWARE', and based on the use of the said trademark[s] in India and other countries, submitted that it is the lawful owner of the trademark 'SOPRA'.

The Complainant is the registered proprietor of the mark 'SOPRA' and 'SOPRA BANKING SOFTWARE' in several countries. The Complainant submits that as the disputed domain name is 'www.soprabanking.in', the disputed domain name is clearly identical/confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

Background of the Complainant and its statutory and common law rights Adoption:

The Complainant was established in France in 1968 and was formerly known as the 'Sopra Group'. Following the merger of the companies 'Sopra' and 'Steria' in January 2015, the Complainant came to be known as the 'Sopra Steria Group'. The Complainant is a major European service provider in the fields of consulting, IT services and software publishing.

The Complainant provides personalized financial software, outsourcing, business consulting and IT systems implementation, development and maintenance services to professionals of the banking sector. The Complainant is most notably established in France, Benelux, Spain, Italy, UK, Switzerland, as well as in India. In India, the Complainant has employed more than 5000 individuals working across cities such as Noida, Bangalore, Chennai and Pune. The Complainant, has therefore, acquired a great renown in its field of business.

Statutory rights:

The Complainant is the owner of the Registered Trademark 'SOPRA' and 'SOPRA BANKING SOFTWARE' in several jurisdictions.

Respondent

The Respondent failed to reply to the notice regarding the complaint.

Discussion and Findings

The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand 'SOPRA'. Moreover, the Complainant has neither given any license nor authorized the Respondent to use the Complainant's mark. The

Respondent has never been commonly known by the domain name in question and, of late, registered the domain name on July 02, 2014.

It's a well established principle that that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

The Respondent's Default

The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows

"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."

Rule 11(a) empowers the Arbitrator to proceed with an ex parte decision in case any party does not comply with the time limits or fails to reply against the complaint. Rule 11(a) reads as follows:

" In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."

The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated; the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case.

The 'Rules' paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP which reads:

"Types of Disputes -

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Respondent's domain name is identical or confusingly similar to a name, 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; and
(iii) the Respondent's domain name has been registered or is being used in bad faith.

The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.
It has been proved by the Complainant that it has intellectual property, particularly trademark rights, and other rights in the mark 'SOPRA' by submitting substantial documents. The disputed domain name contains Complainant's 'SOPRA' Trademark in its entirety alongwith a generic term 'Banking'. The mark is being used by the Complainant in relation to its business and is internationally renowned.

Further, it has been previously decided under the INDRP that incorporating a well known trademark in its entirety is sufficient to establish the identical and confusingly similar nature of the disputed domain name.

According to the INDRP paragraph 3 it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations -
By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that:

- *the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate;*
- *to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- *the Respondent is not registering the domain name for an unlawful purpose; and*
- *the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."

The Respondent has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant; the panel has come to the conclusion

that the disputed domain name is identical with or deceptively similar to the Complainant's 'SOPRA' mark[s]. Accordingly, the panel concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

The Respondent has no rights or legitimate interests in respect of the disputed domain name
The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorised the Respondent to register or use the 'SOPRA' Trademark. The Complainant has been using the mark 'SOPRA' for a bonafide purpose.

Moreover, the burden of proof on the Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge. Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own right and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain and subsequently, misleading consumers and tarnishing the Complainant's 'SOPRA' Trademark.

Further, the Respondent has been using the disputed domain name to confuse the internet users by directing them to a parking page which contains several pay per click advertisements. Such behaviour constitutes evidence that the Respondent has no right or legitimate interest in respect of the disputed domain name www.soprabanking.in.

For these reasons, the panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name has been registered or is being used in bad faith.
It has been contended by the Complainant that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

"Circumstances indicating that the Respondent has registered or has 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

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 the Respondent has engaged in a pattern of such conduct; or

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 its Website or location or of a product or service on its Website or location."

From the circumstances of the case and from the evidences put before the Panel by the Complainant, the panel is of the opinion that the Respondent had no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent's website or other online locations of the Respondents or product/services on the Respondent's website and otherwise, due to the use by Respondent of the Complainant's said trademark ['SOPRA'] in the disputed domain name, which trademarks have been widely used all over the world by the Complainant and which trademarks are associated exclusively with the Complainant.

The domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark 'SOPRA' as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location or of a product or service on the registrant's website or location.

Moreover, the Respondent attempted to sell the disputed domain name to the Complainant for USD 5000. The Respondent is also using the disputed domain name to divert the users to a parking page thereby generating material benefits by "pay per click" domain parking solution. Further, it appears that the Respondent is a habitual cybersquatter and has registered several other domain names pertaining to famous marks. This, in the view of the panel, constitutes bad faith.

The Panel is therefore prepared to accept the Complainant's contention that its 'SOPRA' trademark and corresponding business is well-known and has developed a significant global reputation. With regard to Famous Names, successive UDRP panels have found bad faith registration because Complaint's name was famous at the time of registration: *WIPO/D2000-0310 [choyongpil.net]*.

On bad faith registration and use [generally], panels have noted: "Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith": *NAF/FA95314 [thecaravanclub.com]*, *WIPO/D2000-0808* [very use of domain name by Respondent who

had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith - *4icq.com*].

Thus, all the three conditions given in paragraph 6 of the INDRP are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent/Registrant is a registration in bad faith.

Decision

The Respondent failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights.

The Complainant has given sufficient evidence to prove extensive global trademark rights on the disputed domain name. Further, the Respondent's adoption and registration of the disputed domain name is dishonest and malafide.

While the overall burden of proof rests with the Complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is clear that the Respondent is using the disputed domain name in bad faith and 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.

[Relevant decisions: Lego Juris AS v. Robert Martin INDRP/125; *Societe Air France v. DNS Admin* INDRP/075; *Kelemata SPA v. Mr Bassarab Dungaciu WIPO D2003-0849; Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO D2003-0455; *Uniroyal Engineered Products , Inc. v. Nauga Network Services* WIPO D2000-0503; *Microsoft Corporation v. Chun Man Kam* INDRP/119]

The Respondent's registration and use of the domain name [www.soprabanking.in] is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with Policy and Rules, the Arbitrator directs that the disputed domain name [www.soprabanking.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

Rodney D. Ryder
Sole Arbitrator

Date: June 9, 2016