

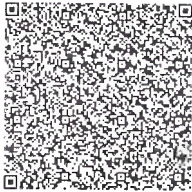
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL54365214562808R
Certificate Issued Date	: 08-Mar-2019 11:25 AM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1714615011879047R
Purchased by	: AMARJIT SINGH ADVOCATE
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: AMARJIT SINGH ADVOCATE
Second Party	: Not Applicable
Stamp Duty Paid By	: AMARJIT SINGH ADVOCATE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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2. The onus of checking the legitimacy is on the users of the certificate.
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BEFORE THE SOLE ARBITRATOR

MR. AMARJIT SINGH

**IN THE MATTER OF ARBITRATION IN INDRP
CASE NO. 1069, UNDER THE INDRP POLICY**

AND

**RULES OF PROCEDURE OF .IN REGISTRY,
NATIONAL INTERNET EXCHANGE OF INDIA**

BETWEEN

SPARKOL LIMITED

at:

1 TEMPLE WAY, 5TH FLOOR, BRISTOL,
BS2 0BY, UK

...COMPLAINANT

AND

Mr. SHRIPAL

at:

B-20, 3RD FLOOR,
EVEREST PRE CO. SOC. LTD.
156 TARDRO, MUMBAI - 400034

...RESPONDENT



1. THE PARTIES

- 1.1 The Complainant in this Administrative Proceeding is **SPARKOL Limited**, a Company incorporated under the Laws of UK having its registered office at 1 Temple Way, 5th Floor, Bristol, BS2 0BY, UK. The Complainant's authorized representative is Mr. Christopher Carpenter (*Chief Financial Officer*).
- 1.2 According to the WHOIS Database of the NATIONAL INTERNET EXCHANGE OF INDIA [hereinafter **NIXI**], the Respondent in this Administrative Proceeding is **Mr. Shripal** at B-20, 3rd Floor, Everest Pre Co. SOC. Ltd., 156 TARDRO, Mumbai – 400034.

2. THE DOMAIN NAME AND THE REGISTRAR

The disputed domain name **<www.sparkol.in>** was registered by the Respondent on December 16, 2016 with the Registrar, ENDURANCE DOMAINS TECHNOLOGY LLP at Unit No. 501, 5th Floor and Unit No. 402, 4th Floor, IT Building, NESCO IT Park, Nesco Complex, Western Express Highway Goregaon (East), Mumbai – 400063, Maharashtra.

3. PROCEDURAL HISTORY

- 3.1 The Complaint was filed with The NIXI, against the Respondent, in respect of the disputed domain



<www.sparkol.in>. The NIXI verified whether the Complaint and the Annexures thereto satisfied the formal requirements of the .IN DOMAIN NAME DISPUTE RESOLUTION POLICY, (*hereinafter, The INDRP Policy*) and the RULES OF PROCEDURE (*hereinafter, The Rules*)

3.2 In accordance with the Paragraph 2(a) and 4(a) of The Rules, NIXI formally notified the Respondent of the Complaint being filed against him and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with The INDRP Policy and the Arbitration and Conciliation Act, 1996, along with the Rules framed there under. The Parties were first notified about my appointment as the Arbitrator on February 8, 2019.

3.3 The Panel had submitted the *Statement of Acceptance and Declaration of Impartiality and Independence*, in compliance with Paragraph 6 of The Rules, on February 7, 2019. Thereafter, the Arbitration Proceedings commenced on February 9, 2019. In accordance with Paragraph 5 (c) of The Rules, the Respondent was then notified about the commencement of Arbitration Proceedings and was duly sent, the Complaint, along with all the Annexures thereto, by NIXI on February 8, 2019.

3.4 The Respondent, via email dated February 9, 2019, was intimated by this Panel about the Arbitration Proceedings



and was granted 10 days' time ending on February 19, 2019 to file his response/written statement. The aforesaid email, dated February 9, 2019 was duly delivered at the email address, <thinkstrap@gmail.com>, furnished by the Respondent with the Registrar at the time of obtaining the disputed domain name, being <www.sparkol.in>.


3.5 The Panel did not receive any update or response from the Respondent to the emails dated February 8, 2019 and February 9, 2019. In the absence of any response by the Respondent to the complaint or any attempt to settle the matter amicably, the Panel had no other choice than to decide the present Complaint on merits and on the basis of the material available on record.

3.6 The Panel considers that according to Paragraph 9 of The Rules, the language of the proceedings should be in English. In the facts and circumstances, an in-person hearing was not considered necessary for deciding the Complaint. Consequently, based on the Complaint and the Documents submitted on record, the present Award is being passed within the period of 23 days from the date of commencement of Arbitration Proceedings; as per Paragraph 5 of The Rules.



4. FACTUAL BACKGROUND

4.1 The Complainant is a Company founded on December 2, 2008 as THE INSPIRATION ENGINE LIMITED in United Kingdom having its Head Office at 1 Temple Way, 5th Floor, Bristol, BS2 0BY, UK. The Complainant subsequently changed its name to **SPARKOL LIMITED** in September 2013. **"SPARKOL LIMITED"** is the creator of the world renowned and exceptionally popular whiteboard animation software. It specializes in storytelling tools, like VideoScribe and StoryPix, to help businesses, charities and educators tell stories with staying power.

4.2 The Complainant claims to have coined, conceived and adopted the Trade Mark/ Trade Name '**SPARKOL**' in and around March 2009. The Trade Mark/ Trade Name '**SPARKOL**' is claimed to have been used in more than 160 countries worldwide, including India, through the Complainant's website <<https://www.sparkol.com>>. The Trade Mark '**SPARKOL**' is also registered in the name of the Complainant in the United Kingdom and the United States of America, while the Application(s) for registration are pending in different jurisdictions. The Domain Name <www.sparkol.com> was registered on 23rd March 2009 in the name of the Complainant. The disputed Domain Name <www.sparkol.in> was registered by the Respondent only on 16th December 2016. The Complainant is thus, prior in the adoption and use of the Mark '**SPARKOL**'. 

4.3 The **SPARKOL LIMITED** is also recipient of many awards and accolades for its unmatched creativity and unparalleled and superlative software products. **SPARKOL LIMITED's** product "VideoScribe iPad Application" won the Best Mobile/Tablet B2B App at the 2013 MOMA Awards; after being nominated in three categories. **SPARKOL LIMITED** was also recommended on the BBC news website, in the same year.

4.4 The Respondent in the present dispute has registered the impugned domain, <www.sparkol.in> on December 16, 2016.

5. PARTIES CONTENTIONS

A. COMPLAINANT

The Complainant has raised the following three contentions in compliance with The INDRP Policy and The Rules.

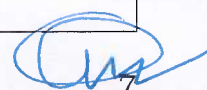


I. **Identical and Confusingly Similar**

[Para3 (b) (vi) (1) Of the Rules and Para 3 Of INDRP Policy]

- i. Complainant submits that in and around March 2009, it coined, conceived and adopted the trademark/tradename **"SPARKOL"** and has been openly, continuously and extensively using the mark **"SPARKOL"** as its trade name, corporate name, business name, trading style and trademark, worldwide. After that **SPARKOL LIMITED** got its domain name **<www.sparkol.com>** registered with 123-Reg Limited on March 22, 2009. **SPARKOL LIMITED's** services under the mark **"SPARKOL"** are well known and available in more than 160 countries, worldwide, including India, through **SPARKOL LIMITED's** website **<https://www.sparkol.com>**. **SPARKOL LIMITED's** website is not merely accessible in India but is highly popular among its users and has unquestionably acquired distinctiveness, reputation and enormous goodwill in India.
- ii. Complainant reiterates that it is the Registered Proprietor of the trademark **"SPARKOL"** in following jurisdictions, the details of which are as under:

S.No.	Trademark	Date of Application /Registration	Country	Class
1.	UK00003068957	18.08.2014	United Kingdom	42



2.	86480873	18.08.2014	US	09, 42
3.	UK00002513210	07.04.2009	United Kingdom	09

- iii. Complainant has used the Trademark "**SPARKOL**" in the jurisdictions of Australia, Canada, China, Colombia, EU, Israel, India, Mexico and the Philippines in respect to goods and services covered under classes **09 and 42** of the nice classifications.
- iv. Complainant also reiterates that it is also the owner of the website <<https://www.sparkol.com>> which is accessible world over and is available for use by users globally including those in India. The said website contains extensive information about **SPARKOL LIMITED**, and its products and services marketed and sold under the trademark and corporate name "**SPARKOL**". It is pertinent to note that the website not only depicts the products and services of **SPARKOL LIMITED**, but also elaborates their functionalities and other characteristics and is undeniably a great source of advertisement for **SPARKOL LIMITED**.


II.

Absence of Legitimate Interest

[Para 3(b) (vi) of The Rules Para 7 of INDRP Policy]


- (i) Complainant submits that it has legitimate interest in the

“SPARKOL” trademark and has been openly, continuously and extensively using it for more than 9 years. By virtue of long and extensive use and advertising, the **“SPARKOL”** trademark has acquired an unparalleled distinctiveness, enviable reputation and goodwill and has become a well-known mark.

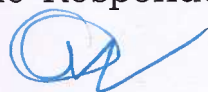
- (ii) Further, the Complainant submits that it has registered the domain name on March 3, 2009 whereas, the disputed domain sparkol.in was registered by the Respondent on December 16, 2016. Hence, such subsequent adoption and registration of the disputed domain name shows that the Respondent has no right or legitimate interest in the domain name sparkol.in
- (iii) The Complainant submits that the Respondent is neither commonly/popularly known in the public nor has applied for any registration of the mark **“SPARKOL”** or any similar mark or has registered his business under the said name with the Ministry of Corporate Affairs, India.
- (iv) The Complainant submits that the disputed domain name was intentionally created by the Respondent for commercial gain to misleadingly divert the consumers or traders of the Complainant to the disputed domain name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant. 

- (v) From the above circumstances, it is apparently clear that the Respondent has failed to comply with Para 7 of INDRP wherein the onus is on the Registrant to prove that he has a right and legitimate interest in the domain name.

III. *Impugned Domain Name was Registered in Bad Faith*
[Para 39(b)(vi)(3) of the Rules and Para 6 of INDRP Policy]

- (i) The Complainant states that the Respondent was duty-bound to conduct the bare minimum due diligence before applying for the registration of the impugned domain name in order to ensure that it does not infringe the rights of any third party. A simple Google search of the terms **"SPARKOL"** would have established whether or not they were violating the rights of any third party. The impugned domain name was registered a considerable period after the Complainant's trade mark. The term **"SPARKOL"** is an invented word and does not have any ordinary meaning and therefore, it is reasonable to assume that the Respondent registered it with the intent to disrupt the Complainant's business or to attract internet users to other websites by creating likelihood of confusion.
- (ii) Moreover, simple Google search with the terms SPARKOL generates results that are solely related to the Complainant's website and business, therefore, it is safe to
- 

infer that the Respondent must have been aware of the Complainant's rights at the time of registering the impugned domain name.

- (iii) Other pieces of evidence of bad faith include non-hosting of a regular website on the said domain name, absence of any rights or legitimate interests in acquiring the said domain name, absence of a conceivably legitimate use to which the domain name can be put and an attempt to prevent the owner of the trademark from reflecting the mark in a corresponding domain name. A simple perusal of the website at sparkol.in reveals that it is not adopted for any bonafide use by the Respondent and there is strong and reasonable likelihood that the domain name is adopted in absolute bad faith with mere intention to resell or rent the same to the Complainant or any third party which would cause irreparable damage to the Complainant.
- (iv) The Complainant submits that by using the disputed domain name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark as to the source or sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered/available on the Respondent's website thereby violating Para 6 of INDRP. 

- (v) Further, the Complainant submits that the Respondent has deliberately registered the disputed domain name with the intention of preventing the Complainant who is the owner of the trademark "**SPARKOL**" from reflecting the said trademark in its domain name in India and across the world.

B. RESPONDENT


- (i) The Respondent, in the present dispute, got the impugned domain **<www.sparkol.in>** registered on December 16, 2016.
- (ii) The Respondent, as aforesaid, failed/neglected and omitted to file any response to the averments made in the Complaint and/or the documents filed in support thereof on merits; despite an opportunity having been granted by the Panel via email dated February 9, 2019.


6. DISCUSSIONS AND FINDINGS

- (i) The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the. In Dispute Resolution Policy and the Rules framed thereunder in terms of Paragraph (3b) of the Rules and Procedure. The

Respondent also submitted to the mandatory arbitration proceedings in terms of Paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

- (ii) Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- (iii) It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act. 

- (iv) Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to have been admitted.
- (v) The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad**, AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof (See: Section 58 of the Indian Evidence Act, 1872). The material facts stated in the complaint have neither been dealt with nor specifically disputed or denied by the Respondent and are therefore deemed to have been admitted.
- (vi) Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.
- (vii) Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled. I, therefore, proceed to deal with the three elements under the policy, irrespective of the deemed admissions made by the respondent to the averments made in the complaint and the documents filed on record. 

A. IDENTICAL AND CONFUSINGLY SIMILAR

- i) A mere glance at the disputed domain name show that the domain name registered by the Respondent contain the entire Trade Mark/Trade Name '**SPARKOL**' of the Complainant.
- ii) UDRP Panels have held in many decisions [See: **Farouk Systems, Inc. v. Yishi, Case No. D2010-0006; Havells India Limited, QRG Enterprises Limited v. Whois Foundation D2016-1775**] that a domain name which wholly incorporates a Complainant's Trade Mark/Trade Name may be sufficient to establish identicalness or deceptive similarity, irrespective of the addition of other words to such marks or not.
- iii) In the case of **OSRAM GmbH v. Yuri A Ivano, Case No. D2009-0692**; it was held that-incorporating a Trade Mark in its entirety may be sufficient to prove that a domain name used by the Registrant is confusingly or identically similar to a Trade Mark used by the Complainant.
- iv) In the present case, it is very natural for an internet user, who wishes to visit the website of the Complainant to type its commercial name/brand name followed by the country specific Top-Level Domain **<.in>**. This will lead the Internet user to believe that the Complainant is associated with or

owns the web site bearing the domain name **<www.sparkol.in>**.

- v) The Complainant is therefore successful in establishing the First Element of INDRP Policy and the Panel finds that the disputed domain name is identical to the Trade Mark/Trade Name/Domain Name of the Complainant. Consequently, the First requirement of Paragraph 4 of the policy is satisfied.

B. ABSENCE OF LEGITIMATE INTEREST

- i) The Complainant has registered the mark **'SPARKOL'** in various foreign jurisdictions and also has pending registrations in various countries including India. It is apparent that the Respondent knew of the Complainant's mark and its business activities as the mark **'SPARKOL'** has been in use by the Complainant in relation to software development and storytelling tools suitable for online media, since the year **2009**. It is thus, highly improbable that the Respondent has any rights or legitimate interests in the impugned domain name. Moreover, the impugned domain name was registered by the Respondent in order to cash-in on the reputation of the **'SPARKOL'** brand. The impugned domain name was registered on **December 16, 2016**, while the Complainant's mark **'SPARKOL'** has been

in continuous and extensive use since **2009**. [Relevant Decisions: **Telstra Corporation Limited v. Nuclear Marshmallows, D2000-0003; Kelemata S.p.A. v. Mr. Bassarab Dungaciu, D2003-0849**].

- ii) It is pertinent to note that the Respondent has no connection with the Complainant, or any company licensed by the Complainant. Respondent is not commonly known by the disputed domain name or the Trade Mark '**SPARKOL**'. Further, Respondent was not and is not authorized by Complainant to register, hold or use the disputed domain name.
- iii) The illegality in the registration of the disputed domain name arises from the fact that domain names today are a part and parcel of corporate identity. In this specific case, the Complainant is in the business of developing software and tools that enables storytelling on the online platform and their official website **www.sparkol.com** serves as an information portal for potential buyers and customers. Moreover, a domain name acts as the address of the company on the internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the internet address of a company.
- iv) Moreover, the Respondent cannot have any right or legitimate interest in the disputed domain name because



the disputed domain name incorporates the Trade Mark/Trade Name '**SPARKOL**' in its entirety, a mark in which the Complainant has sole and exclusive rights and that has become well-known owing to the Complainant's efforts. [**Relevant Decision: Arthur Golden v. Galileo Asesores S.L. Case No. D2006-1215**].

- v) The absence of any functional website on the disputed domain name further indicates that the Respondent does not have any rights or legitimate interests either in the 'Lloyd' mark or the impugned domain name.

- vi) The Respondent is not, either as an individual, business or other organization, commonly known by the name '**SPARKOL**'. The Respondent has no active legitimate or bona-fide business in the name of '**SPARKOL**'. The Respondent is not a licensee of the Complainant, nor has the Respondent ever been authorized by the Complainant to use the Complainant's trademarks or register the disputed domain name. The Complainant has no relationship with the Respondent. [**Relevant Decisions: Charles Jourdan Holding AG v. AAIM, D2000-0403 (WIPO, June 27, 2000); ITC Limited vs. Mr. Mark Segal, INDRP/079 (February 10, 2009); Wells Fargo & Co. and Anr. v. Krishna Reddy, INDRP/581 (May 15, 2014); Aon PLC and Ors. v. Gangadhar Mahesh, INDRP/632**



(October 31, 2014); Aon PLC and Ors. v. Guanrui, INDRP/633 (October 28, 2014)].

vii) Furthermore, the Respondent whose name is 'Shripal', as per the WHOIS records, is not commonly known by the disputed domain name, nor the Respondent actually engages in any business or commerce under the name 'SPARKOL'. [Relevant Decision: ***Etro S.p.A v. M/S Keep Guessing, INDRP/024 (June 27, 2007); Tata Sons Limited v. Jacob W., Case No. D2016-1264***].

viii) The case of ***SOCIETE DES PRODI ITS NESTLE SA, SWITZERLAND v. NESCAFE LIMITED***, United Kingdom was decided on May 24, 2009 by NIXI Panel. The relevant excerpt are as under:

"Nescafe Ltd. has got the domain name "nescafe.co.in" registered in its name, whereas the Complainant was the proprietor of the mark "NESCAFE" and has got several TLDs registered including nescafe.com, nescafe.co.uk, nescafe.info, nescafe.biz, nescafe.mobi, nescafe.name, nascafe.pl, Nescafe.lk, nescafe.cn, nescafecoffee.com. In the case, Arbitrator's award at page 7 states that- "It appear that, the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of diverting Internet traffic, which is neither fair use nor non-commercial use. Such facts and circumstances create a rebuttable presumption that the Respondent has no

rights in the domain name and is not using it for any legitimate purpose."

- ix) In *Monster.com (India) Pvt. LIMITED. v. Domain Leasing Company*, where the domain name in dispute was **monster.in** and the Arbitrator articulated that the onus is on the Registrant to ensure that they are not infringing on any 3rd party rights.
- x) The Panel finds that the Respondent has never been commonly identified with the disputed domain name or any variation thereof prior to Respondent's registration of the disputed domain name. Furthermore, the burden is on the Respondent to prove that it has rights and legitimate interests in the disputed Domain Name.
- xi) From the above circumstances, it is apparently clear that the Respondent has failed to comply with Para 7 of INDRP wherein the onus is on the Registrant to prove that he has a right and legitimate interest in the Disputed Domain Name.



C. DOMAIN NAME WAS REGISTERED IN BAD FAITH

i) For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

ii) For the purposes of establishing registration and use of Domain Name in bad faith by the Complainant, any of the following circumstances should be present:

a. Circumstances indicating that the Registrant has registered or acquired the Domain Name primarily for the purpose of selling, running or otherwise transferring the Domain Name registration to the Complainant, who bears the name or is the owner of the trade mark or service mark, or be a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the Domain Name; or

b. The Registrant has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged any pattern of such conduct;
or



- c. By using the Domain Name, the Registrant has intentionally admitted to attract Internet users to the Registrant's Website or other online location, by creating a likelihood of confusion that the Complaint's name or mark as to the source, sponsorship, affiliation or endorsement of the Registrant's Website or location or of a product or service on Registrant's Website or location.
- iii) It is inconceivable that the Respondent did not know of the Complainant's well-known mark **'SPARKOL'**. It is inconceivable that the Respondent while registering the disputed domain in the year **2016** was unaware of the well-known mark **'SPARKOL'** which has been actively and continuously used over internet since **2009**.
- iv) Moreover, a basic internet search of the terms **'SPARKOL'** would have alerted the Respondent of the Complainant's extensive ownership and rights over the **"SPARKOL"** mark as well as its business activities under the said mark.
- v) At present, the impugned domain name **<www.sparkol.in>** is being held by the Respondent. This is in bad faith and a clear attempt to take advantage of the Complainant's goodwill and reputation. This is an attempt to misuse the domain name by registering the word **'SPARKOL'** with a country specific domain name extension variant. The mark **'SPARKOL'** as well as the official website



<**www.sparkol.com**> having been extensively used is understood and associated by consumers as the mark of the Complainant denoting their services and business. On account of the high degree of inherent and acquired distinctiveness, which the mark '**SPARKOL**' is possessed of, the use of this mark or any other identical or deceptively similar mark, by any other person would result in immense confusion and deception in the trade, leading to passing off.

vi) The Respondent has registered the impugned domain name in bad faith for the following reasons:

a. The well-known mark "**SPARKOL**", having been extensively used in relation to the business of the Complainant, has acquired distinctiveness and is understood and associated by consumers as the mark of the Complainant denoting their goods, services and business. Any incorporation of the said mark in a domain name is bound to be in bad faith. The Respondent clearly knew of the Complainant's prior rights when registering the domain name. This by itself constitutes "bad faith".

b. More specifically, customers and potential buyers would be induced to believe that the Respondent's domain name has some connection with the Complainant in terms of a direct nexus or affiliation



with the Complainant and that the Respondent is carrying on activities that have been endorsed by the Complainant on its behalf and the services or products that are sought to be offered by the Respondent are at the same level of quality and reliability as that offered by the Complainant and its group of companies.

- vii) In light of the Respondent's presumed knowledge of the Complainant's rights, it is reasonable to infer that the Respondent registered the disputed domain name without any intention of using it for genuine business or commercial activities. The Respondent must have the intention to sell it for financial gain or misuse the disputed domain name, as the impugned domain name has no functional website.
- viii) Such passive holding of the domain name by the Respondent amounts to bad faith under the present circumstances. **[Relevant Decisions: Lockheed Martin Corporation v. Aslam Nadia, INDRP/947; Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000-0003].**
- ix) Furthermore, it would be extremely difficult, if not impossible, for the Respondent to use the disputed domain name as the name of any business, product or service for which it would be commercially useful without violating the



Complainant's rights. Thus, the disputed domain name was registered in bad faith. [**Relevant Decision: *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc., INDRP/250 (December 30, 2011)***].

- x) Further, in ***Netgear Inc. vs Chen Shenglu***, decided on 15th September 2006, involving the disputed domain name <netgear.co.in>. Complainant (Netgear Inc.) contended that the domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Complainant stated that it is known consumers worldwide as 'NETGEAR' and that the disputed domain name is <netgear.co.in> is likely to be confusing with the Complainant's distinctive mark Netgear. The Complainant also stated that it owned more than 680 trademark registrations worldwide for marks containing the word 'NETGEAR' and contended that the Respondents has no rights or legitimate interests in respect of the domain name. It was also stated that respondent has not been commonly known by the mark 'NETGEAR' and further that the Respondent was not making legitimate or fair use of the 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 and the customers of the Complainant. The Complainant further contended that the domain name has been registered and is used in bad faith and it is registered



only for the purpose of trafficking and that the main object of registering the domain name <netgear.co.in> by the Respondent was to earn profit and mislead the general public and the customers of the Complainant. The Complainant stated that the use of a domain name that appropriates a well-known mark to promote competing or infringing products cannot be considered a 'bonafide offering of goods or services'. The Respondent did not reply to any of the Complainant's contentions. The Arbitrator ordered that the domain name be transferred to the Complainant.

- xi) In the above circumstances, the Panel concludes that the registration of impugned Domain Name was obtained in bad faith.

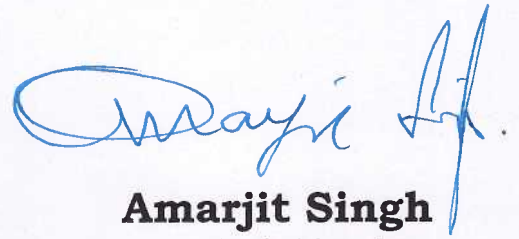
7. DECISION

The Complainant has succeeded in establishing all three elements of the policy.

*In view of the above discussions, the Panel directs the transfer of impugned domain name <**www.sparkol.in**> to the Complainant.*



Arbitration Award



Amarjit Singh
Sole Arbitrator



Dated: March 8, 2019