

हरियाणा HARYANA

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BEFORE THE SOLE ARBITRATOR C.A. BRIJESH

.IN REGISTRY

C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)
NEW DELHI, INDIA

Eureka Forbes Limited

Registered office:

7, Chakraberia Road,

Kolkata

West Bengal - 700025

India

Corporate office:

B1/B2, 701, Marathon Innova,

Off Ganpatrao Kadam Marg

Lower Parel

Mumbai-400012

India

.... Complainant

Versus

RO Care India

Unit No. 234, Tower B-2 Spaze I-Tech Park

Sector 49, Gurgaon

Haryana-122002

India

.... Respondent No. 1

Astha Sharma

Unit No. 234, Tower B-2 Spaze I-Tech Park

Sector 49, Gurgaon

Haryana-122002

India

.... Respondent No. 2

Shri Bhagwan Sharma

Unit No. 234, Tower B-2 Spaze I-Tech Park

Sector 49, Gurgaon

Haryana-122002

India

.... Respondent No. 3

1. The Parties

The Complainant is **Eureka Forbes Limited**, with its principal place of business at 7, Chakraberia Road, Kolkata, West Bengal – 700025, India (hereinafter referred to as the **Complainant**).



The Respondent No.1 is **RO Care India Limited**, of Unit No. 234, Tower B-2 Spaze I-Tech Park, Sector 49, Gurgaon, Haryana-122002, India (hereinafter the **Respondent No. 1**).

The Respondent Nos.2 and 3 i.e. Astha Sharma and Shri Bhagwan Sharma (hereinafter the Respondent No. 2 and 3 respectively) are the operators of RO Care

India Limited, of Unit No. 234, Tower B-2 Spaze I-Tech Park, Sector 49, Gurgaon, Haryana-122002, India.

2. The Domain Name and Registrar

The disputed domain name is < eurekaforbes-ro.in >. The Registrar with which the Domain Name is registered is **GoDaddy.com LLC**

3. Procedural Timeline

December 13, 2018: The .INRegistry proposed to Mr. C.A. Brijesh to act as Sole

Arbitrator from its panel as per paragraph 5(b) of INDRP Rules
of Procedure.

December 14, 2018: Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.

December 21, 2018: Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover. Further, NIXI forwarded a soft copy of the Complaint along with the annexures to the Respondent with a copy marked to the Complainant's Authorised Representative and Arbitral Tribunal.

January 25, 2019: Arbitral Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Legal Representative and NIXI, directing the Respondent to file its response, if any, within 10 days.

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February 04, 2019:

Arbitral Tribunal, as a last opportunity, and in interest of justice granted the Respondent additional time of 3 days to file its response, if any.

February 08, 2019:

The Tribunal addressed an email to the parties intimating that an Award shall be passed on the basis of the material available on record.

February 12, 2019:

The Tribunal, addressed an email to the Legal Representative of Complainant intimating them that a perusal of Complaint and accompanying documents reveals that the Complainant has placed on record materials/information pertaining to the mark 'AQUAGUARD' and not 'EUREKA FORBES'. Hence, the Complainant was given three day's time to furnish details/adduce evidence of its' rights in the mark 'EUREKA FORBES'. The email bounced back from the email address of the Complainants' Legal Representative.

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February 13, 2019:

The Tribunal again addressed an email to the Complainant.

February 14, 2019:

The Complainant's Legal Representative in response to the email, forwarded following documents to the Tribunal:

1.) Registered Trademarks/ Applications for Brands "FORBES", "EUREKA FORBES" and "EUREKA FORBES" formative marks in the name of Complainant.

- 2.) Copyright Certificate of the mark "EUREKA FORBES".
- 3.) Various arbitration awards in favour of Complainant obtained against Respondents and third parties for the domain names containing the mark AQUAGUARD.

The language of the proceedings shall be English.

4. Factual Background

4.1. Complainant's Activities

At the outset, this tribunal has noted that the Complaint was drafted on the basis of another domain name 'www.aquaguard-ro-customer-care.in', whereas the domain name in question is 'eurekaforbes-ro.in'. The Tribunal had to revert to the Complainant asking for documents pertaining to the impugned domain name 'eurekaforbes-ro.in'. Such casual approach of preparing the pleadings have resulted in wastage of precious time of this Tribunal. However, since the tribunal was subsequently supplied with documents reflecting prior rights, this Tribunal has now proceeded in passing the award.



The Complainant states, *inter alia*, that it is a part of the Shapoorji Pallonji Group of companies. The Complainant further claims to be India's leading health and hygiene brand. It is a multi-product, multi-channel organization with a gross group turnover of INR 29,612 Million for the accounting year 2017-18.

The Complainant claims in the Complaint that its product portfolio encompasses immensely popular water purification, vacuum cleaning, air purification and home security solutions. It has a base of over 20 million customers, a reach of over 1,500 cities and towns in India and a global footprint across 53 countries. The Complainant claims that it enjoys enviable goodwill, reputation and customer loyalty in respect of its products and services, particularly in respect of its flagship brands AQUAGUARD and EUREKA FORBES. In addition to Asia's largest direct sales force, it has dealer and institutional channels, an inventive business partner network, a rural channel and one of the most expansive service networks in India. The Complainant claims to be the owner of the website <www.eurekaforbes.com>. Extracts of the said website have been annexed to Complaint as Annexure F.

The Complainant further states that, in its 33 years of existence, the Complainant has been a pioneer and trendsetter in direct selling in India and today is one of the largest direct selling companies in the world. AQUAGUARD is the flagship water purifier brand of the Complainant and has been conferred with numerous Indian and international awards for its superior technology.

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The Complainant further claims that owing to the goodwill and trust associated with it and its brands, the Complainant takes cautious and stringent steps to ensure customer safety, quality and standards of the products and related services. The Complainant conducts and promotes various awareness campaigns for its customers in relation to these concerns.

The Complainant further claims to have been active and vigilant in enforcing and protecting its rights in its mark AQUAGUARD & EUREKA FORBES. Actions taken by the Complainant includes sending Legal Notices to third parties owning domains containing the mark AQUAGUARD and/or EUREKA FORBES or any deceptively similar mark. Annexure E filed by Complainant contains a list of third party websites against which action has been taken by Complainant. The Complainant has also put on record Arbitral awards in his favour obtained against third parties including the Respondents. Incidentally, these awards pertain to Complainant's mark AQUAGUARD.

Complainant's use of 'EUREKA FORBES'

The Complainant, in paragraph 21 of the Complaint, claims to be the registered proprietor and owner of the trademarks AQUAGUARD and EUREKA FORBES. Complainant submits that AQUAGUARD and EUREKA FORBES are its flagship brands.

The Complainant has provided records of Trade Marks Registry to support its' claim of registration in the EUREKA FORBES and EUREKA FORBES formative marks.

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A perusal of the website of Complainant www.eurekaforbes.com filed as Annexure

F of the Complaint shows that products and services under the marks

'AQUAGUARD' and 'EUREKA FORBES' are being displayed on the website

and Social media pages of the Complainant.

4.3 Respondent's activities and its use of EUREKA FORBES

The impugned domain <eurekaforbes-ro.in> was registered on June 21, 2014. A perusal of WHOIS records of said domain name filed as Annexure A shows that the same is registered with GoDaddy.com LLC. The Complainant submits that the domain name <eurekaforbes-ro.in> redirects to the domain name <www.rocustomer-care-number.com>. The WHOIS report of the website hosted on the domain <www.ro-customer-care-number.com> is annexed herewith as Annexure B. A perusal of Annexure B reveals that the said domain name is registered with GoDaddy.com LLC. It is registered in the name of Respondent No. 1. The Complainant alleges that the Respondents Nos. 2 and 3 are operators of Respondent No. 1 and 3D Logic Pvt. Ltd. The same is discernible from records of Registrar of Companies available on the website of Ministry of Corporate Affairs filed by Complainant as Annexure D. The Complainant alleges that Respondents No. 2 and 3 are habitual offenders and have been made a party herein on the basis of previous Complaints filed against them. This is evident from a perusal of Arbitral awards submitted by the Complainant. Present Complainants have previously obtained Awards against the present Respondents in many cases such as, Eureka Forbes Limited Vs. RO Care India and Ors. (INDRP Complaint Nos. 1023/2018), Eureka Forbes Limited Vs. RO Care India and Ors (INDRP Case No. 1050/2018) and Eureka Forbes Limited vs. RO Care India and Ors. (Award dated January 28, 2019) in respect of domain names <aquaguard-ro.co.in>, <www.aquaguard-rorespectively. <aquaguard-ro-service-centre.in> customer-care-.in> and Complainant further alleges in Paragraph 18 of the Complaint that the Respondents are hosting an imposter website on the impugned domain name. The Complainant submits that the Respondents are using Complainant's well-known and registered

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marks on the impugned website and promoting services which are identical to services offered by the Complainant under the mark AQUAGUARD. A perusal of Annexure I reveals that Complainants marks EUREKA FORBES and AQUAGUARD are being used extensively on the impugned website. Further, Respondents claim to be the best source to buy EUREKA FORBES water purifier. The website further displays, *inter alia*, a "Eureka Forbes Complaint number" and "Eureka Forbes tollfree number", "Eureka Forbes water purifier price list" and "EUREKA FORBES repair centre". The website has multiple references to Complainants' marks EUREKA FORBES and AQUAGUARD. As alleged by the Complainant the Respondents claim on the impugned website that they are using genuine spare parts, it is a team of well qualified and experienced engineers and RO repair professionals and it has years of experience and expertise in the field of RO water purifiers.

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Given that the Respondent has not furnished a response to the extant Complaint, no further information is available on its business activities and/or its use of the domain comprising the mark/name EUREKA FORBES.

5. Contentions of Parties as summarised in the pleadings

5.1 Complainant

a) The Domain Name is identical or confusingly similar to the

Complainant's trade marks (Paragraph 4(i) of the .IN Policy)

i. Complainant submits that it has secured registrations for the trade marks "FORBES" "EUREKA FORBES" and "EUREKA FORBES formative marks" in India under different classes. Copies of extracts of these trade mark registrations have been provided by the Legal Representative of Complainant vide email dated February 14, 2019. A perusal of the said extracts reveals that the earliest registration for the mark "EUREKA FORBES" in the name of Complainant dates back to November 28, 1989 in Class 16 under application No. 520403. The earliest registration for the mark "FORBES" in the name of Complainant dates back to February 19, 2003 in Classes 1 and 33 under application Nos. 1176321 and 1176289 respectively. Though the said applications are pending renewal, it does evidence prior statutory rights of Complainant in the mark EUREKA FORBES. The earliest registration for EUREKA FORBES formative mark in the name of Complainant is for the mark "Eureka Forbes Home Store" in Classes 7 and 16 under numbers 1178687 and 1178696 respectively. These applications date back to February 27, 2003.



ii. Complainant submits that the disputed domain name is identical or confusingly similar to the trade mark in which the Complainant has rights. Further, it has been submitted by Complainant that owing to confusing similarity of the impugned domain name with the Complainant's registered trademarks, the customers and internet users, will visit the website hosted on the impugned domain name, under pretext that the same belong to the Complainant and are bound to believe that the Respondent is an authorized / genuine reseller/ service centre of the Complainant

and/or that the Respondent is closely associated with the Complainant.

The Complainant submits that the website hosted on the impugned domain name will lead consumers to believe that the Respondent is providing quality services and/or genuine parts, as provided by the Complainant.

iii. Therefore the Complainant submits that Domain Name is identical to the Complainant's trade mark in accordance with paragraph 4(i) of the .IN Policy.

b) The Respondent has no rights or legitimate interests in respect of the Domain Name (Paragraph 4 (ii) and Paragraph 7 of the .IN Policy)

i. The Complainant contends that it is the registered proprietor and owner of the trademark EUREKA FORBES and hence, the Respondent has no right or legitimate interest in respect of the impugned domain name, other than that of reaping undue benefit.



- ii. The Complainant submits that Respondent / Website owner has adopted and is using the impugned domain name with so as to:
 - a. Impersonate itself as an authorized and genuine reseller and service centre of the Complainant;
 - b. Misrepresent itself and Pass off its unauthorized, spurious and substandard products and services as that of the Complainant; and

- c. Misappropriate the Complainant's reputation, goodwill and customer loyalty for its own wrongful profits.
- iii. It is further submitted by the Complainant that the impugned domain name hosts an imposter website and the Respondents are using Complainant's well-known and registered marks on the said website for promoting goods/services which are identical to goods/services offered by the Complainant under the said marks.

c) The domain name was registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the .IN Policy)

- Complainant asserts that the domain name <eurekaforbes-ro.in> was registered and is being used in bad faith.
- ii. Complainant contends that the Respondent registered the disputed domain name in bad faith seeking to somehow attract the existing and potential customers of the Complainant, for commercial gain. Complainant further contends that Respondents have deceived the unwary customers, who may have availed the Respondents' products and services under confusion that the said products and services are offered by or are affiliated by the Complainant.
- iii. It is submitted by Complainant that in addition to causing deception and cheating the unwary customers, the Respondents by using the domain

name <eurekaforbes-ro.in> and creating the impugned website, are putting life and liberty of consumers at risk. The adoption and use of impugned domain name has grave consequences in terms of personal safety of the Complainant's existing and potential customers, who may allow the Respondent and/or its staff, into their premises, under the belief that they are associated with the Complainant Company. Such misrepresentation and cheating by way of impersonation, can have dire consequences involving threat to life and liberty. It is therefore submitted that in addition to causing blatant infringement of the Complainant's exclusive rights, the Respondent also pose grave danger to the customers, who are entrapped through the impugned domain name. The Complainant claims that the impugned domain name is thus registered under bad faith and hence be deleted / handed over to the Complainant.

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iv. In addition, the Complainant has put on record various cases to establish that Respondents are habitual infringers. Present Complainants have previously obtained Awards against the present Respondents in many cases such as, Eureka Forbes Limited Vs. RO Care India and Ors. (INDRP Complaint Nos. 1023/2018), Eureka Forbes Limited Vs. RO Care India and Ors (INDRP Case No. 1050/2018) and Eureka Forbes Limited vs. RO Care India and Ors. (Award dated January 28, 2019) in respect of domain names quaguard-ro-co.in, www.aquaguard-ro-customer-care-.in and <a quaguard-ro-service-centre.in respectively.

5.2 Respondent

As per the INDRP Rules of Procedure, NIXI had forwarded a copy of the Complaint along with all annexures to the Respondent with a copy marked to Complainant and this Arbitral Tribunal.

On January 25, 2019 this Tribunal issued a notice to Respondent directing it to file a response within 10 days. Thereafter, as a last opportunity, another notice was issued to the Respondent by this Tribunal, on February 4, 2019, directing it to file its response within 3 days. However, no response was received from Respondent.

Absent a response from Respondent thereto or any intimation by Respondent of its desire to furnish a response, the matter has proceeded *ex-parte*.

6. Discussion and Findings

As per Paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), 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:



- The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights or legitimate rights in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

6.1 Identical or confusingly similar trade/service mark

As per the WHOIS records, the disputed domain name <eurekaforbes-ro.in> was registered on June 21, 2014.

Complainant is the proprietor of the registered trade mark EUREKA FORBES and i. EUREKA FORBES formative marks in diverse classes in India. To substantiate the same, Complainant has placed on record copies of extracts from the online records of the Trade Marks Registry for the marks FORBES, EUREKA FORBES and its formative marks in India. Specifically, in India, Complainant's earliest registration for the mark "EUREKA FORBES" in the name of Complainant dates back to November 28, 1989 in Class 16 under application number 520403. Similarly, the earliest registration for the mark FORBES in the name of Complainant dates back to February 19, 2003 in Classes 1 and 33 under application numbers 1176321 and 1176289 respectively. Though the said applications are pending renewal, it does evidence prior statutory rights of Complainant in the mark EUREKA FORBES. The earliest registration for EUREKA FORBES formative mark in the name of Complainant is for the mark 'EUREKA FORBES HOME STORE' in Classes 7 and 16 under numbers 1178687 and 1178696 respectively. These applications date back to February 27, 2003.



The disputed domain name incorporates the mark EUREKA FORBES in its entirety. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed* (INDRP/278) as well as in *Indian Hotels Company Limited vs. Mr. Sanjay Jha* (INDRP/148) that when a disputed domain name incorporates a mark in entirety, it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. Similarly, in case of *Farouk Systems Inc. v. Yishi*, (WIPO Case No. D2010-006), it has been held that the domain name wholly incorporating a Complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the additions or deletions of other words to such marks.

As can be seen from above, Complainant operates the website www.eurekaforbes.com and has secured registrations for the mark EUREKA FORBES and its formative marks the earliest of which goes back to the year 1989. The Complainant also owns copyright in 'EUREKA FORBES Your Friend for Life Logo" since May 27, 2014. The Respondent on the other hand registered the domain <eurekaforbes-ro.in> subsequently i.e. on June 21, 2014.

In the view of the foregoing discussions, Complainant has satisfied this Tribunal that:



i. The domain name in question <eurekaforbes-ro.in> is phonetically as well as visually identical to Complainant's prior registered trade marks EUREKA FORBES, its formative marks and Complainant's website <www.eurekaforbes.com>.

ii. It has both prior statutory and proprietary rights in respect of the markEUREKA FORBES and its formative marks.

6.2 Rights and legitimate interests

Complainant has asserted that Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 7 of the INDRP enumerates three circumstances (in particular but without limitation) and if the Arbitrator finds that the Registrant has proved any of the said circumstances, the same shall demonstrate its rights to or legitimate interest in the disputed domain name. The said paragraph is reproduced herein under:

"Registrant's Rights to and Legitimate Interest in the Domain Name - Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interest in the domain name for the purposes of Paragraph 4 (ii):



 Before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name with a *bona fide* offering of goods or services;

- ii. The Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- iii. The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleading divert consumers or to tarnish the trademark or service mark at issue."

The impugned website www.eurekaforbes-ro.in redirects to another website

Further, there is no evidence to substantiate that the Respondent was commonly known by the disputed domain name; or has made fair use of the disputed domain name or has demonstrated any use prior to the established rights of the Complainant. In fact, no use of the impugned domain name is on record.

In addition, as observed by the panel in the case of *International Hotels v. Abdul Hameed* (INDRP/278), it is well established, that trade mark registration is recognised as *prima facie* evidence of rights in a mark. Complainant, in the instant case, is the owner of the registered trademark EUREKA FORBES and its formative mark in India. Complainant's registration in India predates registration of the impugned domain name by Respondent and thus has sufficiently demonstrated its rights in the trade mark EUREKA FORBES and its formative marks.

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Further, it is a settled position that if Respondent does not have trade mark right in the word corresponding to the disputed domain name and in the absence of evidence that Respondent was commonly known by the disputed domain name, the Respondent can have no right or legitimate interest [See *Shulton Inc. vs. Mr. Bhaskar*, INDRP/483-<'oldspice.in'>].

In view of the foregoing, it is evident that Respondent has no rights or legitimate interests in the disputed domain name.

6.3 Bad faith

Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith. The said paragraph is reproduced herein under:

"Evidence of Registration and use of Domain Name in Bad Faith: For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

i. Circumstances indicating that the Registrant 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 bears the name or is the owner of the trademark or service mark, or to 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

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- ii. the Registrant 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 Registrant has engaged in a pattern of such conduct; or
- iii. by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant'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 the Registrant's website or location."

The following clearly establishes bad faith:

- (i) Arbitral awards placed on record by Complainant demonstrate that the Respondents have, in the past, created domain names comprising Complainants mark AQUAGUARD. This conduct shows that the Respondents are habitual infringers and constitutes bad faith within Paragraph 6(ii) of INDRP mentioned above.
- (ii) The redirected website which reflects use of the Complainant's marks

 EUREKA FORBES evidences that the Respondent has not used the disputed

 domain name in connection with *bona fide* offering of goods/services. Such
 substantial use of Complainant's mark EUREKA FORBES on the website of
 Respondents indicates towards an attempt to ride on the goodwill and

reputation of the Complainants and attracting the internet users by representing to them that Respondents are affiliated to the Complainant. The factum of diverting users to a domain comprising Complainant's trade mark (business name) without consent constitutes bad faith (see: *DELL Inc. v. Varun Kumar Laptop Service Center (INDRP/920 (<dellservicescenterghaziabad.in>)*. Hence the conduct of Respondents amounts to bad faith under Paragraph 6(ii) of INDRP.

- (iii) From the records, it also appears that by registering the impugned domain name, the Respondent has attempted to attract internet users by creating headers such as Eureka Forbes Complaint number" and "Eureka Forbes tollfree number", "Eureka Forbes water purifier price list" and "EUREKA FORBES repair centre" thereby creating likelihood of confusion with the Complainant's mark/source of origin. See Colgate Palmolive Company and Colgate Palmolive (India) Ltd. v. Zhaxia, INDRP/887 (<colgate.in>). Hence the conduct of Respondents amounts to bad faith under Paragraph 6(iii) of INDRP.
- (iv) The Respondent has not placed any evidence on record to show it's bonafide use of the impugned domain name. Let alone providing evidence, the Respondent has not contested the matter. In *Compaq Computer Corporation v. Boris Beric* (WIPO Case No. D2000-0042), it has been held that Respondent's failure to submit any evidence, of any actual or contemplated *bona fide* use, to rebut Complainant's allegations, inter alia, amounts to use of domain name in bad faith.

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This panel further notes that the impugned domain name 'eurekaforbes-(v)

ro.in' redirects to the website <www.ro-customer-care-number.com>. This

shows that the impugned domain name is not being used by Respondents.

Therefore, retention of the same amounts to "bad faith".

In view of the foregoing, the panel is of the view that Respondent has registered

the domain name <eurekaforbes-ro.in> in bad faith.

7. Award

From the foregoing findings, it is established beyond doubt that (1) the impugned domain

name is confusingly similar to the reputed mark EUREKA FORBES and its formative

marks which is proprietary to the Complainant, (2) the Respondent has no rights or

legitimate interests in respect of the disputed domain name, and (3) the domain name is

registered in bad faith.

Thus, in accordance with the Policy and Rules, this Arbitral Tribunal directs the

Respondent to immediately transfer the disputed domain name <www.eurekaforbes-

ro.in> to the Complainant.

The parties shall bear their own cost.

Dated: February 27, 2019

C.A. Brijesh

Sole Arbitrator

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