

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

Hero MotoCorp Limited

34, Basant Lok

Vasant Vihar

New Delhi – 110057

India

.... Complainant

Versus

Rashmi Singh

Anna Road

Warkam, Vapi

Gujarat- 369191

India

.... Respondent

1. The Parties

The Complainant is **Hero MotoCorp Limited**, with its principal place of business at 34, Basant Lok, Vasant Vihar, New Delhi – 110057, India (hereinafter referred to as the **Complainant**).

The Respondent is **Rashmi Singh**, of Anna Road, Warkam, Vapi, Gujarat – 369191, India (hereinafter the **Respondent**).

2. The Domain Name and Registrar

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

3. Procedural Timeline

October 11, 2018: The .INRegistry appointed Mr. C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.

October 11, 2018: Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.

October 18, 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.

October 19, 2018 : Arbitral Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorised Representative and NIXI, directing the Respondent to file its response, if any, within 10 days.

October 24, 2018 NIXI informed the Arbitral Tribunal that the courier agency was unable to deliver the hard copy of Complaint to the Respondent due to incomplete address and switched off phone number. Since electronic copy of the Complaint along with annexures were forwarded to the Respondent at its email address mentioned in the Whois records on October 18, 2018 and there was no bounce back/delivery failure notification, the said email was considered as deemed service to the Respondent.

October 30, 2018 : Arbitral Tribunal, as a last opportunity, and in interest of justice granted the Respondent additional time of 7 days to file its response, if any.

November 12, 2018 : The Tribunal addressed an email to the parties intimating that an Award shall be passed on the basis of the material



available on record.

The language of the proceedings shall be English.

4. Factual Background

4.1. Complainant's Activities

The Complainant states, *inter alia*, that it is a part of the HERO group of companies, and is engaged in the manufacturing and sale of bicycles and parts thereof since 1950. Over the period of time, HERO group of companies have diversified its business activities into manufacturing and selling of automobiles (two wheelers), its parts and fittings, financial solutions, insurance, investments, planning, advisory, execution and monitoring of investments.

Incorporated on January 19, 1984, the Complainant, today, is the largest manufacturer of motorcycles and scooters having its global presence in about 35 countries and cumulative sales of more than 84 million two wheelers since its inception. It is further stated by the Complainant that, it is world's number one two-wheeler manufacturing company for 17 consecutive years and has a market share of 36.9% in the domestic two wheeler market and a market share of 51.1% in the domestic motorcycles.



The Complainant further states that, since its incorporation, it has spent worldwide huge amount of money in the publicity, advertisements and promotion of their goods and services under the mark HERO and has reproduced a table reflecting its advertising expenditures alongwith revenue figures in India from the years 2012 – 2018, a perusal of the same reflects the revenue and advertising expenditure for the year 2018 in the region of 33, 397 Cr and 837.65 Cr respectively and therefore, the Complainant submits that the mark HERO and Hero MotoCorp has today, become synonymous with the products and services of the Complainant.

The Complainant has also listed out various awards and recognitions received by it from the year 2012 - 2018 under the mark HERO, for instance the Complainant was awarded the 'Business Leader in Automobiles (two-wheelers)' at the NDTV Profit Business Leadership Awards in the year 2012; the 'Most Trusted Brand (2-Wheelers)' by Brand Equity in the year 2013. The Complainant also received the 'NDTV Manufacturer of the year' and 'Best Launch – Two wheeler at the CNB Auto Expo Awards for Excellence' in the years 2017 and 2018 respectively.

4.2. Complainant's use of 'HERO'

The trade mark HERO was adopted by Hero Group of Companies in the year 1950 and the Complainant has been using the mark/name HERO since the year 1984 in connection with its on going business and claims to be the registered proprietor of trademark and domain name comprising HERO in numerous countries all over the world including India.



The Complainant further states that, it markets, sells and advertises its products under the mark HERO and Hero MotoCorp, which also forms a part of its trade name. In this regard, Complainant has filed as **Annexure II** a copy of the certificate of incorporation of the Hero MotoCorp Ltd. In addition, a company, Hero InvestCorp Private Limited was incorporated on December 04, 1981, with the objective to apply for, register, own, develop, create, purchase or by other means acquire and protect, prolong and renew any IPR, goodwill etc. Having said that, it is submitted by the Complainant that, the mark HERO and the H device forms the forepart and is the most distinguishing feature of the Complainant's corporate name and its other group companies.

It is further submitted by the Complainant that, it operates through its main website www.heromotocorp.com and markets, sells and advertises its products under the mark HERO. The said website is interactive in nature and *inter alia* provides an online platform to the prospective dealers for applying dealership of the Complainant. The Complainant in this regard has marked and annexed as **Annexure III**, the Whois records of the said domain, which reflects the date of creation of the said domain as May 17, 2011 in Complainant's name and is due to expire on May 17, 2021.

4.3 Complainant's Trade Mark HERO

Complainant, through its IP holding company Hero InvestCorp Private Limited claims to be the owner of the trade marks HERO, H device and its formative marks globally in around 122 jurisdictions including India, Republic of Liberia,

Malawi, Djibouti etc. A perusal of **Annexure IV** confirms Complainant's aforesaid claims. In addition, the Complainant has reproduced a table with Indian Trade Mark registrations comprising the mark HERO. A perusal of the table indicates that the earliest registration of the mark HERO dates back to the August 26, 1993 in Class 06 and earliest registration for the mark Hero MotoCorp dates back to the year May 09, 2011 in Class 09. The complainant has filed as **Annexure V**, copies of registration certificates / online records of the Trade Marks Registry to substantiate its aforesaid claims.

4.4 Respondent's activities and its use of HERO

The domain name <heromotocorps.in> was registered in the name of the Respondent on August 02, 2018. The Complainant submits that the domain name <heromotocorps.in>, points to an identical and confusingly similar website, wherein the Respondent has blatantly copied the Complainant's website content, page by page, with minor alterations with respect to the toll-free number and email addresses which bear no association to the Complaint. The email addresses being info@heromotocorps.in and dealership@heromotocorps.in also comprises the Complainant's mark HERO / Hero MotoCorp. In addition, as submitted by the Complainant, the Respondent has uploaded an identical form for dealers. The Complaint further submits that, the website www.heromotocrops.in has an identical interface, layout, description, images and logos to that of the Complainant's, which therefore, indicates unauthorised use of the marks HERO, H device and trade name – Hero MotoCorp and the same is clearly discernable from **Annexure VIII** provided by the Complainant, which provides screenshots



of its website www.heromotocorp.in and of the impugned website www.heromotocorps.in.

The Complainant further states that, it had filed two complaints with WIPO for domain names <heromotocorps.com> and <herodealership.com> bearing Nos. (LBA) D2018-1480 and (TLE) D2018-1744, respectively and had also filed two copyright and trade marks complaints with the Registrar of the aforesaid domains, bearing incident ID: 36400734 and 36400953 and Incident ID: 36574632 and 36574402 on July 02, 2018 and July 09, 2018, respectively. Whereafter, the Registrar directed the Respondent to pull down the infringing content from the aforesaid websites and had also suspended the same. With respect to the extant domain in question i.e. <heromotocorps.in> a similar complaint has been filed by the Complainant with the Registrar i.e. GoDaddy and result of the same is awaited. It is thus submitted by the Complainant that, the pattern of the websites www.heromotocorps.com, www.herodealership.com and www.heromotocorps.in is identical. The extant impugned website i.e. www.hereomotocorps.in is a replica of the websites www.heromotocorps.com and www.herodealership.com. It is submitted by the Complainant that, the aforesaid domains were created in Gujarat. Further, the Toll Free number mentioned on the domain names <heromotocorps.com> and <herodealership.com> is same as that of the impugned domain name <heromotocorps.in>. In view of the aforesaid, it is apprehended by the Complainant that, the Registrant of the domain names <heromotocorps.com>, <herodealership.com> and <heromotocorps.in> is same and is a habitual offender. A perusal of **Annexure – VII**, being the complaints filed with the WIPO confirms the Complainant's aforesaid claims. It appears



from the website of WIPO that the domain names <heromotocorps.com> and <herodealership.com> were directed to be transferred to the Complainant *vide* order dated August 24, 2018 and October 15, 2018, respectively.

It is further submitted by the Complainant that, the Respondent *vide* domains <heromotocorps.com> and <herodealership.com> has minted lakhs of rupees from the prospective dealers of the Complainant and apprehends that the Respondent will continue to do so, by creating new domains unless strict preventive measures against the Respondent are taken, which included transferring of the impugned domain name in the name of the Complainant.

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 HERO


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 mark HERO and variants thereof in various countries of the world in different classes and the name/mark HERO is internationally recognised and is

inherently distinctive. Copies of extracts of these trade mark registrations, are attached at **ANNEXURE - IV and ANNEXURE - V.**

- ii. Complainant submits that the disputed domain name is identical or confusingly similar to the trade mark in which the Complainant has rights. The domain name <heromotocorps.in> incorporates the term HERO and HERO MotoCorp in its entirety. Further, it has been submitted by Complainant that, except the addition of letter 's', the entire domain name <heromotocorps.in> is identical to the Complainant's domain name <heromotocorp.in> which is therefore, bound to cause confusion and deception in the minds of the public that Respondent has some association or affiliation with Complainant which is not the case.
- iii. The Complainant has placed reliance on plethora of cases. For instance, by placing reliance on *Quixtar Investments, Inc. v. Dennis Hoffman* (WIPO Case No. D2000-0253) and *Charming Charlie LLC v. Normand Clavet* (INDRP/859), the Complainant submits that, the incorporation of a trade mark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered marks. The Complainant has also placed reliance on *PRL USA Holdings, Inc. v. Spiral Matrix* (WIPO Case No. D2009-0009) wherein it was observed by the panel that 'it is a well established principle that the addition of descriptive or non-distinctive terms to a complaint's trade marks in a domain name does not dispel confusing similarity.'
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- iv. The complainant has also placed reliance on *Bharti Airtel Limited v. Sunita Bhardwaj(INDRP/837)*, wherein it was held that 'the respondent has registered the disputed domain name 'airtelservices.in' using the mark of the complainant in toto which creates confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement in relation to the impugned domain name.
- v. 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. It is the contention of the Complainant that Respondent has no rights or legitimate interests in the disputed domain name nor in the trade marks HERO, HeroMotoCorp, H device and trade name HERO MOTOCORP LIMITED.
- ii. The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in Paragraph 7 of the .IN Policy, in order to demonstrate rights or legitimate interests in the Domain Name.
- iii. Complainant submits that it has legitimate interest in the well-known mark 'HERO' as the same was adopted by the Complainant in 1950's. Further, the domain <heromotocorp.in> is registered in the

Complainant's name since May 17, 2011, which is much prior to the Respondent's date of registration of the domain <heromotocorps.in> i.e. August 02, 2018.

- iv. It is further submitted by the Complainant that the content of the impugned website www.heromotocorps.in has been blatantly copied from the Complainant's website www.heromotocorp.in which is likely to mislead customers into believing that the impugned domain / website originates from the Complainant or has been licensed / authorized for the same. To substantiate the same, the Complainant has placed reliance on *Croatia Airlines d.d. v. Modern Empire Internet Ltd. (WIPO Case No. D2002-0455)*, wherein it was held that 'use of a domain name that is identical or confusingly similar to a trademark that applies to goods sold by Respondent is not bona fide use, if the Domain Name serves as a bait to attract customers to Respondent's website, rather than merely as a descriptor of the Respondent's products'.
- v. Further, by placing reliance on *eBay Inc. v. Akram Mehmood (WIPO Case No. DAE2007-0001)*, the Complainant submits that, 'rights or legitimate interests cannot be created where the user of the Domain Name at issue would not choose such a name unless he was seeking to create an impression of association with the Complainant.
- vi. The Complainant asserts that, the Respondent has registered the infringing domain name and created an identical website to trade on Complainant's goodwill and to divert traffic to its website as well as tarnish the goodwill of the Complainant by impersonating the

Complainant for illegal acts. In this regard, the Complainant has placed reliance on *Philip Morris Inc. v. Alex Tsykin* (WIPO Case No. D2002-0946) wherein it was held that 'use, which intentionally trades on the fame of another cannot constitute *bona fide* offering of goods or services'.

- vii. To substantiate, that the Respondent does not have rights or legitimate interests in respect of the domain name, the Complainant has also placed reliance on various other cases such as *Bumble & Bumble LLC v. Gladyshev*, WIPO Case No. D2008-1956, *Toyota Jidosha Kabushii Kaisha v. Double TIME Jazz* FA0205000113316 (2002), *Avon Prods, Inc. v.s Lee* (WIPO Case No. D2001-0272) etc.

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

- i. Complainant asserts that the domain name <heromotocorps.in> was registered and is being used in bad faith.
- ii. Complainant contends that, it is apparent that the Respondent knowingly and deliberately registered the disputed domain name in bad faith to gain illicit profits from the Complainant's goodwill and renown.
- iii. It is submitted by Complainant that by using the domain name <heromotocorps.in> and creating a mirror image website, the

Respondent is intentionally attempting to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the websites.

iv. The Complainant further asserts that, by creating an identical website with identical layout, establishes grounds for bad faith and evidences that the Respondent has created the same with the dishonest intention to:

- (a) defraud and cheat the customers, dealer and other relevant stakeholders of the Complainant;
- (b) mislead and/or divert the consumers/trade channels and the public at large or to sell the said domain name to the Complainant for profit.
- (c) range a cyber-attack on the Complainant in a bid to extort monetary benefit from its illegal and unethical activities.
- (d) disrupt the business of the Complainant by misrepresenting that the domain belongs to Complainant.
- (e) gain commercial benefit illegally.

v. In addition, it is submitted by the Complainant that, it cannot be a matter of sheer coincidence that the overall content, structure, design and layout of the impugned domain names <heromotocorps.com>, <herodealership.com> and <heromotocorps.in> is identical. This not only evidences the bad faith in registration of the impugned domain names but also to the fact that the Respondent is carrying out the said

activities with the sole intention to defraud the trade channels and customers of Complainant.

- vi. The Complainant has also asserted that the Respondent's bad faith is substantiated by the fact that the impugned domain name was created by giving fake name, address and contact details in order to conceal the identity of the true Registrant and to ensure that the Complainant cannot identify the actual entity and/or individual behind the impugned domain name.
- vii. To substantiate the aforesaid, the Complainant has placed reliance on *Hero InvestCorp Pvt. Ltd v. Muzzafar Hussain Barchiwale (WIPO Case No. D2017-1957)*, wherein the Panel ordered to transfer the domain <herohousingfinance.com> in Complainant's favour, finding that the Respondent had failed to establish any rights or legitimate interests in the disputed domain name and was registered by the Respondent in bad faith.
- viii. In addition, the Complainant has placed reliance on various cases to establish the Respondent's bad faith, such as, *America Online, Inc. v. Cyber Network LLP (WIPO Case No. D2000-0977)*; *Identigene, Inc. v. Genetest Laboratories (WIPO Case No. D2000-1100)*; *InfoSpace.com, Inc. v. Hari Prakash (WIPO Case No. D2000-0076)*. It was held in the aforesaid cases that, 'Respondent's use of the domain name at issue to resolve to a web site where services are offered to internet users is likely to confuse the user into believing that Complainant is the source of or is

sponsoring offered at the site. This constitutes evidence of bad faith registration and use under the policy, paragraph 4(b)(iv).

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 on October 18, 2018 with a copy marked to Complainant and this Arbitral Tribunal.

On October 19, 2018, 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 October 30, 2018, directing it to file its response within 7 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:

- i. 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

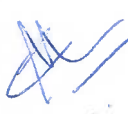
As per the WHOIS records, the disputed domain name <heromotocorps.in> was registered on August 02, 2018.

Complainant is the proprietor of the registered trade mark HERO and Hero MotoCorp in diverse classes and has applications/registrations for the said marks in various jurisdictions of the world including India. To substantiate the same, Complainant has placed on record copies of extracts from the online records of the Trade Marks Registry for the trade mark HERO, Hero MotoCorp and its formative marks in India as well as from other jurisdictions of the world. Specifically, in India, Complainant's earliest registration for the mark HERO dates back to August 26, 1993 under No. 605248 in Class 06 and earliest registration for the mark Hero MotoCorp dates back to May 19, 2011 under No. 2146781 in Class 09. Further, Complainant also claims to own the domain name

comprising 'HERO' and 'Hero MotoCorp' such as <heromotocorp.in>, <heromotocorps.com>, <herodealership.com> etc. with the registration of the domain <heromotocorp.in> dating back to May 17, 2011. The Complainant further claims to have been substantially and continuously using the mark/name HERO and Hero MotoCorp in relation to its business/products/services.

The disputed domain name incorporates the mark HERO / Hero MotoCorp 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 has registered the domain name <heromotocorp.in> (created on May 17, 2011), and has filed various domain name complaints with WIPO for the domains <heromotocorps.com> and <herodealership.com> for securing its rights in the mark HERO and Hero MotoCorp and is doing/operating business/website under the said domain names / trade name Hero MotoCorp and trade mark HERO / Hero MotoCorp. The



Respondent on the other hand registered the domain <heromotocorps.in> much subsequent to Complainant i.e. on August 02, 2018.

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

- i. The domain name in question <heromotocorps.in> is phonetically as well as visually identical to Complainant's prior registered trade marks HERO and Hero MotoCorp and that the ccTLD ".in" does nothing materially to distinguish the same from Complainant's mark HERO and Hero MotoCorp; and
- ii. It has both prior statutory and proprietary rights in respect of the mark HERO and Hero MotoCorp.

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):

- i. 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 misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The fact that the impugned website www.heromotocorps.in points to a website with identical layout and also reflects use of the Complainant's marks HERO and Hero MotoCorp evidences that the Respondent has used the disputed domain name with a *mala fide* and illegitimate intention. Screenshots evidencing the same have been filed by the Complainant. Further, Complainant has also alleged that such use of the mark HERO and Hero MotoCorp in Respondents website is likely to create confusion in the minds of public, believing Respondent to be associated with the Complainant.

Further, there is no evidence to substantiate that the Respondent is commonly known by the disputed domain name; or has made fair use of the disputed domain name.

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 HERO and Hero MotoCorp in various jurisdictions in the world; and has secured registration in India which predates registration of the impugned domain name by Respondent and thus has sufficiently demonstrated its rights in the trade mark HERO and Hero MotoCorp.

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
- 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) That the impugned domain name was created with a fake name, address and contact details in order to conceal the identity of the true registrant.
- (ii) That the Respondent is a habitual infringer and has in the past created websites www.heromotocorps.com and www.herodealership.com which have been blocked by GoDaddy after investigation.
- (iii) The overall content, structure, design and layout of all the impugned websites discussed above are identical to that of the Complainant. This clearly shows bad faith to cheat and deceive internet users/unwary customers for illicit gains.
- (iv) From the records, it appears that by registering the impugned domain name, the Respondent has attempted to attract internet users 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>). 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>))

In view of the foregoing, the panel is of the view that Respondent has registered the domain name <heromotocorps.in> in bad faith.



7. Award

From the foregoing findings, it is established beyond doubt that (1) the domain name is confusingly similar to the reputed mark HERO and Hero MotoCorp 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 <heromotocorps.in> to the Complainant.

The parties shall bear their own cost.

Dated: December 18, 2018



C.A. Brijesh

Sole Arbitrator