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| Unique Doc. Reference | : SUBIN-DL06421631893221S |
| Purchased by | : JAYANT KUMAR |
| Description of Document | : Article 12 Award |
| Property Description | : Not Applicable |
| Consideration Price (Rs.) | : 0 (Zero) |
| First Party | : JAYANT KUMAR |
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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
IN THE MATTER BETWEEN

Lyft, Inc.

v.

Linda Hac

Complainant

Respondent

Statutory Alert:

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ARBITRATION AWARD

1. The Complainant is Lyft, Inc., a corporation organized and existing under the laws of the State of Delaware and having its office at 185 Berry St., Suite 5000, San Francisco, California, USA.
2. The Respondent is Lina Hac having address at 1935 Elkview Drive, Riverdale – 30236, USA.
3. The Arbitration pertains to the disputed domain name <lyft.co.in> registered on May 23, 2013 by the Respondent. The registrar for the disputed domain name is Endurance Domains Technology LLP.
4. NIXI has appointed the undersigned as the Sole Arbitrator to decide the instant complaint. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI on November 2, 2019.
5. The Complaint was handed over to the sole arbitrator by NIXI on November 5, 2019. A copy of the complaint along with Annexures was served upon the Respondent by NIXI. The Respondent, vide email dated November 13, 2019, was granted 2-weeks time to file its Reply to the Complaint. The Respondent, vide email dated November 21, 2019 filed its Reply. The Respondent did not serve an advance copy of the Reply upon the Complainant. A copy of the Reply was therefore served upon the Complainant by the undersigned vide its email dated November 24, 2019 and the Complainant was directed to file its Rejoinder, if any, to the Reply by December 6, 2019. The Complainant filed its Rejoinder vide its email dated December 6, 2019. A copy of the Rejoinder was served upon the Respondent as well. The pleadings were then complete. However, the Respondent thereafter, without any direction or leave from the Arbitral Tribunal, filed sur-rejoinder vide its email dated December 10, 2019. A copy of the same was not served upon the Complainant. Neither the

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Complainant nor the Respondent filed physical copy of their Reply/Rejoinder/Sur-rejoinder.

Complainant's Submissions

6. The Complainant states that it was founded in the year 2007 under the corporate name Bounder Web, Inc., which was later changed to Zimride, Inc. in the year 2008. The company focused on linking drivers with passengers on Facebook Connect for ride sharing and car-pooling intercity long distance car rides.
7. The Complainant adopted the mark LYFT in the year 2012 as a trademark and then also changed its corporate name to Lyft, Inc. in 2013. It offers an on-demand ride-sharing network for transportation and facilitates peer-to-peer ridesharing by connecting passengers who require a ride with drivers who have cars via its mobile phone application platform, among other services.
8. The Complainant further states that it was ranked #19 in the Unicorn List 2016 carried out by Fortune Magazine for successful start-ups and has a revenue of US\$ 2.2 billion in 2018. It is stated to have delivered one billion rides as of 2018, and has established one of the largest transportation networks in United States of America and Canada with 18.6 Million active riders and over 1.1 million drivers who provided rides for the quarter ending on December 31, 2018.
9. The Complainant owns and operates a website under the domain name <lyft.com> since 2012. It also owns <lyftbusiness.com> since 2017. It also has a mobile application under the trademark LYFT which has been downloaded over 10 million times on Google Play Store and has a rating of 4.9 out of 5.
10. The Complainant further submits that in the year 2015 it announced a strategic alliance with India's service company Ola Cabs, where customers of Ola Cabs from India visiting the United States would be able to use the Ola app during



their travels in the United States and avail the services of the Complainant, while the customers of the Complainant would be able to visit the LYFT app during their travels in India and use the services of Ola Cabs.

11. The Complainant's mark LYFT has featured in various Indian newspapers including Business Insider India, Times of India, The Indian Express, Economic Times, Business Standard and Live Mint, and thus, it is contended that the Indian people are aware of the mark LYFT.
12. The Complainant states to have registered the mark LYFT in Argentina, ARIPO, Brazil, Australia, China, Denmark, EUIPO, Germany, Italy, Japan, Malaysia, New Zealand, Singapore, Russian Federation, Sweden, UAE, USA and many other jurisdictions. In India, it owns trademark Registration No. 2784691 for the mark LYFT in Class 25 and 2784692 for the mark LYFT in Class 39, both as of August 1, 2014. It also owns trademark registrations in India for the LYFT logo mark. It has successfully enforced its rights in the mark LYFT before the Hon'ble Delhi High Court in CS(Comm) 461/2019 in *Lyft, Inc. v. Goer Techno Infra Private Limited*.
13. The Complainant further submits that the Respondent is the registrant of over 220 domains, several which are merely ".in" and ".co.in" extensions of substantially well-reputed foreign companies, start-ups, names of popular mobile applications.
14. The Respondent is also offering the disputed domain name for sale and thus, there is a manifest evidence of bad faith use and registration.
15. On the basis of the above, the Complainant submits that disputed domain name be transferred to it.

Respondent's Submissions

16. The Respondent filed its Reply to the Complaint and stated that it registered the disputed domain name in 2013 and the Complainant had no civil rights in the

mark LYFT in India at that point of time. It further submitted that there are many other people which are using the mark LYFT and therefore, registration of the domain name should be on the basis of "*first register, first service*".

17. The Respondent emphasized on the fact that no one knew about the Complainant in India in May, 2013 viz. when the Respondent registered the disputed domain.
18. The Respondent also submitted that the Complainant cannot claim exclusivity in the mark LYFT before the date of registration of the disputed domain name.
19. The Respondent submitted that it registered the disputed domain name for investment purposes. It was not aware of the Complainant at the time of registering the disputed domain name. It has currently parked the disputed domain name which brings a meagre income. The Respondent has shown its willingness to change the contents of the parking page if the Complainant has a problem with contents of the parking page.
20. The Respondent also submits that the registration of other domain names by it, as alleged by the Complainant, are irrelevant for the present dispute and the Respondent can register as many domains as it wants to.
21. The Respondent further submitted that the Complainant's behaviour is reverse-hijacking.

Complainant's Submission in Rejoinder

22. The Complainant submitted that the Respondent cannot justify its actions on the ground that various other third parties are also using the mark LYFT.
23. It further submitted that the Respondent's contention of registering the disputed domain name for "investment purposes" is an admission that her intention is to buy the domain name and unlawfully exploit the same to earn money with full



knowledge that the domain is likely to become valuable in future. It shows that the Respondent registered the disputed domain name with a commercial intent.

24. The Complainant denied that the domain name registration is on the basis of "*first register, first service*". It stated that since the Respondent is offering the disputed domain name for sale, this is sufficient to conclude a finding of bad faith registration and use.
25. The Complainant also denied the allegations of reverse-hijacking, and stated that it has bonafidely filed the present Complaint.
26. The Respondent filed its sur-rejoinder without any direction or seeking leave of the Arbitral Tribunal. However, the same is being taken on record as it is only a reiteration of the contents of the Reply already filed by it. The Respondent, in its sur-rejoinder stated that LYFT is a four-letter word and is very common for investment in the world and there is nothing wrong in registering the said domain name for investment purposes. It also reiterated that the Complainant has not filed any evidence to show its business activities in India as of May, 2013 and therefore, Complainant is not entitled for India specific country code level domain name.

Discussion and Finding

27. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:
- a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
 - b. The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c. The Respondent's domain name has been registered and is being used in bad faith.



28. The Arbitrator finds that the Complainant has submitted sufficient documentary evidence to establish its rights in the mark LYFT. It has multiple trademark registrations for the mark LYFT in India. It owns trademark registrations for the mark LYFT in a number of other jurisdictions as well. The Arbitrator is convinced with the distinctive nature of and the Complainant's ownership in the mark LYFT. The disputed domain name incorporates the mark LYFT in entirety. Even the Respondent has also not disputed similarity of the disputed domain name with the mark LYFT and hence, the disputed domain name is held to be confusingly similar with the Complainant's mark LYFT.

29. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Respondent has not provided any reason or rationale for registering the disputed domain name or its rights in the mark LYFT. The Respondent has stated that it registered the dispute domain name for investment purposes. While registration of the domain name for investment purposes by itself is not barred in India, if the investment is with a view to encash upon the rights, goodwill and reputation of other's mark, the same cannot be permitted. The Respondent has parked the disputed domain name and is hosting a pay-per-click webpage thereat. This use of a domain name cannot be considered as a use for a *bona fide* offering of goods or services.

30. The Respondent has also not filed any evidence on record or even any submission to show that the Respondent has been commonly known by the disputed domain name or makes legitimate non-commercial fair use of the website linked to the disputed domain name. There is no force in the plea of the

Respondent that the Claimant had no physical presence in India at the time of registration of the disputed domain name. The burden was on the Respondent to establish its legitimate rights or interest in the disputed domain name, but it failed to discharge the burden. Based on the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

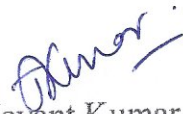
31. The Respondent has made no use of the domain name other than hosting a pay-per-click webpage thereat. It is offering the disputed domain name for sale and that is a sufficient evidence of bad faith registration and use. Furthermore, the Respondent has a pattern of registering domain names featuring third party marks, and that also corroborates bad faith on the part of the Respondent. In this regard, reliance can be placed on *Atlas Copco Aktiebolag v. Kentaur Trade & Marketing Consultancy, Henri H.J. van Muyden*, WIPO, D2005-0593 wherein the Panel held that *"this Panel finds, given the several instances of prior registrations referred to by the Complainant incorporating third party marks (or words likely to be confusingly similar to third party marks), that the Respondent has registered the Domain Name in order to prevent the Complainant from reflecting its mark in a the corresponding Domain Name and that there is evidence of a pattern of similar conduct in the past."*

32. The fact of passive holding of a domain name also permits an inference of registration and use in bad faith. Based on the above, the Arbitrator finds that the domain name was registered and used in bad faith by the Respondent.

Decision

33. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <lyft.co.in> be transferred to the Complainant.

Dated: January 7, 2020


Jayant Kumar
(Sole Arbitrator)