



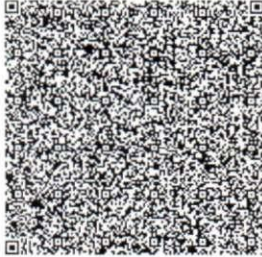
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Certificate No.	: IN-DL129991589741960
Certificate Issued Date	: 08-Feb-2016 02:25 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP17245568306541120
Purchased by	: ASHOK KR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ASHOK KR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: ASHOK KR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

The Goodyear Tire & Rubber Company
200, Innovation Way
Akron, Ohio 44316, United States of Amercia

.....Complainant

Vs.

Mr. Gao Gou
Yerect
Suite 1100, South Tower
175, Bloor Street East
Toronto, Ontario, M4W 3R8, CANADA

..... Respondent

Statutory Alert:

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A. THE PARTIES

The Complainant in this administrative proceeding is The Goodyear Tire & Rubber Company, a corporation organized and existing under the laws of the State of Ohio, United States of America having its corporate headquarters at 200, Innovation Way, Akron, Ohio 44316, United States of America.

The respondent in this proceeding is Mr. Gao Gou , Yerec Suite 1100, South Tower, 175, Bloor Street East, Toronto, Ontario, M4W 3R8, CANADA.

B. THE DOMAIN NAME, REGISTRAR AND REGISTRANT

The disputed domain name is **www.goodyear.in** and it is registered with IN Registrar d.b.a. inregistrar.com (R123-AFIN), Mitsui.in, Adarsh Palace, 118, Old Hanuman Lane, Kalbadevi Road, Mumbai- 400 002, India

C. PROCEDURAL HISTORY:

I was appointed as the Arbitrator by .In Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <**www.goodyear.in**>.

.In Registry has supplied the copy of the Complaint and Annexures to me.

On 03.12.2015, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the above mentioned email itself, the Tribunal requested the complainant to supply the copy of the complaint with annexure to the Respondent and to provide the tribunal with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 03.12.2015 with the instructions to file his reply within 15 days from the receipt of the stated email or the receipt of the copy of the Complaint, whichever is later.

The service of the consignment, sent by NIXI containing the complaint and the annexures was delayed as the same was destroyed by the courier agency. The consignment containing the complaint and the annexures was then handed over to another courier agency by NIXI for service upon the respondent at his residential address as would be evident from the emails dated 04.01.2016, and 07.01.2016 exchanged between NIXI and the Arbitrator. However, till



the date of passing the award no report was received from NIXI confirming service of hard copy of the complaint and annexures upon the respondent.

The soft copy of the Complaint and annexures were served on the respondent by NIXI on 20.01.2016 through Wet Transfer Facility and information in this regard was given to the Arbitrator vide email dated 20.01.2016. The complainant also got the soft copy of the complaint and annexures served on the email address of the respondent on 07.01.2016 as is clear from email dated 08.01.2016. Thus, it can be inferred that the respondent has been duly served on the email address given by him in WHOIS details.

The Respondent has failed to file his say/ reply to the Complaint of the Complainant. The Tribunal feels that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of this proceeding. Since he has failed to join the proceedings, or to file any response, the present award is passed on the basis of the pleadings and the documents, placed on record by the complainant and .IN Registry.

On perusal of the entire pleadings and the documents placed on record, the Arbitrator's finding is as under:-

D. FACTUAL BACKGROUND:

The following information is derived from the complaint and supporting evidence submitted by the Complainant.

E. COMPLAINANT:

The case of the Complainant is that:

1. The Complainant is a corporation organized and existing under the laws of the State of Ohio, United States of America, having its corporate headquarters at 200 Innovation Way, Akron, Ohio 44316, United States of America. The Complainant is one of the world's leading tyre companies and develops, manufactures, distributes and sells a wide variety of tyres and tubes, several lines of rubber and rubber-related chemicals as well as provides automotive repair services.
2. The Complainant submits that it was established more than a century ago, in the year 1898 in Akron, Ohio, USA. It is submitted that it initially comprised thirteen employees and manufactured bicycle and carriage tyres, rubber horseshoe pads and poker chips. Named after Charles Goodyear, the inventor of vulcanized rubber, the Complainant's tyres under the trade mark/name GOODYEAR quickly became popular as they were easily detachable and low maintenance. The Complainant also submits that it grew with the advent of the automobile and by 1926 it was the largest

rubber company in the world. The Complainant further states that it continues to be one of the leading manufacturers of tyres, tubes etc. in the world with one of the most recognizable brand names.

3. It is submitted that the Complainant has presence on six continents and operates in most regions of the world with 50 manufacturing facilities in over 22 countries and together with its international subsidiaries and joint ventures, develops, manufactures, markets and distributes tyres for most applications. The Complainant also submits that it operates approximately 1,200 tyre and auto service center outlets where it offers its products for retail sale and provides automotive repair and other services. It is submitted by the complainant that it is also one of the world's largest operators of commercial truck service and tyre retreading centers.
4. It is submitted that the success and recognition of the Complainant and/or its products under the trade mark GOODYEAR can be gauged from the numerous awards/accolades conferred upon them such as on July 10, 2008, the Complainant was recognized as one of America's most respected companies by the Reputation Institute, ranked 16th in the Forbes magazine's third annual listing of companies with the best reputations in the United States (2008), recognized as one of America's most reputable companies by *Forbes*, placing 38th on the magazine's sixth annual ranking of corporate reputations in the U.S.A. (2011), *Fortune* also included the Complainant in its list of the 10 best stocks for 2012 etc.
5. It is submitted by the complainant that the consumers in India have been familiar with the Complainant's trade mark/name GOODYEAR for generations. It is also submitted that the Complainant has been present in India for about 90 years through its subsidiaries/affiliates such as Goodyear India Limited, Goodyear South Asia Tyres Private Limited and has manufacturing facilities at Ballabgarh and Aurangabad. The Complainant submits that through its affiliates it is one of the largest tyre manufacturing companies in India in the passenger car and tractor tyre segments. The Complainant further submits that it has also been a pioneer in introducing tubeless radial tyres in this segment. The Complainant submits that in the year ending December 2011, the Complainant had sold 2.72 million automotive tyres and 1.628 million automotive tubes in India.
6. It is submitted that it is evident from the global as well as India specific net sales figures/revenues generated by the Complainant through sale of products/services

under the trade mark/name GOODYEAR during the period 2009-2014, that the products of the complainant command tremendous popularity.

7. It is submitted that the complainant actively advertises and markets its products and services under the trade/service mark/name GOODYEAR making them extensively available and known all across the world through various advertising, sales and distribution channels and media. The Complainant submits that it is famous throughout the world for GOODYEAR BLIMP, for advertising purposes and for use as a television camera platform for aerial views of sporting events. The complainant further submits that the first GOODYEAR BLIMP flew in 1925 and today it is one of the most recognizable advertising icons. Resultantly, the said trade mark has become a household name. The Complainant also submits that it has expended substantial monies/resources towards promotion of its products/services under the trade mark GOODYEAR.
8. It is submitted that the trade/service mark/name GOODYEAR, is registered and/or pending registration in numerous jurisdictions of the world such as Argentina, Australia, Austria, Bangladesh, Belarus, Benelux, Bhutan, Brazil, Brunei, Bulgaria, Cambodia, Cameroon, Canada, Chile, China, Denmark, Egypt, France, Great Britain, Germany, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kenya, Korea South, Kuwait, Macao, Malaysia, Mexico, Monaco, Morocco, Myanmar, Nepal, New Zealand, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Switzerland, Singapore, Spain, Sri Lanka, Sweden, Taiwan, Thailand, Turkey, United Arab Emirates, Uganda, Ukraine, Uruguay, United States of America, Vietnam, Zambia, Zimbabwe etc. with the oldest registration dating back to October 16, 1906 in the United States of America.
9. It is submitted that in India, the trade/service mark GOODYEAR and GOODYEAR formative marks are registered in respect of diverse goods and services falling in different Classes of the fourth schedule of the Trade Marks Act, 1999 with the oldest dating back to February 15, 1943 in Classes 7, 9, 12, 17 and 25.
10. It is submitted that the complainant has registered several top level domain names as well as country code top-level (CCTLD) domain names comprising the trade mark GOODYEAR including 'goodyear.com'; 'goodyear.co.in' etc. It is also submitted that the Complainant's websites are very popular amongst the internet users and

disseminate valuable information and are a source of knowledge of its products/business under the trade mark/name GOODYEAR.

11. It is submitted that the trade mark/name GOODYEAR represents important proprietary and statutory rights of the Complainant and that the said trade mark is representative of the Complainant, its products, brand identity, business reputation and public identification throughout the globe including India. The Complainant also submits that it has invested years of time, capital, efforts and resources and attained immense goodwill and reputation in the trade mark/name GOODYEAR and as a result of that a secondary meaning stands attached in respect of the said trade mark/name, which is exclusively associated by members of the trade and public with the Complainant and its products/services. It is further submitted that the complainant's said trade mark is extremely well-known through out the world.
12. It is submitted that the complainant was notified by one of the Outside Counsel that the domain name 'goodyear.in' was registered in India. It is also submitted that the complainant also learnt that several of its employees received solicitation emails attempting to sell 'goodyear.in' to them, which is clearly evidence of bad faith. It is submitted by the complainant that the address given by the Registrant is incorrect as the same pertains to the Australian Consulate-General and Trade Commission in Toronto and that even the telephone number appears to be incomplete/bogus. It is further submitted that as per the WHOIS records pertaining to the domain 'goodyear.in', the same was registered on July 9, 2013.
13. It is submitted that a review of the webpage www.goodyear.in reveals that it is merely a standard ad-referral sponsored link website, comprising the Complainant's trade mark GOODYEAR as well as links to competitors and other third party websites. It is submitted by the complainant that the Registrant is using the objectionable domain name to profit financially from consumer confusion inasmuch as, the Registrant directs the domain to a web page that is a parked pay-per-click or sponsored search portal. The complainant also submits that its research has revealed that the said domain is also parked for sale on 'sedo.com', a popular online domain market place, for trading of/monetization of domain names.
14. It is submitted by the Complainant that the online research has also revealed that the complete name of the Registrant's company is Yerect International Limited and the Registrant is a habitual cyber squatter. It is submitted that numerous UDRP/INDRP complaints have been filed against the Registrant/its company for registration of

domains comprising well-known marks such as 'hidglobal.biz', 'mastercardinternational.biz', 'breitling.in', 'zanussi.in' etc.

F. RESPONDENT:

1. The respondent in this proceeding is Mr. Gao Gou , Yerec Suite 1100, South Tower, 175, Bloor Street East, Toronto, Ontario, M4W 3R8, CANADA.
2. The respondent has failed to file his say/ reply to the Complaint of the Complainant within the stipulated time nor has he communicated anything on the complaint till the date of this award.

G. PARTIES CONTENTIONS:

1. Complainant

From the factual background given above, it is evident that in nutshell the contentions of the Complainant are as follows:

- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

2. Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

H. DISCUSSIONS AND FINDINGS:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

A fair opportunity had been given to the Respondent to file the reply but no response has been received from him. Therefore, the Arbitration proceedings have been conducted on the basis of the records made available to the Arbitrator.



Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be applicable."*

After examining the complaint and the documents placed on record by the complainant and INDRP Rules of Procedure and policy, the Arbitrator's finding on the contentions of the claimant is as follows:

(i) The Registrant's Domain Name is identical or confusingly similar to a trademark in which the Complaint has rights:

The complainant in support of the above contention has stated as under in the complaint:

- a. The registrant's impugned domain name 'goodyear.in' is identical to and comprises in entirety the Complainant's trade mark GOODYEAR, which is registered in numerous countries, including India.
- b. The Registrant has registered the impugned domain name 'goodyear.in' with a *mala fide* intention to trade upon the immense goodwill and reputation enjoyed by the Complainant in its well-known trade mark GOODYEAR and thereby gain undue mileage out of it as is apparent from the fact that sponsored links on the website 'www.goodyear.in' are pertaining to the Complainant as well as its competitors.
- c. The conduct of the Registrant is violative of the rights enjoyed by the Complainant in its well-known and registered trade mark/name GOODYEAR and variants thereof and is tantamount to infringement and passing off. It is submitted by the complainant that the objectionable domain name has no meaning or significance independent of the Complainant's trade mark/name GOODYEAR and that it is a clear case of violation of the Complainant's statutory rights and tantamount to passing off.
- d. Given the repute and well-known nature of the Complainant's trade mark/name GOODYEAR, the Registrant's use of the same, clearly establishes that the Registrant registered the impugned domain name with full knowledge of the Complainant, its business activities and intellectual property.



- e. The impugned domain name 'goodyear.in' is identical to the domain names registered in the name of the Complainant like goodyear.com, goodyear.co.in, goodyear.ca, goodyear.cn etc.
- f. The impugned domain name 'goodyear.in' was created on July 26, 2013 in the name of the Registrant, whereas the Complainant's domain 'goodyear.com' and 'goodyear.co.in' were created on December 8, 1992 and July 12, 2006, respectively. The Complainant's earliest trade mark registration in respect of the trade mark GOODYEAR dates back to the year 1906 in USA and the trade mark GOODYEAR is also registered in India under No. 12112 since February 15, 1943. Therefore, the Complainant's adoption of the trade mark/name/domain name GOODYEAR is much prior to the Registrant's registration of the impugned domain name 'goodyear.in' and thus the complainant has prior rights in the trade mark/name/domain GOODYEAR *vis-à-vis* the Registrant.

Since the above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures attached with the complaint establish that the domain name of the Respondent is similar and identical to the well-known trademark of the Complainant and as such this issue is decided in favour of the complainant.

(ii) The Registrant has no rights or legitimate interests in the respect of the domain name:

The complainant in support of the above contention has stated as under in the complaint:

- a. The Registrant is not offering any goods/services under the domain name 'goodyear.in'. In fact, the Registrant monetizes the objectionable domain name by directing it to parked pay-per-click or sponsored search portals.
- b. The web page operated under the objectionable domain name consists of weblinks comprising the Complainant's trade mark thereby portraying an association with the Complainant in an attempt to divert unwary Internet users to the said web page. By also posting links to competitor's websites, the Registrant is attempting to divert the Complainant's business and the objectionable domain is listed for sale on 'sedo.com' which is a destination for



trading of monetizing domain names. By no stretch of imagination, can the Registrant demonstrate any use relating to *bona fide* offering of goods or services before any notice of this dispute or at any point in time whatsoever.

- c. The Registrant is not commonly known by the said domain name and is not authorized or licensed by the Complainant to use its mark and the Complainant is a global organization providing fastening solutions for businesses and consumers around the world and the mark/name GOODYEAR is inextricably interwoven and identified exclusively with the Complainant.
- d. The Complainant is not only using the trade mark/name GOODYEAR since the year 1898 but has also registered the said mark in numerous jurisdictions including India and due to the extensive and continuous use of the trade mark/name GOODYEAR for more than a century, the same has become well-known and come to be exclusively associated with the Complainant and no one else. Hence, the Registrant cannot establish any association with the domain name for any reason/s whatsoever.
- e. The Registrant is not making any legitimate non-commercial or legitimate fair use of the domain name and that the conduct of the Registrant cannot come under the definition of '*bona fide* use'.
- f. The registration of the impugned domain is aimed to gain leverage from the immense goodwill and reputation of the Complainant's trade mark/name GOODYEAR, divert visitors/customers by creating initial Internet confusion and thereby commercially profit from use of the Complainant's trade mark GOODYEAR.
- g. The Registrant is indulging in (i) unfair use of the domain name with an intention to reap profits therefrom, (ii) misleading/diverting customers to competitor websites, and (iii) tarnishing the goodwill and reputation enjoyed by the Complainant's well-known trade mark/name GOODYEAR.

From the facts given in the complaint it is evident that:

The Complainant has made positive assertions and has presented concrete evidences making a prima facie case showing that the Respondent does not possess rights or legitimate interests in the domain name goodyear.in based on Complainant's continuous and long prior use of its trademark and trade name GOODYEAR. Hence, the burden shifts on the Respondent to prove that it has rights or legitimate interests in the subject domain name. The Respondent has



failed to discharge the above burden by not responding to any of the allegations raised by the Complainant in its Complaint.

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose 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 in connection with a bona fide offering of goods or services;*
- ii. *the Registrant (as an individual, business, or other organization) 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 Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name. The Arbitrator thus, accepts the submissions made by the complainant.

Even otherwise also the above facts establish that the Respondent has no right or legitimate interest in the domain name goodyear.in as the Respondent is not making a bona fide offering of goods or services, is not commonly known by the disputed domain name and is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii). Therefore this issue is also decided in favour of the complainant.

(iii) The Respondent has registered and is using his domain name in bad faith:

The complainant in support of the above contention has stated as under in the complaint:



- a. The Registrant has registered the impugned domain name 'goodyear.in' with the sole purpose of selling/transferring the same for excessive consideration as is clear from its listing on www.sedo.com.
- b. The string of apparently false registrant information coupled with the above clearly establish (mis)use of the Complainant's well-known trade mark/name/domain GOODYEAR to gain illegal benefits.
- c. The Registrant registered the impugned domain name knowing well of the Complainant and its subsidiaries and their businesses and the same is established by the fact that it has uploaded links comprising the Complainant's trade mark GOODYEAR.
- d. The solicitation emails for purchase of the impugned domain name were also sent to the Complainant's employees and the registration of the domain name 'goodyear.in' by the Registrant has resulted in the Complainant being prevented from reflecting the trade mark/name/domain(s) GOODYEAR in a corresponding domain name with the .IN Registry, which is presently in the name of the Registrant. Several TLDs/ccTLDs comprising GOODYEAR including the domain 'goodyear.co.in' are owned and managed by the Complainant.
- e. The registrant's web page has been constructed in a manner so as to portray an association/affiliation with the Complainant and its subsidiaries. The confusion is further enhanced by the presence of links to the websites of the Complainant's competitors. The conduct of the Registrant amply proves its *mala fide* to attract Internet users to its web page by using the mark/name of the Complainant and consequently creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Registrant's web page and/or of a product on the Registrant's web page.
- f. The internet users desirous of accessing the Complainant's website may get attracted to the impugned web page, thereby creating confusion in their minds. The links of the Complainant's competitors establish the Registrant's *mala fide* to gain illicit benefits and cause harm to the Complainant's business.

All above submissions made by the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the unrebutted facts and annexures give no reason to doubt that the respondent has registered and used the domain name www.goodyear.in in bad faith. This issue is decided accordingly.

Ans

I. DECISION:

In view of the above facts and circumstances and finding of the Arbitrator, the Complainant has succeeded in his complaint. .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. < **www.goodyear.in** > to the Complainant. The parties are left to bear their own cost. The Award is accordingly passed on this day of 08th February, 2016



Ashok Kumar Singh

Sole Arbitrator

Date: 08th February, 2016