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INDIA NON JUDICIAL

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e-Stamp

Certificate No.

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Certificate Issued Date

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Account Reference

: IMPACC (IV)/ dl984503/ DELHI/ DL-DLH

Unique Doc. Reference

: SUBIN-DL98450328481662878687S

Purchased by

: SANJAY KUMAR SINGH ARBITRATOR

Description of Document

: Article 12 Award

Property Description

: Not Applicable

Consideration Price (Rs.)

: 0
(Zero)

First Party

: SANJAY KUMAR SINGH ARBITRATOR

Second Party

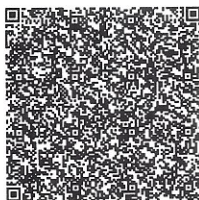
: Not Applicable

Stamp Duty Paid By

: SANJAY KUMAR SINGH ARBITRATOR

Stamp Duty Amount(Rs.)

: 100
(One Hundred only)



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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)
IN RE:-

GOOGLE LLC

COMPLAINANT

VERSUS

FU Li Jia Yuan

RESPONDENT

Sanjay Kumar Singh
04/08/2020

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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Google LLC,
1600 Amphitheatre Parkway,
Mountain View, CA 94043

Through Authorised Representative

Shwetashree Majumder,
Awanika Anand,
Shipra Shansilya,
Fidus Law Chambers, F-12,
Ground Floor, Sector 8,
Noida-201301.

Email: shwetashree@fiduslawchambers.com
awanika@fiduslawchambers.com
shipra@fiduslawchambers.com

COMPLAINANT

VERSUS

Fu Li Jia Yuan 19 Zhuang 302 Shi
Huzhou Zhejiang-313000, China
E-mail: domainnames.tv@gmail.com

RESPONDENT

1. THE PARTIES:

COMPLAINANT:

Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043
through Authorised Representative Shwetashree Majumder, Awanika
Anand, Shipra Shansilya, Fidus Law Chambers, F-12, Ground Floor,

Sanjay Kumar Singh
04/08/2020

Sector-8, Noida-201301, Email: shwetashree@fiduslawchambers.com;
avanika@fiduslawchambers.com ; shipra@fiduslawchambers.com.

RESPONDENT:

Fu Li Jia Yuan 19 Zhuang 302 Shi, Huzhou Zhejiang-313000
 China; E-mail: domainnames.tv@gmail.com

2. **DOMAIN NAME AND TRADEMARK IN DISPUTE:**

The disputed Domain name of the respondent is:
"www.googlemeet.co.in".

The trademark of the complainant is **"GOOGLE"**. The registry is
 National Internet Exchange of India (NIXI).

3. **BRIEF BACKGROUND:**

This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed thereunder.

The complainant submitted his complaint in the registry of NIXI. Shri Sanjay Kumar Singh was appointed as Sole Arbitrator in the matter by NIXI.

The complainant is a company duly registered under the laws of Delaware in the United States of America. The complainant has further submitted that it is the operator of one of the most highly recognized and widely used internet search engines in the world under the trademark GOOGLE. In addition to the search technologies and related activities, the complainant is well known for a wide range of goods and services, including online advertising, web browser software email services, mobile phones, laptops and its accessories.

The complainant has submitted that the disputed domain name is identical and confusingly similar to the domain name and trademarks or service mark of the complainant. The complainant has also submitted that respondent lacks or has no rights or legitimate interests in respect of the disputed domain name that is the subject of the complainant. The complainant has further submitted that the disputed domain name was registered in bad faith. The complainant has prayed that domain name

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"www.googlemeet.co.in" be transferred to the complainant and cost be imposed on the Respondent.

A copy of complaint has already been sent to the respondent by the .In Registry through e-mail.

Upon receipt of the complaint, the Arbitrator sent a notice dated 30-06-2020 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within TEN days from receipt of notice. However, the respondent did not send the defense / counter to the complainant.

A notice was again sent to the respondent on 10-07-2020 giving another opportunity to the respondent to submit his defense / counter to the complaint within 7 days making it clear that in default or non-filing of the defense / counter to the complaint, the matter would be proceeded ex-parte and award would be passed ex-parte on merits of the complaint. However, the respondent did not send the defense / counter to the complainant. The Arbitrator again sent notices dated 21-07-2020 and 30-07-2020 respectively by giving last and final opportunity to the respondent to send his defense / counter to the complaint with further notice that in default or non-filing of the defense / counter to the complaint, the matter would be proceeded ex-parte and award would be passed ex-parte on merits of the case. It was also stated in the notice that it was last and final opportunity to the respondent and no further opportunity will be given to him.

In spite of repeated notices, the respondent has again not come forward and has not sent any reply to the Arbitrator. Therefore, this matter is being decided ex-parte on the merits of the complaint and as per law of the land.

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The complainant has submitted that complaint is based on the adoption and use of the registered well-known trademark GOOGLE of the Complainant and its use in connection with its domain names.

4. **FACTUAL AND LEGAL GROUNDS COMPLAINANT'S TRADEMARK RIGHTS:**

1. The complainant has submitted that it is a company duly registered under laws of Delaware in the United States of America. Ever since its formation in the year 1997 it has been carrying on business in internet related services and products, which include advertising technologies, internet search, cloud computing and software, and mobile and computer hardware. The complainant has submitted that it is the operator of one of the most highly recognized, and widely used internet search engines in the world under the trademark GOOGLE. In addition to search technologies and related activities, the Complainant is well-known for a wide range of goods and services, including online advertising, web browser software, email services, mobile phones, laptops and its accessories. The complainant has enclosed the Extracts from the Complainants website at <https://about.google/intl/en/products/> listing the products and services the Complainant offers under the trademark GOOGLE and other trademarks as **ANNEXURE-A**.
2. The complainant has submitted that its search engine service under the trademark GOOGLE lets users search for publicly accessible websites offered on web servers globally. The search engine service under the trademark GOOGLE is available in 150 languages. The complainant has relied on the documents evidencing the above i.e. **ANNEXURE-B**.
3. The complainant has submitted that it has been offering an enterprise videoconferencing platform under the trademark HANGOUTS MEET since the year 2017, that later, in April 2020, was rebranded to be called GOOGLE MEET. Details of the said platform are available on the Complainant's website at the domain <https://meet.google.com/>. The said platform was made free for users on 29th April 2020. The complainant has

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further submitted that details surrounding the use of the platform and its re-branding which has been discussed in various leading third-party media publications. The complainant has relied on the documents demonstrating the above facts as **ANNEXURE-C**.

4. The complainant has submitted that it has been found to be one of the top-most valuable global brands with 'Brand Finance Global 500' in 2019. As per the 2019 rankings, the Complainant was valued at USD 142.8 billion. In a 2019 survey report published by Glassdoor, the Complainant was ranked at the top amongst the "Best Places to Work" as voted by its Employees. Documents pertaining to the above have been annexed by complainant as **ANNEXURE-D**.
5. The complainant has submitted that the trademark GOOGLE is also a part of the Complainant's company name i.e. Google LLC as well as various other trademarks of the Complainant. The complainant has further submitted that the trademark GOOGLE is not only associated to the search engine services offered under it but also with various other goods and services that the Complainant offers. According to Forbes, the trademark GOOGLE ranked second in the top 10 most valuable trademarks and brand in the world, valued at \$ 167 billion as per their 2019 report. Documents pertaining to the above have been annexed by complainant as **ANNEXURE-E**.
6. The complainant has submitted that as per 2019 report of 'Best Global Brands' issued by Interbrand, a brand consultancy involved in brand analytics and valuation, the Complainant was ranked no. 2 amongst the top 15 brands worldwide. The complainant has submitted that according to comScore Media Metrix from the year 2018, GOOGLE is the number 1 Web property in the United States, with over 240 million unique visitors/month. The complainant has submitted that Alexa, a web traffic ranking company, lists the search engine under the trademark GOOGLE as the top-most visited website for many countries, including India. The

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complainant has annexed the copies of the afore-mentioned reports and other rankings accorded to the Complainant as **ANNEXURE-F**.

7. The complainant has submitted that it's highly reputed search engine service has been operating under the trademark GOOGLE since its launch in 1997. The search engine service under the trademark GOOGLE is available in more than 150 interface languages. The trademark GOOGLE is a unique mark for the services for which the same is used and it has no meaning or resemblance whatsoever to services of any kind or nature. Documents pertaining to the above have been annexed by complainant as **ANNEXURE-G**.
8. The complainant has submitted that it has a significant global presence with more than 150 offices worldwide. The products and services of the Complainant reach more than 150 countries worldwide, including India. The complainant has further submitted that the trademark GOOGLE is also the company name and has been consistently used by the Complainant as a trade name apart from just as a trademark for its search engine services along with many other products. The complainant has submitted that it owns and operates over 190 GOOGLE based domains where search can be accessed. The complainant has submitted a list of those domains as **ANNEXURE-H**. The complainant has further submitted that it has consistently used the trademark GOOGLE as a part of its products, services and business since the year 1998 and has been given the status of a well-known trademark globally. Documents pertaining to the above have been annexed by complainant as **ANNEXURE-I**.
9. The complainant has submitted that it has continuously used the trademark GOOGLE globally since its launch. The trademark is inherently distinctive and is a strong identifier of source for the Complainant and its services. It has no dictionary meaning and does not otherwise exist in the English language. The primary platform under the trademark GOOGLE is

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located at www.google.com. The Complainant's search engine platform is integrated with various other products and services of the Complainant.

THE COMPLAINANT'S TRADEMARK RIGHTS:

10. The complainant has submitted that complaint is based on the trademark GOOGLE, registered in favour of the Complainant and used primarily in connection with online search engine services, apart from other additional array of goods and services.
11. The complainant has submitted that it owns numerous registrations for the trademark GOOGLE with the earliest registration dating back to September 16, 1998 in the United States of America and commercial use in India since March 1999. Each registration remains valid and is in full force and effect.
12. The complainant has submitted that it owns over 650 registrations for the trademark GOOGLE in various classes in 163 countries. The complainant has further submitted the copies of Registration Certificates from few countries are as **ANNEXURE-J (COLLY)**.
13. The complainant has submitted that it has registered its trademark "GOOGLE" and various forms of the trademark in India in Classes 9, 16, 20, 25, 38, and 42, details of which are set out below:

Trademark	Registration/ Application no.	Application Date	Class(s)	Status
GOOGLE	845041	12/03/99	9	Registered
GOOGLE	1480385	17/8/06	38	Registered
GOOGLE	1237958	18/09/03	42	Registered
GOOGLE	1351909	20/04/05	35	Registered
GOOGLE	1351910	20/04/05	16	Registered
GOOGLE	1351911	20/04/05	25	Registered
GOOGLE	2378924	13/08/12	39	Registered

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GOOGLE	14803SO	21/08/06	36	Registered
GOOGLE	1513045	13/12/06	9,38, 42	Registered
GOOGLE	1404165	06/12/05	9	Registered
GOOGLE	1404168	06/12/05	42	Registered
GOOGLE	2176019	15/07/11	9,35,36, 42	Registered
GOOGLE	2166829	28.06.11	3,20	Registered
GOOGLE	2297910	13/03/12	42	Registered
GOOGLE	3178084	05/02/2016	9,25, 35, 36, 38, 39,42	Registered

The complainant has submitted the copies of registration certificates of the above listed registrations as **ANNEXURE-K (COLLY)**.

14. The complainant has submitted that it has conceived, adopted and used the trademark "GOOGLE" in connection with its online search engine services since 1997 and the same has been in use continuously till date. By virtue of its adoption more than twenty years ago, and extensive use thereof, the trademark GOOGLE has become exclusively and globally associated with the Complainant in the eyes of consumers. The complainant has further submitted that additionally, the trademark GOOGLE has also been declared a 'well known' trademark by the Delhi High Court in 2011. The complainant has further submitted that by virtue of the said order, the trademark GOOGLE has been included in the well-known trademark list maintained by the Indian Trademark Registry. Therefore, use of this mark by any third party will lead to confusion and deception among the consumers and general public. The complainant has submitted a copy of the said court order of the Hon'ble High Court declaring the trademark GOOGLE as well-known as well an extract of the well-known trademarks list (obtained from the trademark registry website at www.ipindia.nic.in) maintained by the Indian trademark Registry as **ANNEXURE-L (COLLY)**.

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15. The complainant has submitted that the search engine service under the trademark GOOGLE located at www.google.com is accessible around the world including in India and the Complainant has owned and operated the same since September 15, 1997.

The complainant has submitted that it also owns a country specific domain at www.google.co.in that is registered since June 23, 2003. The WHOIS extracts of the above domains has been annexed by the complainant as **ANNEXURE-M**.

16. The complainant has submitted that it has successfully pursued domain name complaints before the WIPO and National Arbitration Forum and obtained favorable decisions in respect of numerous infringing domain names such as 'googleplace.in, googleseoservices.in, googlepays.in, googleblog.com, google-0.com, chotagoogle.com, google-montenegro.me, google-sina.com, google-vietnam.com' etc. The complainant has submitted that all these decisions acknowledge the Complainant's proprietorship over the trademark GOOGLE. The complainant has annexed the copies of these decisions as **ANNEXURE-N (COLLY)**.

THE RESPONDENT:

1. The complainant has submitted that it was recently made aware of the existence of the domain name www.googlemeet.co.in (hereinafter referred as 'the disputed domain') which subsumes the Complainant's registered trademark GOOGLE and GOOGLE MEET in their entirety. The complainant has further submitted that the disputed domain is nearly identical to the Complainant's domain www.google.com and www.google.co.in. The complainant has submitted that this amounts to infringement of the Complainant's rights in the trademark GOOGLE. The complainant has annexed the Whois extract of the disputed domain as **ANNEXURE-O**.

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2. The complainant has submitted that the disputed domain was registered on 7th May 2020, significantly subsequent to the Complaint's adoption and use of the trademark GOOGLE and registration of the domains www.google.com and www.google.co.in.
3. The complainant has submitted that the disputed domain has merely been parked and no commercial use of the domain is being made. It can be seen from the landing page of the said domain, the same is being offered for sale.
4. The complainant has submitted that it has filed the present complaint which is based on the following legal grounds:

5. THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS:

- a) The complainant has submitted that he disputed domain name www.googlemeet.co.in, registered by the Respondent, incorporates the Complainant's trademarks GOOGLE and GOOGLE MEET in their entirety, and is nearly identical to Complainant's registered domain names www.google.com and www.google.co.in.

The complainant has submitted that without prejudice and irrespective of the inclusion of the country-code second-level domain (ccSLD), the fact that the disputed domain comprises the Complaint's trademarks GOOGLE and GOOGLE MEET in their entirety, has the potential to cause consumer confusion. Consumer recall behind the Complainant's trademark GOOGLE is such that if any person will come across the disputed domain, they will automatically associate the same with the Complainant only and none other.

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- b) The Complainant in its submission has relied upon *Nike Inc. v. Nike Innovative CV Zhaxia* (Case No. INDRP/804); *Metropolitan* Trading Company v. Chandan Chandan* (Case No. LND RP/811); *Leso Juris A/s v. Robert Martin* (Case No. INDRP/125) where it was held that if a disputed domain name completely incorporates the trade mark / service mark of the Complainant, then the mere addition of domain codes such as "in" and/or ".co.in" will not distinguish the Respondent's disputed domain name.
- c) The complainant has submitted that in several UDRP decisions as well, various panels have found that the fact that a domain name wholly incorporates a complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy. The complainant has relied on following decisions:
- i) *Oki Data Americas. Inc. v. the ASD. Inc.* (WIPO Case No. D2001-0903)
 - ii) *Go Daddy.com. Inc. v. Shoneve's Enterprise* (WIPO Case No. D2007-1090).
 - iii) *Qaio. LLC v. Chen Jinjun and Magnum* (WIPO Case No. D2018-2215)
 - iv) *Piering Inc v. The Mudiackers* (WIPO Case No. D2000-1525).
- d) The complainant has submitted that it has used GOOGLE as a trademark, trade name and as a part of various domains, well prior to 7th May 2020, which is the registration date of the disputed domain. The complainant has submitted that it has established rights in its trademark GOOGIE dating back to 1997 and has a prior domain registration for www.google.com.
- e) The complainant has submitted that it the Sole Arbitrator appointed in the matter of *Google Inc. v. Mr. Gulshan Khatri* (Case No. INDRP-189 May 06, 2011), in relation to the domain [googlee. in](http://googlee.in), held that the act of registering a domain name similar to or identical with or famous trade mark is an act of unfair competition whereby the domain name registrant takes unfair

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advantage of the fame of the trademark to either increase traffic to the domain, or to seize a potential asset of the trademark owner in the hope that the trademark owner will pay the requirement to relinquish the domain name. The complainant has submitted that the same principle is applicable here as well, since the disputed domain name is identical to the trademark GOOGLE of the Complainant.

6. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME:

1. The complainant has submitted that:
 - a) Under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP), any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a disputed domain name;
 - b) Before any notice to it of the dispute, the Respondent'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; or
 - c) The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
 - d) The Respondent 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."
2. The complainant has submitted that in the present case, the Respondent is not a part of or is related to the Complainant. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to use as a part of their trade name, as a part of an email server or register domain names comprising its trademark GOOGLE. The complainant has further submitted that as already held by previous Panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name. In the present case, the Respondent is not commonly known by the disputed domain.

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3. The complainant has submitted that it has not authorized or licensed the Respondent to use any of its trademarks in any way. Such unlicensed, unauthorized use of the disputed domain incorporating the Complainant's trademark is strong evidence that Respondent has no rights or legitimate interest in the disputed domain name.
 4. The complainant has submitted that it reiterated that the disputed domain is merely parked since its registration and is not being used for a bonafide commercial purpose.
 5. The complainant has submitted that the domain is currently up for sale, which is evident of the malafide intention of the Respondent to make undue profit by squatting a domain that comprises the Complainant's registered and famous trademark GOOGLE. In this regard the Complainant relies on PLUG & Play, LLC v. Matt Morris {Case No. D2018-2385}.
 6. The complainant has submitted that in the words of the Sole Arbitrator in Kraft Foods Global Brands, LLC v. Jet Stream Enterprises Limited, Jet Stream (Case No. D2009-0547) "...while the overall burden of proof rests with Complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore, a Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, a Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See Croatia Airlines d.d. v. Modem Empire Internet Ltd., WIPO Case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110."
- The complainant has submitted that it that the said threshold has been satisfied in the present instance
7. The complainant has submitted that the Respondent is not using the disputed domain for bonafide offering of services and not making legitimate, non-commercial and fair use of the Complainant's trademark as per the policy.

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7. THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED IN BAD FAITH:

The complainant has submitted that the disputed domain name has been registered in bad faith for the following reasons:

- a) The complainant has submitted that the Respondent's bad faith is established by the fact that the Respondent has passively held the disputed domain name since registering it on 7th May 2020. The Respondent has simply warehoused the disputed domain name and has not made any bona fide use of the disputed domain name in over five years. Given the distinctiveness and reputation of Complainant's trademark GOOGLE, the only conclusion that can be drawn is that the Respondent registered the domain name in bad faith to hold it for profit.
- b) The complainant has placed reliance on HSBC Holdings PLC Vs. Hooman Esmail Zadeh [INDRP Case No. 032] where it was held that non-use and passive holding of a domain are evidence of bad faith registration.
- c) The complainant has submitted that the Respondent's bad faith is further established by the fact that the home page of the disputed domain prominently states, "*The domain name googlemeet.co.in is for sale!*". The said domain is being offered for sale for \$10,000 (Rs. 710,645). On the landing page of the said domain, a tab titled "BUY NOW" is provided, and upon clicking on the same, a user is directed to a form at the following link
https://dan.com/orders/checkout?googlemeet.co.in?utm_campaign=BuvNow&utm_medium=parking&utm_source=.co.in&utm_term=googlemeet.co.in. On the said form, a buyer is required to fill in personal details such as name, email address, phone numbers etc. to purchase the domain. This clearly shows that the Respondent is actively soliciting offers for purchase of the disputed domain, which has been parked since its registration so that the Respondent sells it at a profit. Therefore, the Respondent clearly has a malafide intent for commercial gain. The complainant has relied on

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Extracts of the landing page of the disputed domain and the said form has been submitted as **ANNEXURE-P**.

- d) The Complainant has further relied on Rolls-Royce Motor Cars Ltd. Vs. Amy Hill (rendered by Sole Arbitrator, dated 17th October 2017) where the Panel held that the Respondent's bad faith was evidenced by the fact that the Respondent offered to sell the domain name.
- e) The complainant has submitted that the evidence overwhelmingly supports the conclusion that the Respondent registered the disputed domain name in bad faith. The fame and unique qualities of the trademark GOOGLE, which was internationally adopted by the Complainant well prior to the registration of the disputed domain name, make it extremely unlikely that the Respondent created the disputed domain name independently without any knowledge of the Complainant's trademark.
- f) The complainant has submitted that it has also been established by way of evidence enclosed with this complaint, the product and services under the trademarks GOOGLE and GOOGLE MEET had attained significant fame and reputation in the world by 7th May 2020 (the registration date of the disputed domain) and that Respondent cannot claim that he/she was unaware of the trademark in question at the time of registering the disputed domain. Even constructive knowledge of a trademark is sufficient to establish registration in bad faith. The Respondent registered the disputed domain name which comprises the Complainant's trademark GOOGLE in its entirety, with the sole intention of squatting on the domain or using it for attracting commercial gain by listing the same for sale.
- g) The complainant has submitted that several UDRP panels have consistently found that it ought to be presumed that the respondent had constructive notice of the Complainant's trademark if it is shown by the complainant to be well known or in wide use on the Internet or otherwise. Such knowledge of the Respondent is an indicator of bad faith on its part

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in having registered the disputed domain name. The complainant has relied on Research In Motion Limited v. Privacy Locked LLC/Nat Collicot, WIPO Case No. D2009-0320 and The Gap, Inc. v. Deng Youqian, WIPO Case No. D2009-0113.

The complainant has submitted that it the respondent's intention is not to act in good faith but has got registered the disputed Domain name in bad faith.

The complainant has sought the relief of transfer of domain name "**www.googlemeet.co.in**" to the complainant.

8. OPINION/FINDING:

The para no.4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

TYPES OF DISPUTES:

Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to .IN Registry on 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 interests in respect of the domain name and
- iii) The Registrant's domain name has been registered or is being used in bad faith."

The para no.6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:

9. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH

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:

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- "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
- ii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online 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 para no.7 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

10. REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS 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 interests in the domain name 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 bonafide offering of goods or services;
- ii) the Registrants (as an individual, business, or other organization) has been commonly known by the domain name,

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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 other fact, which is to be dealt with before going into merit is, that, as to whether, the cases decided by WIPO- Administrative Panel could be considered, while deciding the present controversy. Moreover these cases throw light upon various important aspects of controversy. As such they would be considered, while deciding the present controversy, in so far as they do not conflict with INDRP.

11. OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, “Sify” & “Siffy” were held to be phonetically similar and addition of word ‘net’ in one of them would not make them dissimilar.

It is held in aforesaid case that in modern time’s domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere can still be confusingly similar or identical.

Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention

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here that as per the claim of the complainant the respondent has no trademark right on the said domain name.

This principle is settled in many above Indian cases and referred cases **JT 2004(5) SC 541 and 2004(5) SCC 287.**

The complainant in its complaint has made submission that it enjoys a reputation in its GOOGLE trademark, both in India and on a global scale.

Thus the conclusion is that the domain name "**www.googlemeet.co.in**" is identical and confusingly similar to the trademark of complainant '**GOOGLE**' and the complainant has established that he has right in the trademark.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him

It is pertinent to mention here that paragraph 4 (ii) of INDRP is to be read with paragraph no.7.

As already stated that paragraph 4 (ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras is prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct congest and positive evidence which are in his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has not come forward in spite of repeated notices to submit any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by the disputed

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domain name. The respondent has neither put forth nor has provided such evidence.

Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

C) Whether the respondent's domain name has been registered or is being used in bad faith

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated, the onus is primarily upon complainant.

Keeping in view above facts and circumstances it is thus clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has not come forward and has neither provided any substantial evidence in his support.

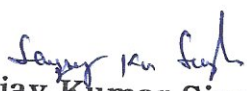
Thus the conclusion is that the respondent has got registered his domain name "**www.googlemeet.co.in**" in bad faith.

12. CONCLUSION:

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The complainant is entitled to transfer of the domain name "**www.googlemeet.co.in**" to him, as he has established his bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry.
No order as to costs.

Delhi

Date: 04-08-2020.


(Sanjay Kumar Singh)
Arbitrator