



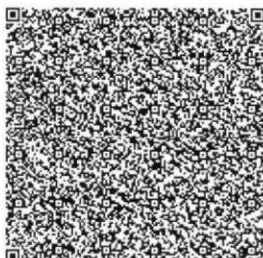
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No. : IN-DL12652763904633K  
 Certificate Issued Date : 13-Aug-2012 05:16 PM  
 Account Reference : SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH  
 Unique Doc. Reference : SUBIN-DLDL-SHCIL25502945445120K  
 Purchased by : A K SINGH ADVOCATE  
 Description of Document : Article Others  
 Property Description : NA  
 Consideration Price (Rs.) : 0  
 (Zero)  
 First Party : A K SINGH ADVOCATE  
 Second Party : NA  
 Stamp Duty Paid By : A K SINGH ADVOCATE  
 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

Force India Formula One Team Limited  
 Dadford Road, Silverstone,  
 Northampton, NN128TJ

Vs.

Mr. Mandeep Singh Dhingra  
 8-2-402/B1, Road No. 4, Banjara Hills,  
 Hyderabad, Andhra Pradesh-500034, India.

Complainant

Respondent

*[Signature]*

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##### Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"

## **THE PARTIES**

The complainant in the present proceeding is Force India Formula One Team Limited, Dadford Road, Silverstone, Northampton, NN12 8TJ.

The respondent in this proceeding is Mr. Mandeep Singh Dhingra, 8-2-402/B1, Road No. 4, Banjara Hills, Hyderabad, Andhra Pradesh-500034, India.

## **THE DOMAIN NAME, REGISTRAR AND REGISTRANT**

The Domain Name in dispute is "www.saharaforceindia.co.in". The Registrar is Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com. The Registrant is Mr. Mandeep Singh Dhingra, 8-2-402/B1, Road No. 4, Banjara Hills, Hyderabad, Andhra Pradesh-500034, India.

## **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.saharaforceindia.co.in

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

On 7<sup>th</sup> of July 2012, the Tribunal sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 7<sup>th</sup> of July 2012, itself the Tribunal sent an email to Complainant requesting them to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

The Complainant and the Respondent have filed various documents as Annexures in support of their contentions.

On 9<sup>th</sup> July, 2012, the Counsel of the Complainant sent an email stating that they do not understand the meaning of "service Record". It was further stated that the copy of the complaint was served to the Respondent and Registry through email as well as by post on 28<sup>th</sup> May.

On 20<sup>th</sup> July, 2012, the Respondent sent an email claiming that the disputed domain name mentioned in the email dated 7<sup>th</sup> July 2012, of the Tribunal was not registered by him.

After perusing the records the Tribunal got to know that due to minor typographical error, in the email dated 7<sup>th</sup> July, 2012, rather than mentioning the actual disputed domain name www.saharaforceindia.co.in, due to minor error it was mentioned "www.sharaforceindia.co.in".



Thereafter, on 9th August 2012, the Tribunal vide an email clarified to the Respondent that the ongoing Arbitration is related to the disputed domain name [www.saharforceindia.co.in](http://www.saharforceindia.co.in) which as per the records has been registered by the Respondent and directed the Respondent to file his reply within next 7 days.

On 14<sup>th</sup> August, 2012, the Respondent filed his reply with documents attached as annexures.

After perusing all the documents filed by both the parties, the Tribunal came to a conclusion that certain queries and points need some clarification from the Complainant, and hence via an email dated 5<sup>th</sup> September, 2012, the Tribunal raised certain queries to the Complainant and directed them to file certain documents in support of the reply to these queries.

On 7<sup>th</sup> September, 2012, the Complainant answered all the queries and sent all the supporting documents along with it through an email.

I have perused the record and Annexures / documents.

#### **FACTUAL BACKGROUND:**

##### **COMPLAINANT**

Complainant is the registered proprietor of a large number of trademarks, registrations and applications for the mark "Force India", the earlier registration dates from 9 May 2008 and the mark has been in constant use since 2008.

Complainant is a company that owns and runs a Formula one racing team, based in Silverstone, England. The team was formed in 2007 and was known by the name "Force India Formula One Team" until 2011 when Sahara Adventure Sports Limited, an Indian Company which forms part of the Sahara Group, purchased 42.5% Orange India Holdings S.A.R.L, the parent company of the complainant. The complainant uses the domain name [www.forceindiaf1.com](http://www.forceindiaf1.com) as its website address.

The Sahara element of the Sahara force India is owned by Sahara India, an Indian company. The name "Sahara" has been extensively registered by that entity as a trademark in India and used by it since 1987. It is very well known brand in India.

Whilst the composite brand "Sahara Force India" has not yet been registered as a trademark, three applications for a European Community registration have been made by the complainant. The name "Sahara Force India" has been used extensively by the complainant since October 2011 and is now globally recognized in the field of motor racing.





The domain name in dispute is identical or confusingly similar to a trademark in which the complainant has rights.

## **RESPONDENT**

The respondent is a motor sport-enthusiast and is involved in running his family business of driving schools in the name of “Hind Motor Training School” in Hyderabad, Andhra Pradesh, India. More about the website [www.hindmotortraining.com](http://www.hindmotortraining.com). The said domain name was registered by the present Respondent in his own name on 7<sup>th</sup> November 2005.

Respondent started the Andhra Pradesh Motorsports club. The Respondent has organized six national level drag races and two TDS rally in Hyderabad among many others. The respondent also entered the ‘LIMCA BOOK OF RECORDS’ for conducting maximum number drag races in India in a years with an average participation level of more than two-hundred racers.

The Respondent is also a partner of “Speedway Motorsports” which was started in the year 2010 with 5 partners. According to him he started the firm with a single minded aim to provide a racing platform for racing enthusiasts and professionals. The organization had conducted two local drag races in Hyderabad. The respondent states that in the year 2011, Federation of Motorsports Clubs of India nominated championship one in Hyderabad and 4 in Coimbatore. More information about the organization could be found in the website [www.speedwaymotorsports.in](http://www.speedwaymotorsports.in) registered in the month of September 2010.

The respondent has also created a fan page in Facebook in November 2008 for motor sports lovers to share their views on the sports.

The respondent submits that the Complainant does not have any rights over the expression “SAHARA FORCE INDIA” at the time of the registration of the subject domain names or at the time of filing of the present Complaint.

## **PARTIES CONTENTIONS:**

### **Complainant**

#### **a. The Complainant contends as follows in the Complaint:**

- 1) The domain name is identical or confusingly similar to a trademark or services mark in which the complainant has rights:**



- Complainant is the registered proprietor of a large number of trademarks, registrations and applications for the mark “Force India”, the earlier registration dates from 9 May 2008 and the mark has been in constant use since 2008.
- Complainant is a company that owns and runs a Formula one racing team, based in Silverstone, England. The team was formed in 2007 and was known by the name “Force India Formula One Team” until 2011 when Sahara Adventure Sports Limited, an Indian Company which forms part of the Sahara Group, purchased 42.5% Orange India Holdings S.A.R.L, the parent company of the complainant. The complainant uses the domain name [www.forceindiaf1.com](http://www.forceindiaf1.com) as its website address.
- Whilst the composite brand “Sahara Force India” has not yet been registered as a trademark, three applications for a European Community registration have been made by the complainant. The name “Sahara Force India” has been used extensively by the complainant since October 2011 and is now globally recognized in the field of motor racing.
- The domain name in dispute is identical as well as confusingly similar. The domain name contains the mark” Sahara Force India:’ which contains the “Force India” trademark that is the subject of the trademarks registrations owned by the complainant.
- The domain name reproduces the composite mark” Sahara Force India” in which the complainant has substantial goodwill and related rights deriving from its use of this name since 2011.
- The complainant’s rights are thereby being infringed by the registration and use by the respondent of the domain name that is the subject of this complaint.

**2) The respondent has no rights or legitimate interests in respect of the domain name:**

- The respondent is not making any legitimate non-commercial or fair use of the domain name; but rather seems to have registered it solely with the intension of making commercial gain out of its sale to the complainant.

**3) The domain name was registered and is being used in bad faith:**

- The rebranding of the complainant took place after substantial shareholding in the complainant’s parent company which was acquired by the Sahara Group. This transaction was announced on 12<sup>th</sup> October 2011. The disputed domain



name that is the subject of this complaint was registered on the very same day by the respondent.

- On 14<sup>th</sup> October 2011 the complainant discovered that two domain names [www.saharaforceindia.com](http://www.saharaforceindia.com) and [www.saharaforceindiafl.com](http://www.saharaforceindiafl.com) had been registered by the respondent.
- The complainant contacted the respondent to determine how the complainant could acquire the domain names from the respondent. An offer of 8,000 INR was made by the complainant to the respondent, which was refused.
- The complainant discovered that the respondent registered three similar .IN domain names which are the subject of three additional complaints with NIXI and other forums.
- On 15<sup>th</sup> November 2011 further offers to the Respondent in the form of (i) a pair of free domestic return tickets on kingfisher Airlines and (ii) an all expenses trip to attend one of the international Grand Prix's scheduled for 2012, initially for one and then for two people were also made by the complainant and the same were refused by the respondent.
- In November 2011 the respondent was again contacted by the complainant and was asked what he wanted to receive in order to agree to transfer all of the domain names to the complainant, but no reply was received.
- In December 2011 the respondent stated that he would transfer the Domain names if the complainant would pay USD 3,500 per domain. The complainant then made an offer of USD 10,000 for all six of the domain names. The respondent indicated that he was prepared to accept this offer, but then failed to co-operate in finalizing formal written documentation confirming this agreement.
- On 22<sup>nd</sup> March 2012, lower offer for USD 4,000 for all the domain names was made as a final offer by the complainant, which was not accepted by the Respondent.
- This has resulted in the complainant commencing these proceedings against the Respondent.

**b) The Complainant has filed the following documents along with its complaint:**

- Annexure 1: WHOIS search.
- Annexure 2: Registrar's registration agreement.
- Annexure 3: .IN dispute resolution policy.



- Annexure 4: Complainant's trade mark registrations for "Force India".
- Annexure 5: Sample pages from Complainant's website.
- Annexure 6: Complainant's Community Trademarks applications for "Sahara Force India".
- Annexure 7: Email from the Complainant summarizing its correspondence with the Respondent.
- Annexure 8: Copies of email correspondence between the complainant and the Respondent.

**c) The Respondent has contended the following in the Reply dated 14.08.2012 to the Complaint:**

**1) The Complainant has no rights over the Expression "SAHARAFORCEINDIA"**

- The respondent denies all and singular the averments and allegations as contained therein except for those which are specifically admitted.
- The respondent submits that the complainant does not have any right over the expression "SAHARA FORCE INDIA" at the time of the registration of the subject domain names or at the filing of the present Complaint.
- The domain name [www.saharaforceindia.co.in](http://www.saharaforceindia.co.in) has been registered on 12<sup>th</sup> October 2011 much before the date of filing of Trademark application of the complainant or date of use of the trademark by the complainant.
- Respondent denies that Complainant is known by the name of 'Sahara Force India' and it started using the name SAHARA FORCE INDIA, if at all, only from October 2011 after the subject domain names having been registered by the Respondent.
- That the complainant, alleged to be a Company has not even produced its incorporation certificate to show that it is being known by that name or that it has rights over the name.
- That the complainant has not produced one single document to prove that they have been using the expression "SAHARA FORCE INDIA" in the form of advertisements, brochures, invoices etc.
- The documents filed by the Complainant including the trademark Application does not even show since when the trademark has been put into use. No evidence has been provided to show that the complainant has either filed a trademark application 'in India' or has used the expression 'in India'.



- Respondent further submits that even the e-mail communications that has been alleged to be sent by the complainant till April 2012, there is not even a single mention of the logo/ name/ expression SAHARA FORCE INDIA. This clearly shows that the complainant has neither used the mark nor is known by the name. Even the complainant in the present case claiming to be FORCE INDIA FORMULA ONE TEAM LIMITED, but there has been no single document provided to prove the existence of the entity or its legal status.
- Respondent submits that while registering the subject domain names, his intention was to operate a fan site/ a site providing information on the Formula 1 races and the name “SAHARA FORCE INDIA” was not even in existence at the time of registration of the subject domain names. It puzzles the Respondent as to how the Complainant would have rights over the expression SAHARA FORCE INDIA when that name was not even existent when the domain names were registered.
- The respondent submits that the complainant has not adducted any proof to show that ‘it has been using the expression’ “FORCE INDIA OR SAHARA FORCE INDIA”. That merely by filing a trademark Application that too, long after the registration of the subject domain names will not confer any rights on the complainant and has neither provided arguments nor evidence in the form of documents to prove that it has Common-law rights.

**2) Whether the Respondent has rights or legitimate interests in respect of the domain name:**

- Respondent submits that it has lawful intentions to operate the website as a fan page for the Indian Formula 1 team and has taken steps to start operating the website.
- As soon as the domain name was registered respondent had been receiving communications from several entities seeking transfer of the domain name for a consideration. These entities have tried to lure the respondent by offering enormous amount of monies, but the Respondent being a hard core motor sport lover wanted to develop the subject domain names for the benefit of Formula 1 fans, especially those in India, hence Respondent submits that he has legitimate interests in the subject domain names and has lawful intentions of putting the domain into use in a non- commercial and informative manner.





- Respondent submits that the websites are purely for personal use and has been intended to operate as fan sites for formula 1 fan. Its operations are not intended to be a business model as suggested by the complainant nor was the disputed domain names bought for the purpose of selling them.
- Respondent has not been profiting from the subject domain names. There has been no instance of advertisements in the sites, no instance of pay-per-click advertisements etc. which would prove that the Respondent intends to act in good faith and in bonafide manner.

**3) Whether the domain names have been registered and are being used in bad faith:**

- That the respondent had come to know that an Organization called Sahara had bought shares in the team force India and was delighted that an Indian Formula 1 team has obtained more investment and could now perform better. Being excited of the fact, the respondent registered the subject domain name to open a fan page for the team to update and share with other motor sport enthusiasts about the participation of the team in F1 races.
- The respondent had merely conjoined the word SAHARA to the already existing team name FORCE INDIA to form SAHARA FORCE INDIA and registered the subject domain names on October 12, 2011.
- Respondent was continuously disturbed over the phone by individuals, claiming to be from kingfisher and force India, having interest in the said domain names.
- The respondent submits that such being the case, the respondent could not have foreseen or predicted that the brand could be named SAHARA FORCE INDIA, even prior to the founding of the brand.

**d) The Respondent has filed the following documents along with its response:**

- ANNEXURE PART 1: [www.saharaforceindia.co.in](http://www.saharaforceindia.co.in)
  1. Annexure A: WHOIS hindmotortraining.pdf
  2. Annexure B: Partnership Registration Certificate.jpg
  3. Annexure C: Screenshot of Speedwaymotorsports.in.pdf
  4. Annexure D: Facebook Fan Page- part 1.pdf
  5. Annexure E: Newspaper Articles and achievements.pdf



## 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"*.

As mentioned above fair opportunity has been given to both the Parties to file their contentions and after perusal, the following Arbitration proceedings have been conducted.

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"*

In the present circumstances, the decision of the Arbitrator is based upon the contentions and evidence filed by both the parties respectively and conclusion drawn from the same.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark "SAHARA FORCE INDIA".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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.

## BASIS OF FINDINGS:

**The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:**

The complainant contends in the complaint that the domain name of the Respondent is confusingly similar or identical to a trade mark in which the complainant has right <SAHARA FORCE INDIA>.



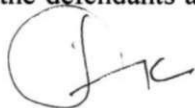
The Complainant is registered proprietor of a large number of trademarks, registrations and applications for the mark "Force India", in a wide range of classes and in many jurisdictions worldwide. Complainant is a company that owns and runs a Formula One racing team which was formed in 2007 and was known by the name "Force India Formula One Team" until 2011 when Sahara Adventure Sports Limited purchased 42.5% of the shares of Orange India Holdings S.A.R.L, The parent company of the Complainant and the team was then renamed "Sahara Force India F1 Team". Sahara has been extensively registered by that entity as a trademark in India and used by it since 1987.

The disputed domain name contains the mark "Sahara Force India" which contains the "Force India" trademark that is the subject of the trademarks registrations owned by the complainant and "Sahara" which is also a registered trade mark and a very well known brand name in India. It is completely connected with the trade mark of the complainant "Force India" after the team of the complainant is renamed as "SAHARA FORCE INDIA".

The Respondent is unable to give any reason to get registered the domain name by the name "Sahara Force India" except that in reply he has stated that he has merely conjoined "Sahara" to the existing team name "Force India". There is no explanation as to why he chose words "Sahara" and "Force India" when he has no relation with them. The Tribunal is of the opinion that the disputed domain name is confusingly similar to a Trademark in which complainant has rights as it is clear that the complainant has substantial goodwill and related rights deriving from its use of this name since 2011 and Respondent has infringed complainant's rights by registration of the domain name.

This proposition was also upheld in the following cases:

- 1) Missoni S.p.A. v. Hi Koo, D2012-0573 (WIPO May 22, 2012), it was held that given the relationship between complainant and the owner of the trademark havaianas, the combination of the two renowned trademarks missoni and havaianas in the disputed domain name may confuse internet users into believing in affiliation or authorization of the disputed domain name with complainant.
- 2) Rediff Communication Limited Vs. Cyberbooth & another, [AIR 2000 Bom 27], it was held that there can be no doubt that two marks/domain names, "REDIFF" of the plaintiff and "RADIFF" of the defendants are almost similar. When both the domain



names are considered it is clearly seen that two names being almost similar in nature there is every possibility of Internet user being confused and deceived in believing that domain names belong to one common source and connection although belong to two different persons.

- 3) Yahoo! Inc. and Overture Services, Inc. v. Registrant (187640), a/k/a Gary Lam, a/k/a Birgit Klosterman, a/k/a XC2, a/k/a Robert Chua, a/k/a Registrant, D2004-0896, it was held that None of the 78 disputed Domain Names are identical to Complainant's trademarks. However, all Domain Names consists of (i) Complainants trademark with the addition of a generic term, or (ii) combinations of Complainant's trademarks, or (iii) misspellings of Complainant's trademarks, with or without combination of generic terms. Such combinations or misspellings are not sufficient to distinguish Respondent's domain names from Complainant's trademarks and all disputed Domain Names are confusingly similar to Complainant's trademarks.

- 4) Mobsat Group Holding SARL v. Sharon Ting (CTLGDN-564616), D2012-0861

In the present case, the disputed domain name is dominated solely by the element "vizada", since "mail" is a purely descriptive term, in particular in the field of telecommunications, where it commonly identifies emails, a method of exchanging digital messages from an author to one or more recipients (see *e.g.* definition on Wikipedia). Thus, the disputed domain name <vizadamaail.com> is solely dominated by the element "vizada" which is identical to the Complainant's VIZADA trademarks. The Panel finds that the disputed domain name is therefore confusingly similar to the Complainant's VIZADA trademarks and concludes that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights.

- 5) Swarovski Aktiengesellschaft v. fan wu, D2012-0065

In the said case, the Domain Name incorporates the Complainant's well-known and well-established registered trademark SWAROVSKI. This, in the view of the Panel, is bound to lead to confusion on the part of consumers and Internet users seeking information on the Complainant's company and its services marketed under its well-known and well-established registered trademark SWAROVSKI. The addition in the Domain Name of the word "outlet", to the word SWAROVSKI, being descriptive, does not provide any distinguishing feature for trademark purposes. Indeed, it only adds to the confusion as the Complainant is in the retail business of selling its goods through various outlets and platforms.



6) Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., D2000-1525.

It was held in the present case that a disputed domain name incorporates a complainant's registered trademark, this may be sufficient to establish that the disputed domain name is identical or confusingly similar for the purposes of the Policy.

7) Harrods Limited v. Vineet Singh, D2001-1162

Where the panel held that any use of the name Harrods in conjunction with a description would suggest a false sense of origin for any associated goods or services'.

8) Xerox Corporation v. Imaging Solution, D2001-0313

In the present case it was held that the Domain Name at issue wholly incorporates the Complainant's central trademark 'Xerox'. This is sufficient to justify the finding that the name is 'confusingly similar' to the Complainant's registered trademarks.

**The Registrant has no rights or legitimate interests in the respect of the domain name**

As per the complaint there is no evidence of any use by the Respondent, or any preparation to use the domain name in question, or any name corresponding to the domain name in connection with a bona fide offering of any goods or service.

The complainant contended that the respondent has not been known by the domain name in question and has not acquired, or attempted to acquire, any corresponding trademark or service mark rights in or relating to it and respondent is not making any legitimate non-commercial or fair use of the domain name; but rather seems to have registered it solely with the intention of making commercial gain out of its sale to the complainant.

The respondent has argued that it has lawful intentions to operate the website as a fan page for the Indian Formula 1 team and he has legitimate interests in the subject domain names and has lawful intentions of putting the domain into use in a non-commercial and informative manner. Respondent submits that the complainant has not produced any evidence that the complainant has used or registered the said expression in India. Respondent submits that how the complainant would have rights over the expression SAHARA FORCE INDIA when the name was not even in existence when the domain names were registered.





The tribunal is of the view that the Complainant has legitimate rights and interest in the disputed domain name irrespective of the fact as contended by the Respondent that the name "SAHARA FORCE INDIA" was not known in the India and no one in India was aware about the said name when the respondent registered the domain name and the Complainant had no Trademark registered in India. "SAHARA and FORCE INDIA" are well established and very well known companies and in 2011 when Sahara purchased shares of the parent company of "FORCE INDIA" at that time the team was renamed as "SAHARA FORCE INDIA F1 TEAM" and after this team is known by this name only. As the team is famous world wide it is obvious that followers of the team all around the world were aware of the change in name of the team and when the respondent heard about the purchase of shares by the Sahara group after that he conjoined the two terms and registered the subject domain name. Respondent just by conjoining two already existing and registered well known marks cannot claim the rights in it and especially when two marks "SAHARA and FORCE INDIA" were already used together by the complainant by renaming its teams name as "SAHARA FORCE INDIA F1 TEAM". The complainant has all the right to stop the Respondent from using the subject domain names and transfer the same to the complainant as it has all the rights and legitimate interest to protect its fame and good will .The good will of the team is attached to its name which has been used by the respondent without any right and legitimate interest.

The Tribunal also gets support to the finding from the following cases:

1) RRI Financial, Inc., v. Ray Chen, D2001-1242

In the said case, the Complainant has alleged that it has searched and found no evidence of any of the nonexclusive methods by which the Respondent can show he has rights or legitimate interest in the Domain Names. Therefore, Complainant has sustained its burden of proving that the Respondent lacks rights to or legitimate interests in the Domain Names.

The file contains no evidence that the use of the Domain Names meets the elements for any of the nonexclusive methods provided for in the Policy paragraph 4(c). Therefore, the Sole Panelist finds that Respondent has no rights or legitimate interest in the Domain Names pursuant to the Policy paragraph 4(a) (ii).

2) IG Index Plc v. Fruit Group Inc., D2000-1413

In the present case, the uncontradicted evidence of the Complainant shows that by the time of the registration of the domain name "igindex.org" by the Respondent in April 2000, the Complainant had a common law entitlement to an unregistered trade mark in the name IG Index, in respect of which the domain name registered by the



Respondent is identical or confusing. The Respondent is not a licensee of the Complainant and has not obtained any authorisation to use the Complainant's trade mark and/or domain names, and/or to apply for any domain names incorporating any of the Complaint's trademarks or names. Nor does the Respondent appear to have ever used the name "igindex" or any similar name in the promotion of any goods or services. Further, there is no evidence that the Respondent has been commonly known by the domain name in question.

3) FACI Industries v. BuyDomains.com, Inventory Management, D2012-0146

In the said matter it is stated that, it is undisputed that Respondent was aware of Complainant's FACI mark when it registered the Domain Name. The Panel does not quarrel with Respondent's overall business endeavor, but only with the registration of the Domain Name with actual knowledge of Complainant's registered trademark rights and the offering of the Domain Name for sale at a hefty mark up above out-of-pocket costs. The Panel does not believe that Respondent has rights or legitimate interests in the Domain Name for purposes of the Policy simply because parties other than Complainant have made use of the term "faci." Nor, in the Panel's view, does Respondent acquire such legitimacy under the Policy merely because the Domain Name is offered for sale (for USD 18,800) to the public at large as opposed to being offered to Complainant in particular.

4) ITT Corporation and ITT Manufacturing Enterprises LLC v. VALUE-DOMAIN COM, VALUE DOMAIN, D2012-0529

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights in the distinctive part of the domain name ("ITT"). The Respondent's use and registration of the disputed domain name was not authorized by the Complainant, and there are no indications of any connection between the Complainants and the Respondent.

Accordingly, the Complainants have made their case that the Respondent does not have any right or legitimate interest in the disputed domain name.

5) F. Hoffmann-La Roche AG v. PrivacyProtect.org / Khokhlov Yuriy, D2012-0949

In the said matter, nothing in the record suggests that the Respondent is making any other legitimate noncommercial use of the disputed domain name or registered the disputed domain name as a descriptive, non-source identifying domain name.





Under these circumstances, the Panel takes the view that the Respondent has no rights or legitimate interests in the disputed domain name and that the requirement of paragraph 4(a) (ii) is also satisfied.


**The Registrant domain name has been registered or is being used in bad faith**

The Complainant alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users. Complainant contested that the rebranding of the complainant took place after a substantial shareholding in the complainant's parent company was acquired by the Sahara Group. This transaction was announced on 12<sup>th</sup> October 2011. The domain name that is the subject of the complaint was registered on the very same day by the Respondent.

When the complainant got to know about the two domain names [www.saharaforceindia.com](http://www.saharaforceindia.com) and [www.saharaforceindiafl.com](http://www.saharaforceindiafl.com) has been registered by the respondent, complainant approached the respondent many times to determine that how the complainant could acquire the domain names from the respondent. Many offers were made to respondent but he rejected. In December 2011 the respondent stated that he would transfer the domain names if the complainant would pay USD 3,500 per domain name.

The Respondent has argued the above contentions of the complainant by stating that he is an motor sports enthusiast and when he came to know that an organization called Sahara had bought shares in the team Force India and was delighted that an Indian Formula 1 team had obtained more investment and could now perform better. Being excited of that fact, Respondent Registered the disputed domain name to open a fan page for the team to update and share with other motor sport enthusiasts about the participation of the team F1 races. Respondent states that he conjoined the word SAHARA to the already existing team name FORCE INDIA to form SAHARA FORCE INDIA and registered the disputed domain name on October 12, 2011.

The above contentions made by the respondent it is clear that when he came to know about the rebranding of the complainant he immediately by joining the two words SAHARA and FORCE INDIA registered the subject domain. The two words which he conjoined are very well known companies and marks in their respective fields worldwide and there is a huge fan following of the complainant over the entire world. Sahara group is a well established and famous brand name in India moreover "SAHARA and FORCE INDIA" both are registered marks. The complainant renamed its team's name as "SAHARA FORCE INDIA" any person



who will see any brand name, company name, domain name or any mark which is even slightly similar to "SAHARA FORCE INDIA" will confuse it to be related to the complainant. Here the Respondent registered domain names as [www.sharaforceindia.com](http://www.sharaforceindia.com) and [www.saharaforceindiafl.com](http://www.saharaforceindiafl.com) which he allegedly created to open a Fan page for the followers of the team in Formula 1 races. Any person who is aware of the two companies and is a Fan of the team will without any doubt is going to believe it to be directly related or created by the Complainant and which will harm the goodwill and fame of the complainant, is also a threat to its reputation.

Respondent just by saying that he is not making any profit by registering the domain names and it is just for personal use is not able to prove its intentions. Respondent claims to be an ardent motor enthusiast and that is why he created the Fan page by registering the subject domain name but when he was approached by the complainant many times for the negotiation of the domain names at first he refused and later made a demand of unreasonable amount which makes it clear that he registered the domain name for the purpose of selling. The Tribunal is of the view that as per the facts and circumstances it is clear that the Respondent has countered many contentions of the Complainant but it is also evident that he got the domain name registered in bad faith.

The Tribunal also gets support to the finding from the following cases:

1) Missoni S.p.a. v. BigDoggie.com and Taeho Kim, D2002-0545

In the said case, given that the Complainant's trademarks have become internationally well-known, through massive advertising and the quality level of the products they designates, the Respondent could not have been unaware of the Complainant's trademarks. The Respondent knew of Complainant and its trade marks when he registered the domain name <missoni.net>.

It also points out that by knowingly choosing a domain name consisting of the Complainant's trademarks, the Respondent intentionally created a situation which is at odds with the legal rights and obligations of the parties.

2) Missoni S.p.A. v. Chris Ditchfield, D2012-0417

In the present case, given the degree of fame that the MISSONI trade mark has acquired around the world throughout the many years since its registration and use, the Panel accepts that the Respondent was aware of the Complainant's MISSONI trade mark at the time of registering the Disputed Domain Name and is using the Disputed Domain Name solely for the purpose of capitalising on the Complainant's



reputation and goodwill to generate profits, by attracting Internet users who the Panel accepts would be drawn to the Website on the mistaken assumption that the Website was authorised by or connected with the Complainant. In these circumstances the Panel finds that there is no basis on which to infer that the Respondent has used the Disputed Domain Name in any manner or for any purpose otherwise than in bad faith.

3) Nikon, Inc. and Nikon Corporation v. Technilab, Inc., D2000-1774

It was held that the number of domain names that Respondent registered that contain Complainants' marks gives rise to the inference that Respondent has registered the domain names in order to prevent Complainants from reflecting their marks in the corresponding domain names. the use of the <nikoncamera.com> domain name for a site that sold Nikon products and those of its competitors constitutes an improper use of Complainants' mark to attract Internet users to Respondent's site for commercial gain by creating a likelihood of confusion as to source, sponsorship, affiliation or endorsement of the site. Respondent's offer to transfer four of the domain names in return for the right to keep the other two constitutes an offer to sell the domain names in return for valuable consideration and Had Complainants sanctioned Respondent's right to permanently keep and use two of these domain names, it indisputably would have given Respondent something of great importance, with a value far in excess of the costs of registering the four transferred domain names. These three circumstances demonstrate sufficient bad faith to justify the transfer of all six of the domain names at issue.

4) Lancôme Parfums et Beaute & Compagnie v. D Nigam, Privacy Protection Services / Pluto Domains Services Private Limited, D2009-0728

In this Panel's view, Respondent was aware of Complainant's trademark rights at the time of registering the disputed domain name. This is supported by the fact that Respondent is offering links on the website at the disputed domain name to websites offering products directly competitive with Complainant's products. The submitted evidence demonstrates that Respondent is deliberately trading off the goodwill associated with Complainant's marks and Internet traffic intended for Complainant's website. Such use evidences Respondent's bad faith.



**DECISION:**

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint. In the facts and circumstances of the case it can be presumed that only



purpose for the registration of the disputed domain name was to capitalize on the fame and reputation of Complainant and to make monetary benefit.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <saharaforceindia.co.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent.

The Award is accordingly passed on this 1<sup>st</sup> day of October, 2011.

It consumed a little more time in passing the present award as the Tribunal wanted to arrive at the right decision and as such directed parties to produce certain information and documents which consumed some time.

Before parting with the matter, the Tribunal is constrained to point out that as per the documents and evidences produced before the Tribunal, the Complainant has indulged into initiating of unfair practice to allure the Respondent to sell off his domain name by giving him various offers. The INDRP Rules do not permit to encourage such activities. In the interest of the Registrants and to maintain the high standards of proceedings it would be appropriate for NIXI to frame rules to prevent and penalise such activities. The Tribunal hereby request NIXI to look into this aspect and to frame necessary rules and guidelines.



**A.K. Singh**

**Sole Arbitrator**

**Date: 1<sup>st</sup> October, 2012.**