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BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: March 20, 2020

Google LLC,
1600 Amphitheatre Parkway,
Mountain View, CA 94043
United States of America

COMPLAINANT

[Handwritten signature]

VERSUS

Titan Corporation

166, Nguyen Cong Tru Str. Nguyen Thai

Binh Ward, Dist 1, HCMC.

Email: titancorp@gmail.com

Phone: (84)839252636

RESPONDENT(s)/REGISTRANT(s)

DISPUTED DOMAIN NAME: "GOOGLEBANK.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is represented by Ms. Shwetasree Majumder Fidus, Law Chambers F-12, Ground Floor, Sector 8, Noida-201301.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database extract as per Annexure O of the Complaint is Titan Corporation.

2. The Dispute: The domain name in dispute is "GOOGLEBANK.IN". According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Name.com, Inc..

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	02-03-2020
2.	Date on which consent was given to act as an Arbitrator	02-03-2020
3.	Date of appointment of Arbitrator	05-03-2020
4.	Date on which the Hard copy of the complaint was received	09-03-2020
5.	Date on which notice was issued to the Respondent	09-03-2020
6.	Due date for filing of Counter Statement by the Respondent	16-03-2020

4. Procedural History

4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with

the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).

4.4. On March 09, 2020, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before March 16, 2020.

5. Factual Background:

5.1. The Complainant is a company duly registered under laws of Delaware in the United States of America. Ever since its formation in the year 1998, 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 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. Extracts from the Complainants website, listing the products and services the Complainant offers under the trademark GOOGLE and other trademarks is enclosed as Annexure A of the Complaint.

5.2. The Respondent registered the disputed name "GOOGLEBANK.IN" on August 16, 2018.

6. Parties Contentions

6.1. Complainant's Submission:

- 6.1.1. The Complainant states that the search engine service provided by the Complainant 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. Documents evidencing the above are enclosed as Annexure B of the Complaint.
- 6.1.2. The Complainant states that it offers a digital wallet platform and online payment systems in the financial services space since at least as early as 2011. Documents in support of the above are enclosed as Annexure C of the Complaint.
- 6.1.3. The Complainant states that it has been found to be one of the top-most valuable global brands with 'Brand Finance Global500' in 2019 and as per the 2019 rankings, the Complainant was valued at USD 142.8 billion. Further the Complaint states that 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 are enclosed as Annexure D the Complaint.
- 6.1.4. The Complaint says 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. Further the Complaint states 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. The Complainant states that according to Forbes, the trademark GOOGLE ranked second in the top 10 most valuable trademarks and brand in the world, valued at \$132.1 billion as per their 2018 report. Documents related to the above are enclosed as Annexure E of the Complaint.



6.1.5. The Complaint states that as per 2018 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 technology brands worldwide, according to comScore Media Metrix from the same year, GOOGLE is the number 1 Web property in the United States, with over 240 million unique visitors/month. Further the Complainant states 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 and Copies of the afore-mentioned reports and other rankings accorded to the Complainant are submitted as Annexure F of the Complaint.

6.1.6. The Complainant states that its highly reputed search engine service has been operating under the trademark GOOGLE since its launch in 1997. The complainant further states that 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 demonstrating the same are enclosed as Annexure G of the Complaint.

6.1.7. The Complainant states that it has a significant global presence with more than 150 offices worldwide and the products and services of the Complainant reach more than 150 countries worldwide, including India. The Complaint states 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 states that it owns and operates over 190 GOOGLE based domains where search can be accessed. A list of those domains is submitted as Annexure H of the complaint. The Complainant states 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 evidencing the said facts are enclosed as Annexure I of the complaint.

- 6.1.8. The Complainant states 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 and each registration remains valid and is in full force and effect.
- 6.1.9. The Complainant states that it owns over that 650 registrations for the trademark GOOGLE in various classes in 163 countries and the copies of Registration Certificates from a few countries are enclosed as Annexure J (colly) of the Complaint. Further the Complaint states that the Complainant has registered its trademark "GOOGLE" and various forms of the trademark in India in Classes 9, 16, 20, 25, 38, and 42, the copies of registration certificates of the above listed registrations are enclosed herewith as Annexure K (colly) of the complaint. Further the complaint states that the trademark GOOGLE has also been declared a 'well known' trademark by the Delhi High Court in 2011. By the 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. 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 w-vvw.ip.india.nic.in) maintained by the Indian trademark Registry is attached as Annexure L (Colly) of the Complaint.
- 6.1.10. The Complainant states that it has successfully pursued domain name complaints before the WIPO and National Arbitration Forums and obtained favourable decisions in respect of numerous infringing domain names such as 'googleplace.in, googletezupiapp.in, google- O.com, chotagoogle.com, google-montenegro.me, google-sina.com, google-vietnam.com' etc. Complaint states that all these decisions

acknowledge the Complainant's proprietorship over the trademark GOOGLE. The decisions are annexed as Annexure N (colly) of the Complaint.

6.1.11. The Complainant was recently made aware of the existence of the domain www.googlebank.in registered in the name of Titan Corporation. When accessing the disputed domain, we are redirected to <https://dan.comlbuy-domain/goo.glebank.in?redirected=true&tld=in>, where the landing page contains the following message "the domain www.googlebank.in is for sale". The Complaint states that a printout of the landing page, which indicates that the website at www.googlebank.in is currently up for sale, along with the WHOIS particulars of the Respondent from the .IN Registry website, are annexed as Annexure O (colly) of the Complaint.

6.1.12. The Complaint states that disputed domain name was registered on 16th August 2018, many years after the Complainant established its rights in the well-known trademark GOOGLE. No website is currently being hosted on the disputed domain and the domain is currently up for sale. Further the Complaint states that by registering a domain that comprises the Complainant's well-known trademark GOOGLE, the Respondent presumably intends to profit commercially via exploitation of the Complainant's rights in the trademark. The Complaint states that it is evident that as of today, the sole value of the disputed domain name is dictated by its relation to the Complainant's registered trademark GOOGLE.

6.1.13. In support of its contentions, the Complainant relied on the decisions in the cases of Hon'ble Courts and Hon'ble Mediation Centre passed in the case of Yahoo Inc v. Akash Arora, 1999 PTC (19) 201 (Del), Google Inc. v. ShaheenYounas (WIPO Case No. D2012-1365), Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy (WIPO Case No. D2017-0075), eBay Inc. v. ebayMoving I IzikApo (WIPO Case

No.D2006-130), Oki Data Americas, Inc. v. the ASD, inc. (WIPO Case No. D2001-0903), Go Daddy.com, Inc. v. Shoneye's Enterprises (WIPO Case no. D2007-1090), Qalo, LLCv. Chen Jinjun and Magnum Piering Inc. v. The Mudjackers (WIPO Case No. D2000-1525), Google Inc. v. Mr. Gulshan Khatri (Case No. INDRP-189 May 06, 2011), HSBC Holdings PLC vs. Hooman Esmail Zadeh [INDRP Case No. 032], Kraft Foods Global Brands, LLC v. Jet Stream Enterprises Limited, Jet Stream (Case No. D2009-0547), UDRP. See Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110 and Google Inc. v. Ning Yang WIPO Case No. D2011-1044.

6.1.14. The Complainant requests for the following relief: "To issue a decision that the disputed Domain Name www.googlebank.in be transferred to the Complainant along with costs of the present proceedings be granted to the Complainant and pass any other appropriate favorable orders deemed fit"

6.2. Respondent:

6.2.1. The Respondent did not file any reply to the Complaint.

7. Discussion and findings:

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

7.2.3. The Respondent's domain name has been registered or is being used in bad faith.

7.3. Identical or Confusingly Similar

7.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

7.3.2. The Complainant has filed documents of its registered trademarks to prove it has rights in the trademark "GOOGLE" in various countries including India and that the trademark GOOGLE has also been declared a 'well known' trademark by the Delhi High Court in 2011, this is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has established that it has rights in the trademark "GOOGLE" in India.

7.3.3. The disputed domain name incorporates the trademark "GOOGLE" in entirety along with a suffix "bank" following by ccTLD (country code top level domain), mere addition of the word "bank" followed by ccTLD ".in" does not remove the distinctiveness of the Trademark. This position was upheld in *Google. Inc Vs. Vinit keshav Case No. INDRP/940*, *Santa fe moving service Private Limited v. Achyut Khare INDRP/ 886* and *Disney Enterprises, Inc. & Anr. Vs. Registrant ID- DI_7305075, Case No. INDRP/596*.

7.3.4. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide

offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) the registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

7.4.3. The Complainant is the registered proprietor of the mark GOOGLE and series of GOOGLE marks in various countries with the earliest registration dating back to September 16, 1998 in the United States of America and commercial use in India since March 1999 and each registration remains valid and is in full force and effect., even the domain name www.google.com was registered in the year 1997 as per the Whois records filed as annexure M of the complaint. The fact that disputed domain name is for sale as set out in Annexure O (colly) of the Complaint and the Respondent has made no claims to either having any relevant prior rights of its own or to having become commonly known by the Disputed domain name shows that the Respondent has no right and legitimate interest on the disputed domain name. This view has been upheld in *Novartis v. Aravind R INDRP/941*.

7.4.4. The Arbitrator finds no material on record to show that the Respondent is commonly known by the disputed domain and it has been parked and no website has ever been hosted on it, as per the screenshots annexed in Annexure P of the Complaint. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. This view has been upheld in *Instagram LLC v. Osbil Technology Limited INDRP/ 1130*, *Richemont holdings AG Vs Lina, Doublefist Limited INDRP/1145* and *Dell Inc.v. Olagappan S.P INDRP/1093*. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use

purposes. The registration of the disputed domain name by the Respondent is therefore a case of cyber squatting. This view has been upheld in *The Institute of Electrical and Electronics Engineers v. MingJing Yi* [INDRP/1135].

7.4.5. The Arbitrator finds the Complainant have made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

7.5.2. The Complainant has well-established rights in the well known trademark "GOOGLE" and the name/mark "GOOGLE" is identified with the Complainant's product and services therefore its adoption by the Respondent shows "opportunistic bad faith". This view was upheld in *Disney Enterprises, Inc. V. Lokesh Morada INDRP/177*. It is highly unlikely for the respondent to be unaware of this famous mark "GOOGLE" at the time of registration of this disputed domain name this was upheld in *Google. Inc Vs. Vinit keshav Case No. INDRP/940*, in which the disputed domain name was registered in the year 2014.

7.5.3. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract internet users by creating a likelihood of confusion with the trademark of another and an attempt to take undue/ unfair advantage of Complainant's goodwill and reputation, is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no other

reasonable explanation for the registration of the disputed domain name by the Respondent.

7.5.4. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.6. The above-mentioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by them.

8. Decision

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name "WWW.GOOGLEBANK.IN" to the Complainant without any cost.

8.3. The Award is accordingly passed on this the 20 day of March, 2020.

Place: Chennai



Dr. Sudhir Raja Ravindran

Sole Arbitrator