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15/05/2017  
தமிழ்நாடு TAMILNADU

Dr. Sudhir Raja Ravindran

BM 025576  
V. SUDHARAJAN  
Stamp Vendor  
L.No:12144/B1/96  
Ekkattuthangal, Ch-32  
Mobile No: 9710019476

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: 15<sup>th</sup> May, 2017

Vanguard Trademark Holdings USA LLC

600 Corporate Park Drive

St. Louis, Missouri 63105

USA

COMPLAINANT

VERSUS

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Zhao Ke

Zhao Ke

Weihai Road 755

Shanghai – 200041, CN

RESPONDENT/REGISTRANT

**DISPUTED DOMAIN NAME: "ALAMOCAR.CO.IN"**

**1. Parties**

1.1. The Complainant in this arbitration proceeding is represented by Mr. Rahul Chaudhry, Lall, Lahiri & Salhortra, RCY House, C-235, Defence Colony, New Delhi - 110024.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Zhao Ke.

2. **The Dispute:** The domain name in dispute is **ALAMOCAR.CO.IN**. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is 1APi GmbH (R98 – AFIN).

**3. Calendar of Major Events:**

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	03.04.2017
2.	Date on which consent was given to act as an Arbitrator	04.04.2017
3.	Date of appointment of Arbitrator	18.04.2017
4.	Date on which the Hard copy of the complaint was received	25.04.2017
5.	Date on which notice was issued to the Respondent	20.04.2017

6.	Due date for filing of Counter Statement by the Respondent	27.04.2017
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#### 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 April 20, 2017, 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 April 27, 2017.

#### 5. Factual Background:

- 5.1. The Complainant is a Limited Liability Company organized and existing under the laws of the State of Delaware, United States of America. The Complainant has coined and adopted the



trade name and trademark "**ALAMO**" with respect to its goods and services and it licenses the same to Alamo Rent A Car operating companies (Alamo). The trade mark/trade name "**ALAMO**" is well-established and well-known globally and the Complainant's licensee has been providing car rental services under this mark since 1974. The Complainant's mark "**ALAMO**" is registered in more than 100 jurisdictions in the world including Algeria, Andorra, Argentina, Aruba, Bermuda, Brazil, Canada, Chile, China (PRC), Columbia, Costa Rica, European Union, Germany, India, Iran, Ireland, Jamaica, Malaysia, Netherlands Antilles, New Zealand, OAPI, the Philippines, Romania, Saudi Arabia, Singapore, South Africa, the United Kingdom etc. The Complainant has registered the mark on 18<sup>th</sup> June, 2004, 5<sup>th</sup> February, 2010 and 29<sup>th</sup> January, 2012 in India.

5.2. The Respondent registered the disputed name "**ALAMOCAR.CO.IN**" on 31<sup>st</sup> March, 2013.

## 6. Parties Contentions

### 6.1. Complainant's Submission:

6.1.1. The Complainant has registered its trademark "**ALAMO**" which is distinctive and has an established reputation in many countries in the world.

6.1.2. In India, the Complainant has applied for registration with the Indian Trademark Registry for its trademark "**ALAMO**" in Class 39 under trademark Application numbers 1291187, 1918326, 1915017 on 18<sup>th</sup> June, 2004, 5<sup>th</sup> February, 2010 and 29<sup>th</sup> January, 2012 respectively.

6.1.3. The Complainant claims that its licensee Alamo Rent A Car operating companies (Alamo) is a value-oriented internationally recognized brand in existence since the year 1974, serving the daily rental needs of the airport leisure traveller throughout the United States, Canada, Mexico, the Caribbean, Latin America, Asia and the Pacific Rim. Alamo is also the largest car rental provider to international travellers visiting North America. Alamo has more than 10,000 employees worldwide and serves thousands of customers per day.

6.1.4.The Complainant claims that they adopted the trade mark "**ALAMO**" and has been continuously using the same through their licensee since 1974, providing services under this mark across more than 100 jurisdictions. Owing to the use of the mark in respect of car rental services, the Complainant's brand has gained phenomenal recognition and is one of the most valued brands internationally and has trans-border and spill-over reputation in India.

6.1.5.The Complainant claims that it owns the trade mark "**ALAMO**" and its variants which are registered or are progressing at different levels of registration at Trade Mark Registries across various designated countries including India and this shows the Complainant's perseverance in securing and protecting their intellectual property for its brand name.

6.1.6.The Complainant claims that the Complainant's Trade Mark "**ALAMO**" and its domain names alamo.com, alamocar.com, alamo.in, alamo.co.in, alamocarrental.in and alamocarrental.co.in represent its invaluable proprietary rights and the Complainant vigorously enforces and vehemently defends such rights against any act of infringement and passing off. The Complainant also keeps a close watch on any activity resulting in transgression of its Intellectual Property Rights and is always prepared to take proactive measures against such acts.

6.1.7.The Complainant has to its credit various websites such as alamo.com, alamocar.com, alamo.in, alamo.co.in, alamocarrental.in and alamocarrental.co.in, registered on 15<sup>th</sup> April, 1999, 9<sup>th</sup> December, 2002, 15<sup>th</sup> March, 2005, 15<sup>th</sup> March, 2005, 12<sup>th</sup> July, 2011 and 20<sup>th</sup> November, 2010 respectively and which have been used by the Complainant extensively since their registration.

6.1.8.The Complainant learnt that the disputed domain name had been registered by the Respondent on 31<sup>st</sup> March, 2013 more than more than 10 years after the Complainant had

registered its domain name alamo.com, and more than 10 years since the registration of the trademark "ALAMO" by the Complainants in India. The Complainant claims that the Respondent has displayed various sponsored links to the Complainant's licensee's competitors' products on the website.

6.1.9. The Complainant argues that the domain name used by the Respondent "ALAMOCAR.CO.IN" is identically and confusingly similar to the Complainant's trade name "ALAMO" beyond any doubt of imagination. The Complainant further states that this fact is reinforced by the Respondent suffixing the descriptive term 'car' to the Complainant's trade name "ALAMO" which describes the Complainant's business. The Complainant claims that the Respondent's use of the name of the Complainant in its entirety in which the Complainant has common law as well as statutory trademark rights is bound to create confusion in the minds of the user public.

6.1.10. The Complainant claims that the Respondent has no rights and legitimate interests in the disputed domain name nor has it acquired Trade Mark(s) by the name/comprising "ALAMO" like the Complainant. The Respondent is not authorised or licensed by the Complainant to use its trademark/trade name.

6.1.11. The Complainant further claims that the disputed domain name was registered and used in bad faith as the Respondent seeks to make unlawful gains out of the disputed domain name by hosting pay-per-click links on the domain name. The disputed domain name carried sponsored links including Alamo Rental Car DFW, Cheap Car Rental Carss, Car Rental Miami Airport, Compare Car Rental, Alamo Car Hire, Car Rental at Lax, Airport Car Hire Deals, One Way Car Rental, Rent a Car Rental and Discount Car Rental Companies as recently as 6<sup>th</sup> March, 2017, which when clicked direct users to competitors' websites and are likely to result in deception and confusion to the internet users. The Complainant



claims that the Respondent has registered the disputed domain name with an intention of attracting or attempting to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of services on the Respondent's website and to attempt to prevent the Complainant from reflecting the mark in a corresponding domain name.

6.1.12. The Complainant also states that in the cases of *Vanguard Trademark Holdings USA LLC v. Zhao Ke* (ICANN's dated June 11, 2015) the Complainant brought an action against the Respondent with respect to the registration of the domain name "goalamo.org" where the Respondent's modus operandi was identical to its actions in the instant case. In the above-mentioned case, the Respondent was ordered to transfer the disputed domain name to the Complainant.

6.1.13. In support of its contentions, the Complainant relied on the decisions in the cases of *Vanguard Trademark Holdings USA LLC v. Zhao Ke* (ICANN's dated June 11, 2015), *Rediff.com India Limited V. Mr. Abhishek Varma & Anr.* (Case No. INDRP/1), *Kingston Technology Co. V. Web Master, Skype Network Limited* (Case No. INDRP/003), *Hindustan Petroleum Corporation Limited v. M. Ram Swamy* (Case No. INDRP/059), *Kentucky Fried Chicken (KFC) Corporation v. Webmaster Casinos Ltd.* (Case No. INDRP/006), *Ingersol-Rand Co. Frankly gully d/b/a advcomren* (WIPO Case No. D2000-0021), *Boehringer Ingelheim Pharma GmbH & Co. KG v. Philana Dhimkana* (WIPO Case No. D2006-1594), *Societe Des Prodi Its Nestle SA, Switzerland v. Nescafe Limited* (Case No. INDRP/100), *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* (WIPO Case No. D2003-0455), *Adobe Systems Incorporated v. Domains OZ* (WIPO Case No. D2000-0057), *eBay Inc. v. Akram Mehmood* (WIPO Case No. DAE2007-0001), *Drexel University v. David Brouda* (Case No. D2001-0067),

*Kangaroo Kids Education Ltd. V. Anupam Devi* (Case No. INDRP/146), *Factory Mutual Insurance Company v. Rihanna Leatherwood* (WIPO Case No. D2009), *Owens Corning v. NA* (WIPO Case No. D2007-1143), *Oki Data Americas Inc. v. ASD Inc.* (WIPO Case No. D2001-0903), *Luxottica Holdings Corp v. Lokesh Morade* (Case No. INDRP/139), *Television Food Network, G.P. v. Arif Siddiqui* (Case No. INDRP/138), *Microsoft Corporation v. Chun Man Kam* (Case No. INDRP/119), *Compagnie Gervais Danone v. Yunengdonglishangmao(Beijing)youxiangingsi* (Case No. D2007-1918), *Exxon Mobil Corp. v. Prop Mgmt. Prof'l* (FA 1059655), *Exxon Mobil Corp v. Exxon Mobil c/o Internet Coordinator* (FA 1220-454), *Societe Nationale des Chemins de Fer Francais v. ostrid co.*, (D2008-0627)(WIPO Jun 24, 2008), *Yahoo! Inc. v. Whois Privacy Protection Serv., Inc.*, (FA 412705) (Nat. Arb. Forum Mar. 17, 2005), *Busy Body, Inc. v. Fitness Outlet Inc.*, (D2000-0127)(WIPO Apr. 22, 2000) and *Homer TLC v. Kang* (FA 573872)(Nat. Arb. Forum Nov. 22, 2005).

6.1.14. The Complainant requests for the following relief: "that the disputed domain name "ALAMOCAR.CO.IN" be transferred to the Complainant".

#### 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 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.It is well established that trademark registration 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 "ALAMO" in numerous jurisdictions including India.

7.3.3.The Complainant has established that it has rights in the trademark "ALAMO".

7.3.4.The disputed domain name incorporates the trademark "ALAMO" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.

7.3.5. This principle has been reinstated In the matter of *HOLA, S.L. v. Viraj Malik* (INDRP/732), where it was held that, as the Complainant established that it had applied for registration of its trademark HELLOTV!, the Respondent registering a domain name wholly incorporating the trademark HELLO of the Complainant was sufficient to establish confusing similarity.

7.3.6.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. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name that the Respondent has registered the domain name "ALAMOCAR.CO.IN" mala fide with the sole motive to encash upon the goodwill and reputation of the Complainant.

7.4.3. The Complainant further states that the Respondent having no legitimate interest is corroborated by the fact that the domain in question displays various sponsored links and "pay-per-click" links to the Complainant's licensees competitors and their product on the resolving website.

7.4.4. 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.

7.4.5. The Respondent has not responded in these proceedings and has not provided any material to show rights in the disputed domain name. The Arbitrator finds the material on record does not show the Respondent is commonly known by the disputed domain name. 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. 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.

7.4.6. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a bona fide use under the Policy.

7.4.7. The Arbitrator's view in this regard has been upheld in the matter of *The Goodyear Tire and Rubber Company v. Mr. Gao Gou* (INDRP/741) The Registrant in this case was not offering any goods/services under the domain name 'goodyear.in', but rather, was directing users to parked pay-per-click or sponsored search portals. In view of this, it was held that;

*"the Respondent has no right or legitimate interest in the domain name goodyear.in as the Respondent is not making a bona fide offering of goods or services, is not commonly known by the disputed domain name and is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii)."*

7.4.8. The Arbitrator finds the Complainant has 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 asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "ALAMO", and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose. The disputed domain name carries pay-per-click views and sponsored links to the products and services of the Complainant's licensee and the Complainant's licensee's competitors.

7.5.3. The Complainant's prior adoption of the mark predates the Respondent's domain name registration by more than 10 years and the registration of a name that is so obviously connected with the Complainant is suggestive of the Respondent's bad faith.

7.5.4. The Arbitrator finds the Complainant has established its prior adoption and rights in the trademark "ALAMO". Further, the Complainant's trademark applications were clearly made before the disputed domain name was registered. The evidence on record shows that the Complainant's trademark is well known. Thus the choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy. In *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc.*, INDRP/250 (December 30, 2011) this principle that *"the registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is evidence of bad faith"*, has been well-established.

7.5.5. The Registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant. Under Paragraph 6

  
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(iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online locations by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanation for the registration and use of the disputed domain name by the Respondent. In *Franklin Resources, Inc. and Franklin Templeton Asset Management (India) Pvt. Ltd v. Mr. David Dlugitch*, INDRP/076 (January 15, 2009) this principle "the registration of a domain name that incorporates a third party mark without any legitimate commercial interest is evidence of bad faith registration and use of the domain name" was well-settled.

7.5.6. 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 abovementioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by him.

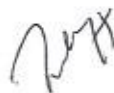
## 8. Decision

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

8.2. For reasons discussed above, the .IN Registry of the NIXI is hereby directed to transfer the domain name "ALAMOCAR.CO.IN" to the Complainant without any costs.

8.3. The Award is accordingly passed on this the 15<sup>th</sup> May, 2017.

Place: Chennai

  
Dr. Sudhir Raja Ravindran  
Sole Arbitrator