



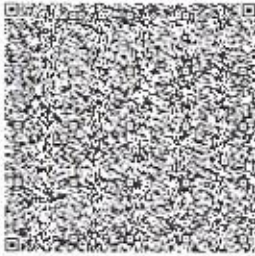
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL79624298988697P
Certificate Issued Date	: 08-May-2017 12:02 PM
Account Reference	: IMPACC (IV)/ dl881103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL88110359945071137407P
Purchased by	: LUCY RANA
Description of Document	: Article Others
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: LUCY RANA
Second Party	: NA
Stamp Duty Paid By	: LUCY RANA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



BEFORE THE SOLE ARBITRATOR UNDER DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry – National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <ALAMOCARS.IN>

IN THE MATTER OF:

Vanguard Trademark Holding USA LLC
600 Corporate Park Drive,
St. Louis, Missouri 63105
USA

Complainant

Versus

Deborah R. Heacock
1256 Horizon Circle
Seattle, WA 98119
USA
Email: domainsimple@gmail.com

Respondent

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

Handwritten signature

1. **The Parties:**

The **Complainant** in this arbitration proceeding is Vanguard Trademark Holding USA LLC of the address 600 Corporate Park Drive, St. Louis, Missouri 63105, USA.

The **Respondent** in this arbitration proceeding is Deborah R. Heacock of the address 1256 Horizon Circle Seattle, WA 98119, USA

2. **The Domain Name, Registrar and Registrant:**

The present arbitration proceeding pertains to a dispute concerning the registration of the domain name <alamocars.in> with the .IN Registry. The Registrant in the present matter is **Deborah R. Heacock**.

3. **Procedural History:**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated April 03, 2017, sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure on the same day.

In accordance with Rules 2(a) and 4(a), NIXI vide email dated April 19, 2017, notified the Respondent of the appointment of the Arbitrator for adjudicating upon the disputed domain name <alamocars.in>.

The Arbitrator received the undated complaint from NIXI on April 19, 2017.

Thereafter, the Arbitrator sent a notice to the Respondent vide email dated April 19, 2017, informing that a copy of this complaint along with annexures has already been forwarded to the Respondent by the .IN Registry and granting the Respondent a period of 14 days (**Fourteen Days**) from the receipt of the notice to file its response to the complaint in both hard as well as soft copy.



NIXI vide email dated April 25, 2017, had informed the Arbitrator that the hard copy of the complaint along with the annexures as sent to the Respondent remained undelivered due to invalid address and contact number.

NIXI vide email dated April 26, 2017, notified the Arbitrator that the soft copy of the complaint along with the annexures as sent to the Respondent vide email has not bounced back.

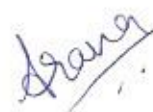
Thereupon, vide email dated April 26, 2017, the Arbitrator notified the parties that as the soft copy of the complaint along with the annexures sent to the registrant's email address vide email dated April 19, 2017, has not bounced back, the delivery of the same is treated as successful. As all alternate modes of delivery, as available, have been attempted by NIXI, service of the complaint to the Respondent stood complete. Therefore, the Arbitrator notified the Respondent that the fourteen (14) days' time period to file a reply would be calculated from April 19, 2017.

However, the Respondent failed to file reply within the fourteen (14) days' time period as granted.

1. Factual Background

The Complainant states that it is a Limited Liability Company organized and existing under the laws of the State of Delaware, United States of America with the address 600, Corporate Park Drive, St. Louis, Missouri, 63105, USA.

The Complainant states that the Complainant is the owner of the ALAMO mark which it licenses to the Alamo Rent A Car operating companies (Alamo) and that the Complainant and its licensees employ more than 10,000 associates/employees worldwide and serves thousands of customers per day. Complainant states that it started Alamo in 1974 as a value oriented brand serving the daily rental needs of the airport leisure traveler throughout the United States, Canada, Mexico, the Caribbean, Latin America, Asia and the Pacific Rim and that Alamo is the largest car rental provider to international travelers visiting North America. Complainant further states that Alamo is the Complainant's licensee and operates an online vehicle rental site at alamo.com that offers airport vehicle rentals. Complainant



also states that the alamocar.in domain name also resolves to the Alamo home page. In this regard the Complainant has also annexed a copy of the Alamo web page as **Annexure 1**.

The Complainant states that the Complainant's mark **ALAMO** is registered in more than 100 jurisdictions of the world including but not limited to Algeria, Andorra, Argentina, Aruba, Bermuda, Brazil, Canada, Chile, China (PRC), Colombia, Costa Rica, European Union, Germany, India, Iran, Ireland, Jamaica, Malaysia, Netherlands, Antilles, New Zealand, OAPI, Philippines, Romania, Saudi Arabia, Singapore, South Africa, and the United Kingdom. In this regard the Complainant has annexed a list of worldwide registrations for the ALAMO mark as **Annexure 2**.

The Complainant states that the trademark and/or trade name ALAMO is well established and/or well known amongst the general public around the globe and further states that it has been continuously providing its services under the mark ALAMO since the year 1974.

The Complainant states that it is the registered proprietor of the trademark ALAMO in classes 16 and 39 in relation to various goods and services in India. In this regard, the Complainant has provided a list of trade mark registrations in India, details of which are copied below:

Trademark	Registration No.	Class	Date
ALAMO	1291187	39	18 June 2004
ALAMO	1918326	39	05 February 2010
ALAMO Logo in Color	1915017	39	29 January 2012

The Complainant states that the aforementioned registrations are valid and subsisting and by virtue of the afore-mentioned registrations and the well-known character of its ALAMO trademark. The Complainant has the exclusive right to use the trademark ALAMO in India and world-wide. In this regard the Complainant has annexed copies of registration certificates of registered marks /online status records for the mark mentioned above as **Annexure 3**.

Arana

The Complainant states that it is the original, honest and prior adopter, user and registered proprietor of the trademark ALAMO. Complainant states that owing to being a privately held company it does not publicly disclose its sales or profits. However, the Complainant states that the world-wide revenue figures for the Complainant for each year between 2006 and 2016 were in the tens of millions of U.S. Dollars and that the above figures have been taken from the books and records maintained by the Complainant.

The Complainant states that its licensee operates a website at alamo.com (to which <alamo.in> and <alamo.co.in> also resolve). The Complainant states that the website at alamo.com was created on 14 April, 1999, and is available to anyone with internet access anywhere in the world, including India. The Complainant states that the trademark ALAMO has also been used extensively over the internet to identify the Complainant and to associate the said mark exclusively with the Complainant. Relevant information pertaining to the Complainant and its well-known brand is available at the website www.alamo.com. The Complainant states that it has also registered various domain names for and containing the mark ALAMO, and in this regard has provided a list of the same:

- Alamo .com
- Alamocars.com
- Alamo.in
- Alamo.co.in

The Complainant states that it has recently become aware of the website Alamocars.in. In this regard the Complainant has annexed a print out of the WHOIS status of the domain <alamocars.in> as **Annexure 4**. The Complainant states that the website at alamocars.in appears to be a parking page following a "pay-per-click" format and is listing various websites and/or businesses, which may change periodically.

Further, the Complainant states that as on 02 March, 2017, the Alamocars.in web page contained the following links:

- Cheap Car Rentals
- Car Rental at Lax
- Car Rental Miami Airport



- Alamo Car Rental MCO
- Cheap Cars for Rent
- Deals on Rental Cars
- Affordable Luxury Cars
- Where to Find Cheap Cars
- Car Rental Car Rental
- Alamo Car Hire

The Complainant states that the website at Alamocars.in also goes further by providing links to other websites upon clicking on any of the links therein. In this regard, the Complainant has annexed a print-out of the web site at Alamocars.in as on 02 March, 2017, as **Annexure 5**. Complainant further states that it is clear that the website at <alamocars.in>, is attempting to create confusion in the minds of consumers by associating itself with the Complainant and thereby generating revenue by directing the said users, to other websites and other businesses providing services in direct competition with Complainant's licensee.

2. **Parties Contentions**

A. **Complainant**

The Complainant submits as follows:

I. **The disputed domain name is identical or confusingly similar to a name, trade mark or services mark in which the Complainant has rights.**

The Complainant states that it is the proprietor of the trademark ALAMO worldwide, including registrations of ALAMO in India, which has been in continuous, extensive and uninterrupted use since 1974. Further, the Complainant also states that its domain <alamo.com> has acquired distinctiveness and is associated with the business of the Complainant. Complainant further states that the mark ALAMO is registered throughout the world, including in India as evidenced from **Annexures 2 and 3** of the complaint.

The Complainant states that the Respondent's <alamocars.in> domain name is deceptively similar with the Complainant's ALAMO mark, as the Respondent's

Drang

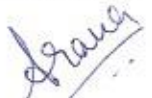
domain name incorporates the Complainant's ALAMO mark in its entirety and merely adds the descriptive term "CARS" which describes Complainant's services offered under the ALAMO mark. Complainant further mentions that it owns various domain names for or that include "ALAMO," including but not limited to Alamo.com, Alamocars.com, Alamo.in, and Alamo.co.in.

The Complainant states that the domain name Alamocars.in is identical to the Complainant's ALAMO mark, as it incorporates its well-known ALAMO mark in its entirety. The Complainant states that in addition to the identical nature of the mark, the impugned website of the Respondent also appears to be a parking page following a "pay-per-click" format and listing various websites and/or businesses offering services in direct competition with Complainant's licensee and states that the website also goes further by providing links to the other websites upon clicking on any of the links. The Complainant further states that the said links all refer to other websites and are bound to cause confusion amongst users wrongfully directed to the website into believing that the same are either endorsed by or in any manner affiliated with the Complainant and has annexed a print-out of the home page at Alamocars.in as **Annexure 5**.

The Complainant further states that the website at Alamocars.in has been specifically designed to redirect users from the website of the Respondent to other providers rendering services in direct competition with Complainant's licensee thereby creating confusion as to the origin of the website and of the links being hosted therein.

The Complainant has stated that owing to the enormous global reputation and goodwill enjoyed by the Complainant, it is apparent that the Respondent has fraudulently acquired the domain name <alamocars.in>, which includes the identical mark of the Complainant and is also identical to the website of the Complainant, solely with an intention of diverting the consumers to the alamocars.in website and creating a likelihood of confusion with Complainant's ALAMO mark.

The Complainant states that the Respondent's domain name <alamocars.in> is deceptively similar to the well-known mark/domain name of the Complainant and further states that the Respondent has made use of the entire trademark and domain

A handwritten signature in blue ink, appearing to read "S. Ravi", is located in the bottom right corner of the page.

name of the Complainant as part of its domain name and merely adds the descriptive term "CARS" which is not sufficient to distinguish the impugned domain name from the Complainant's trade mark and domain names, thereby giving the impression that the domain name is that of the Complainant, referring to the Indian affiliate or Indian business of the Complainant.

The Complainant has also referred to case laws in this regard such as *Rediff.com India Limited v. Mr. Abhishek Varma & Anr. Case No. INDRP/1 (Decided on 03.04.2006)*, where the Complainant's trade mark and the corporate name was 'Rediff' and the Respondent had the registration of the domain name <rediff.in>. It was observed that "By registering the domain name <rediff.in> the Registrant has intentionally attempted to attract internet users to the Registrant's proposed website by creating a likelihood of confusion with the Complainant's name or mark.". Further in *Kingston Technology Co. v. Web Master, Skype Network Limited, Case No. INDRP/033* it was held that the domain name <kingston.co.in> was identical to the Complainant's mark KINGSTON and the domain name <kingston.com>. The panel also noted that, "The Respondent's domain name <kingston.co.in> consists entirely of their trademark, except for .co and .in, i.e., ccTLD, thereby the cyber piracy is in apparent form; the Respondent's registration and use of domain name is a clear case of cybersquatting whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the internet in order to confuse the public to the detriment of the Complainant." Also in *Hindustan Petroleum Corporation Limited v. M. Ram Swamy, Case No. INDRP/059* it was held, "That the domain name <hindustanpetroleum.co.in> is seemingly similar and near to the domain name <hindustanpetroleum.com> and bound to create confusion among users as to its relatedness with www.hindustanpetroleum.com. Further, the Complainant also refers to the case of *Kentucky Fried Chicken (KFC) Corporation v. Webmaster Casinos Ltd. Case no. INDRP/066*, wherein it was stated that, "The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark and logo being KFC. The Respondent's domain name, <kfc.co.in>, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <kfc.co.in> is confusingly similar or identical to the Complainant's marks." Further reference is also made to *Ingersoll-Rand Co. Frankly Gully d/b/a*

Arav

Advcomren, WIPO Case No. D2000-0021), wherein it was held that it is well recognized that incorporating a trade mark in its entirety, particularly if the mark is an internationally known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. Lastly, the Complainant has also referred to the case of *Boehringer Ingelheim Pharma GmbH & Co. KG v. Philana Dhimkana WIPO Case No. D2006-1594*, wherein it was held that if a well-known trade mark was incorporated in its entirety into a domain name that is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered trade mark.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant states that the Respondent does not have any legitimate interest in the mark ALAMO and is not the lawful owner of any right relating to the ALAMO mark. The Complainant states that the Respondent bears no relationship to the business of Complainant and is neither a licensee nor has obtained authorization of any kind whatsoever to use the ALAMO mark.

The Complainant states that the Respondent has neither been using the said domain name or any name corresponding to the same in relation to any goods or services, to the best of the Complainant's knowledge, nor has he been commonly known by the domain name, which in fact, corresponds and is associated exclusively with the Complainant.

The Complainant states that its domain name <alamo.com> was created on 14 April 1999, and the use of the mark ALAMO online had commenced as early as 1999. The complainant further states that the Respondent registered the domain name <alamocars.in> on 09 May, 2013, almost 10 years after Complainant first registered its ALAMO mark in India and 14 years after the web site at Alamo.com first became active. The Complainant further states that being the prior user of the registered and well-known trademark ALAMO it is the lawful owner of the aforesaid trademark



and that the Respondent does not have any legitimate interest in the domain name which copies in its entirety the trademark/domain names of the Complainant.

The Complainant states that the Respondent is making an illegitimate and commercial use of the domain name <alamocars.in> and is deliberately misleading internet users and diverting Complainant's consumers to the other websites in order to tarnish the well-known trademark of the Complainant and the corporate name of its licensee and states that it is apparent that the use of a domain name identical to that of the Complainant's domain name and trademark along with the hosting of websites and search options is clearly an attempt to create confusion and illegally profit from the resulting association between the Complainant and the Respondent. The Complainant has further stated that the website is following a "pay-per-click" format and the said manner of use of the website is clearly commercial.

In this regard the Complainant has referred to the case of *Societe Des Prodi Its Nestle SA, Switzerland v. Nescafe Limited, Case No. INDRP/100*, wherein it was held that, "the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of diverting Internet traffic, which is neither fair use nor non-commercial use. Such facts and circumstances create a rebuttable presumption that the Respondent has no rights in the domain name and is not using it for any legitimate purpose." Further in *Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO Case No. D2003-0455*, it was held that the "Use of a domain name that is identical or confusingly similar to a trademark that applies to goods sold by a Respondent is not a bonafide use if the Domain Name serves as a "bait" to attract customers to Respondents website, rather than merely as a descriptor of the Respondents products (see e.g. *Adobe Systems Incorporated v. Domains OZ, WIPO Case No. D2000-0057* <adobeacrobat.com> and <acrobatreader.com>). Further in *eBay Inc. v. Akram Mehmood, WIPO Case No. DAE2007-0001*) and *Drexel University v. David Brouda Case No. D2001-0067* it was held that "rights or legitimate interests cannot be created where the user of the domain name at issue would not choose such a name unless he was seeking to create an impression of association with the Complainant". The complainant has further referred to *Kangaroo Kids Education Ltd. v. Anupam Devi, Case No. INDRP/146*, regarding the domain name <www.kangarookids.in> wherein the Panel held that given the prior

Drang

use and registrations of the distinctive KANGAROO KIDS mark by Complainant, the Respondent should be held to have actual or at a minimum constructive knowledge of such uses which would also lead to the inference that the same was registered in order to capitalise on the fame and reputation of the Complainant's KANGAROO KIDS family of marks. It stated, "The Respondent has no rights or legitimate interest in the domain name. Further it is apparent that the sole purpose of registering the domain name is to misappropriate the reputation associated with the Complainant's trademarks." In the same case, the Panel also concluded that this action of the Respondent amounted to infringement of the Complainant's rights in its trademarks.

The Complainant has also referred to *Factory Mutual Insurance Company v. Rhianna Leatherwood WIPO Case No. D-2009*, wherein it was held that the selection by the Respondent of a domain name that includes a well-known trade mark not owned by the Respondent, which is being used to redirect to the websites not affiliated with the trademark's owner is not a bona-fide use and does not confer rights or legitimate interests in the Respondent. In light of the above, the Complainant states that the Respondent is put to strict proof, in case he claims of having any legitimate interest in the domain name <alamocars.in>. The Complainant has further referred to the case of *Luxottica Holdings Corp. v. Lokesh Morade, case no. INDRP/139*, wherein it was held that, "Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name."

Lastly the Complainant has placed reference to *Television Food Network, G.P. v. Arif Siddiqui, Case No. INDRP/138* wherein the panel, ruling in favor of the Complainant held that, "the Respondent has registered the disputed domain name on June 02, 2005, which is much subsequent to the Complainant's adoption and use of the mark FOOD NETWORK in respect of similar products/services since the year 1996. There is no evidence to suggest that the Complainant had authorized or licensed the Respondent's registration or use of the domain name."

Arif Siddiqui

The Complainant has further stated that owing to the evidence of long and uninterrupted worldwide use of the trademark ALAMO and the long duration and widespread use of numerous domain names containing the mark ALAMO, the Complainant has established that it is the Complainant who is legitimately entitled to the domain name and that the Respondent does not have any right in relation thereto.

III. The disputed domain name has been registered or is being used in bad faith.

The Complainant states that circumstances indicate that the Respondent has registered or acquired the domain name with dishonest intention to mislead and divert the consumers and to tarnish the trademark/domain name ALAMO of the Complainant.

The Complainant states that the Respondent has registered and is using the domain name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's ALAMO mark and from the likelihood that Internet users will mistakenly believe that the impugned domain name and its associated websites are connected to the Complainant and its goods/services.

The Complainant states that the Respondent has registered and is using the impugned domain name primarily for the purpose of disrupting the business of the Complainant and has no prior right in and no authorization to use the mark ALAMO has been given by the Complainant.

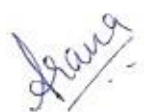
The Complainant states that the offering of other services on the impugned website, particularly services in direct competition with those being offered under the ALAMO mark by Complainant's licensee, manifests Respondent's clear intention to attract, for commercial gain, internet users to Respondent's website by creating a likelihood of confusion with that of the Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's products. The Complainant states that the use and registration of an identical or deceptively similar domain name by the Respondent in an effort to gain commercial benefits is evidence of bad faith.

A handwritten signature in blue ink, appearing to read 'Arang', is located in the bottom right corner of the page.

The Complainant states that the Respondent's bad faith registration of the domain name is established by the fact that the domain name is deceptively similar and almost identical to the Complainant's ALAMO mark and was acquired long after the Complainant started using the impugned mark.

The Complainant has further stated that the Respondent's use of the domain name <alamocars.in> to operate link farms that provide links to other websites promoting various products and services is evidentiary of its bad faith.

The Complainant has also referred to case laws in this regard such as *Television Food Network, G.P. v. Arif Siddiqui, Case No. INDRP/138*, wherein the panel noted that based on the circumstances that the Respondent's domain name currently resolves to a webpage featuring services/products and that by use of the Complainant's mark FOOD NETWORK, it appears that the Respondent has deliberately tried to attract internet users to his website. Further in *Microsoft Corporation v. Chun Man Kam, Case No. INDRP/119*, it was held that, "Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to the Complainant itself or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names and the registration has intentionally attempted to attract Internet users to its website for commercial gain, by intentionally creating a likelihood of confusion with the Complainant's mark, thus misleading consumers." The Complainant also relies on the Judgment of *Compagnie Gervais Danone v. yunengdonglishangmao(beijing)vouxiangongsi Case No. D2007-1918*, in which the panel had accepted that "Given this finding, the Panel also infers and accepts the Complainant's undisputed contention that the Respondent registered the domain name with a view to diverting Internet users with an interest in Danone food products to its website for its own commercial gain. The activities of the Respondent, therefore, fall within the scope of paragraph 4(b) (iv) of the Policy."



The Complainant states that the Respondent is thus not using the domain name for legitimate personal or business purposes and further states that it is apparent that the intention of the Respondent is to create initial-user confusion and divert users to its website and thereafter provide links to websites providing other goods and services and hence generating revenue for itself.

The Complainant thus states that, particularly considering the international fame of Complainant's trademark, including in India, the Respondent has intentionally registered the alamocars.in domain name that it is confusingly similar to the Complainant's ALAMO mark in order to trade off of the goodwill associated with Complainant's aforesaid mark.

The Complainant states that this is not the first time Respondent has registered and used in bad faith a domain name deceptively similar to the ALAMO mark. In this regard the Complainant has referred to the decision under the Uniform domain name Dispute Resolution Policy (UDRP), *Vanguard Trademark Holdings USA LLC v. Deborah Heacock, FA13707001509070 (Nat. Arb. Forum 16 August 2013)*, Respondent was determined to have registered and used the domain names alamocarrental.mobi, alamocarrental.tv, alamorentacar.tv, alamocarhire.me, and alamorentacar.me in bad faith. In this regard the complainant has annexed a copy of the said decision as **Annexure 6**.

The Complainant states that a consumer searching for information concerning Complainant is likely to be confused as to whether the Respondent is connected, affiliated or associated with or sponsored or endorsed by Complainant.

The Complainant has referred to the case of **Exxon Mobil Corp. v. Prop. Mgmt Prof'l, FA 1059655**, available at <http://domains.adrforum.com/domains/decisions/1059655.htm>, wherein it was held that the use of the domain name <exxon.biz> to operate a link farm constituted evidence of bad faith and has also relied *Exxon Mobil Corp. v. Exxon Mobil c/o Internet Coordinator, FA 1220454*, available at <http://domains.adrforum.com/domains/decisions/1220454.htm>, wherein it was held

Drang

that operation of link farms at domains <exxonmobilco.com> and <exxonmobilecorp.com> established Respondent's bad faith.

The Complainant submits that the various website owners who are linked through the alamocars.in website operated by the Respondent presumably provide monetary compensation for the placement of their web-addresses and site links upon the website. The Complainant further states that upon information and belief, this compensation is based on the number of hits the website owners get from being listed on Respondent's site and accordingly, Respondent receives a direct financial benefit from its diversion of Complainant's potential customers to its site. The Complainant further states that by creating a likelihood of confusion with the Complainant's ALAMO trademark by unlawfully capitalizing on the name, recognition and goodwill of the aforesaid trademark to divert Internet traffic to its site, Respondent has undoubtedly registered and has been using the domain name in bad faith. In this regard the Complainant has relied on *Societe Nationale des Chemins de Fer Francais v. ostrid co.*, D2008-0627, (WIPO Jun. 24, 2008), wherein it was held that "the Respondents use of confusingly similar <voyage-scnf-blog.com> domain name for pay-per-click website deemed bad faith registration and use"; *Yahoo! Inc. v. Whois Privacy Protection Serv., Inc.*, FA 412705, (Nat. Arb. Forum Mar. 17, 2005). Further in *Busy Body, Inc. v. Fitness Outlet Inc.*, D2000-0127, (WIPO Apr. 22, 2000), wherein it was held that the Respondent attempted to attract customers to its website and created confusion by offering similar products for sale as Complainant and was thus registered in bad faith.

The Complainant further states that as such, the manner of use of the domain name alamocars.in by the Respondent is a clear example of cyber-squatting. In this regard, the Complainant has relied on *Homer TLC v. Kang*, FA 573872, (Nat. Arb. Forum Nov. 22, 2005) wherein it was held that Respondent's use of <hamptonbay.com> "could in no way be characterized as fair, because consumers would think that they were visiting a site of Complainants until they found there were in a directory which would do the Complainant potential harm".

The Complaint further states that the Respondent's bad faith use of the domain name is further evidenced by the fact that the Respondent has sought to profit from the

Drang

domain name to create an affiliation with the Complainant and that the Respondent's use of Complainant's ALAMO mark bolsters the reputation of Respondent by creating an affiliation with the Complainant's aforesaid famous mark.

The Complainant further states that the Respondent has also made fraudulent and incorrect claims while registering the impugned domain name since all registrants are required to warrant at the time of registering the domain name, under Paragraph 3 (b) of the INDRP that, "to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;" and under Paragraph 3 (d) that, "the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations".

B. Respondent:

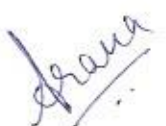
Despite the receipt of soft copy of the complaint and adequate notification from the Arbitrator, the Respondent has not filed any response and submissions to the complaint. Therefore, the Arbitrator has proceeded with the Arbitration proceedings on the basis of the material submitted and put on record by the Complainant.

C. Discussion and Findings:

In the present circumstances, the decision of the Arbitrator is based on the documents as filed by the Complainant.

After perusing the Complaint and annexures as filed, the arbitrator is of the view that the Complainant has satisfied all the three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e., :-

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.



i. **The domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights**

(Paragraph 4 (i) of .IN Domain Name Dispute Resolution Policy)

It is well established that trade mark registration/application is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trade marks has established that it has rights in the trade mark **ALAMO** in numerous jurisdiction of the world.

The Complainant is the proprietor of the trade mark **ALAMO** and variations thereof, in various jurisdictions of the world, including in India.

The Complainant also asserts that the adoption and use of trade mark **ALAMO** identical to Complainant's **ALAMO** trade mark, with the mere addition of the generic suffix **CARS** in respect of similar products/services with that of the Complainant, is evidentiary to the fact that the Respondent has done so in a bid to encash upon the reputation of the Complainant.

The disputed domain name **<alamocars.in>** is confusingly identical/similar to the registered trade mark **ALAMO** of the Complainant and completely incorporates the said registered trade mark of the Complainant. It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed name incorporates the Complainant's trade mark such as *Kenneth Cole productions v. Viswas Infomedia INDRP/093*. Therefore, it is observed that the domain name **<alamocars.in>** is similar to the Complainant's registered trade mark **ALAMO**.

Since .IN is an essential part of any top level domain name, it does not distinguish the Respondent's domain name **<alamocars.in>** from the Complainant's trade mark **ALAMO**. This has also been held in prior panels such as *Lego Juris A/s v. Robert martin INDRP/125* and *AB Electrolux v. GaoGou of Yerec, INDRP/630*.

Therefore, the disputed domain name **<alamocars.in>** is confusingly similar/identical to the registered trade mark of the Complainant and the



Complainant has satisfied the requirement paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name**

(Paragraph 4(ii); paragraph 7 of .IN Domain Name Dispute Resolution Policy)

The Respondent's domain name <alamocars.in> incorporates the mark ALAMO which is phonetically, visually, confusingly and deceptively similar/identical to Complainant's trade mark ALAMO in which Complainant enjoys substantial goodwill.

The Complainant has no relationship with the Respondent and has not permitted or licensed the Respondent to use or register the disputed domain name. Further the Respondent is using the disputed domain name <alamocars.in> and the same is phonetically, visually, confusingly and deceptively similar/identical to Complainant's prior adopted an registered trade mark ALAMO and this would mislead public to believe that the Respondent and the domain name is associated, affiliated and connected with the Complainant, when it is not so. Further, in *Consorzio del Prosciutto di Parma of Via Marco dell' Arpa v. Jim Muller, INDRP/218*, it was held that "misleading users by incorporating other's trade marks in a domain name gives false impression to users and does not constitute a bonafide offering of goods and services."

Use of such phonetically, visually, confusingly and deceptively similar/identical mark by the Respondent is likely to mislead and misrepresent general public and members of trade as to the source, sponsorship, affiliation or association of the activity being carried on through the website. The Respondent's website is not bonafide as the Respondent is using the disputed domain name to divert/redirect internet users seeking Complainant's goods to its own website.

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent is not authorized or permitted to use the trade mark ALAMO or any deceptively similar trade mark such as ALAMOCARS and therefore, the Respondent has no rights or legitimate interest in the domain name <alamocars.in>



and conditions under paragraph 4(ii) and paragraph 7 of .IN Domain Name Dispute Resolution Policy, have been satisfied.

iii. **The Registrant's domain name has been registered or is being used in bad faith.**

(Paragraph 4(iii) and paragraph 6 of the .IN Policy)

Additionally, the Respondent is providing links on its websites promoting various products and services which are in direct competition with those being offered under the **ALAMO** mark by Complainant's licensee for commercial gain and to benefit from the goodwill of the Complainant's registered trademark **ALAMO**. The Respondent intends to benefit by creating an impression that the Respondent is in some manner related or connected to the Complainant.

In view thereof, the Arbitrator concludes that the Complainant has proved the requirements under paragraph 4 (iii) and paragraph 6 of the .IN Domain Name Dispute Resolution Policy and that the Respondent has registered the domain name **<alamocars.in>** in bad faith.

Despite being given adequate notification the Respondent has not filed any reply till date hence, the Complainant's submissions are deemed to be admitted by them. Therefore, in absence of any response received from the Respondent, the Arbitrator has proceeded with the award ex parte. (As held in *Intercontinental Corporation v. Jaswinder Singh*, INDRP/265 and *Park Hospitality Worldwide LLC v. Kristin Frakfurter*, INDRP/659)

D. Decision:

Based upon the facts and circumstances and further replying on the documents as filed along with the Complaint by the Complainant, the Arbitrator is of the view that Complainant has statutory and proprietary rights over the trade mark **ALAMO** and variations thereof. The Complainant has been able to prove that:



- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**alamocars.in**> to the Complainant. The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana

Sole Arbitrator

Date: 15th May 2017

Place: New Delhi, India