



सत्यमेव जयते

INDIA NON JUDICIAL

INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
Government of National Capital Territory of Delhi

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

VALERO ENERGY CORPORATION AND VALERO MARKETING AND SUPPLY COMPANY
Vs
e-Stamp

JOHN DOE

Certificate No. : IN-DL53327209198858V
Certificate Issued Date : 27-Jan-2023 12:17 PM
Account Reference : IMPACC (IV)/ dl914503/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL91450379941617415379V
Purchased by : SUDHIR KUMAR SENGAR
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SUDHIR KUMAR SENGAR
Second Party : Not Applicable
Stamp Duty Paid By : SUDHIR KUMAR SENGAR
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

VALERO ENERGY CORPORATION AND VALERO MARKETING AND SUPPLY COMPANY

Vs

JOHN DOE

ARBITRATION AWARD Disputed Domain Name: <valero88.in>

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.sholestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App 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.

1. The Parties

The Complainants in this administrative proceeding are VALERO ENERGY CORPORATION AND VALERO MARKETING AND SUPPLY COMPANY, ONE VALERO WAY, SAN ANTONIO, TEXAS, USA 78249. The Complainant are represented by Henry "Hank" J. Fasthoff, IV, Fasthoff Law Firm PLLC, 21 Waterway Ave., Suite 300, The Woodlands, TX 77380, (Email: hank@fasthofflawfirm.com, Telephone 713.929.9314).

The Respondent is JOHN DOE, 2 SHENZHEN GUANGDONG 51800 CHINA (Telephone: +86 17722606611, E-Mail: wandou2022@protonmail.com)

2. Domain Name and Registrar

(i) The disputed domain name is <valero88.in>.

(ii) The Registrar with whom the domain name is registered is Dynadot, 210 S Ellsworth Ave #345 San Mateo, CA 94401 US.

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure ("the Rules") which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.



As per the information received from NIXI, the history of the proceedings is as follows:

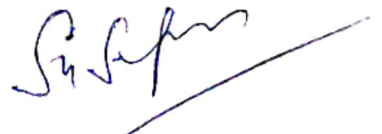
On January 05, 2023, I submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on January 05, 2023 and served an electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on January 05, 2023 and the Respondent was directed to submit a response within 7 (Seven) days. The respondent did not reply to the notice within the stipulated time. The Respondent was further given 5 (five) days time through email dated 13.01.2023 to respond to the notice already served through email dated 05.01.2023. The Respondent failed to file any response even within extended time line. In fact the Respondent has not filed any response till date.

4. Grounds for Administrative Proceedings

1. The disputed domain name is identical or confusingly similar to Complainant's marks.
2. The Respondent has no rights or legitimate interests in the domain name.
3. The Respondent has registered the domain name in bad faith.

5. Background of the Complainant

The Complainants in this administrative proceeding are Valero Energy Corporation, a Delaware corporation and Valero Marketing and Supply Company, a wholly owned subsidiary of Valero Energy Corporation, whose principal place of business is located at One Valero Way, San Antonio, Texas, USA 78249. The Complainant has submitted that Complainant has continuously used the VALERO® mark in commerce for at least 38 years. The Complainant further submitted that during this time, Complainant has spent



tens of millions of dollars advertising, marketing, and promoting the VALERO[®] brand under the Trademarks in the United States and throughout the world, in a wide variety of media formats, including print, television, radio, Internet, billboards, and signage, among others and as a result of Complainant's significant monetary investment and continuous use of the Trademarks to advertise, market and promote the VALERO[®] brand over more than three decades, the trademarks have developed extensive goodwill and favorable consumer recognition. The Complainant has further submitted that Complainant has continuously owned and operated an Internet website under the domain name <valero.com> for many years, and utilizes that domain name for company email addresses through which it communicates internally, with customers, vendors, and the public in general.

The Respondent

The Respondent is JOHN DOE , 2 SHENZHEN GUANGDONG 51800, CHINA (Telephone: +86 17722606611, E-Mail: wandou2022@protonmail.com).The Respondent has registered the nearly identical disputed domain name <valero88.in> on October 17, 2022.

6. Legal Grounds

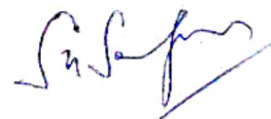
A. The domain name <valero88.in> is nearly identical or confusingly similar to marks in which the Complainant has rights.

Complainant's Contentions

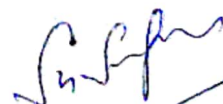
The Complainant has contended that proof of a U.S. federal trademark registration creates a rebuttable presumption that complainant has rights in a mark. The Complainant



has relied on Young v. RN WebReg, Case No. FA 250244 (NAF May 18, 2004) citing Janus Int'l Holding Co. v. Rademacher, WIPO Case No. D2002-0201. The Complainant has submitted that the Complainant owns U.S. Trademark Reg. Nos. 1,314,004, 2,560,091, 2,656,971, and 3,108,715 for the VALERO[®] trademark, and U.S. Trademark Reg. Nos. 2,656,973, 2,927,757, 2,938,790, and 3,688,322 for the VVALERO[®] and VALERO V[®] marks, as well as other registrations embodying the VALERO[®] mark (individually and collectively the "Trademarks. The Complainant further contended that the Complainant has continuously used the VALERO[®] mark in commerce for at least 38 years. (U.S. Trademark Reg. No. 1,314,004). The Complainant has further contended that Complainant has spent tens of millions of dollars advertising, marketing, and promoting the VALERO[®] brand under the Trademarks in the United States and throughout the world, in a wide variety of media formats, including print, television, radio, Internet, billboards, and signage, among others. and as a result of Complainant's significant monetary investment and continuous use of the Trademarks to advertise, market and promote the VALERO[®] brand over more than three decades, the Trademarks have developed extensive goodwill and favorable consumer recognition. The Complainant has also submitted description of the goods and services with which different Trademarks used by the Complainant. The goods and services of the Complainant include Oil and Gas Exploration, Production, Processing, and Distribution Services; Retail store services featuring convenience store items, food products, toiletries, fuels, and lubricants; Convenience store services; Automobile Service Station services and car wash services; Chemical processing services, namely, processing of petroleum feed stocks and chemicals, namely, mixed xylenes, benzene, toluene, propylene;



petroleum refining; production of lubricant base stocks for others; Credit card services; Gasoline and diesel fuel; lubricant base oil and Retail store services featuring gasoline and diesel fuel and convenience store items. The Complainant has also submitted certificates of registration for the Trademarks where applicable, acknowledgments from the United States Patent & Trademark Office acknowledging the continued use and incontestability of the Trademarks. The Complainant submitted that the Complainant has continuously owned and operated an Internet website under the domain name <valero.com> for many years, and utilizes that domain name for company email addresses through which it communicates internally, with customers, vendors, and the public in general. The Complainant has further submitted that more than 50 other panels have previously determined that Complainant has rights in certain of the Trademarks. The Complainant has relied on Valero Energy Corporation v. Domain Admin, WIPO Case No. D2019-1708; Valero Energy Corporation v. David Wayne, WIPO Case No. D2016-1461; Valero Energy Corporation v. Bargin Register, WIPO Case No. D2012-2399; Valero Energy Corporation v. ICS INC., WIPO Case No. D2012-2398; Valero Energy Corporation v. Privacy Protect.org/Maying Joe, WIPO Case No. D2012-0939; Valero Energy Corporation v. Navigation Catalyst Systems, Inc., WIPO Case No. D2011-1227; Valero Energy Corporation v. Transure Ent., Ltd./Oworested Domain Privacy; WIPO Case No. D2011- 0920; Valero Energy Corporation v. Linkz Internet Services, WIPO Case No. D2008- 0479; Valero Energy Corporation v. Web Advertising Corp., WIPO Case No. D2008- 0407; Valero Energy Corporation v. Rare Names, Web Reg, WIPO Case No. D2006- 1336; Valero Energy Corp. v. American Distribution Systems, Inc., WIPO Case No. D2001-0581. The Complainant has



contended that the Trademarks are both distinctive and famous and within the meaning of U.S. trademark law. The Complainant has contended that the domain name <valero88.in> is confusingly similar to the Trademarks owned by Complainant because it is comprised of Complainant's VALERO® mark in its entirety, plus the generic number "88," along with the country code domain extension, ".in". The Complainant has also relied on Société Nationale des Chemins de Fer Français, SNCF v. Transure Enterprise Ltd / Bargin Register Domain Privacy, WIPO Case No. D2011-0447 wherein the Panel does not consider, when analyzing the identity or similarity, the suffix, in this case ".com," because it is a necessary component of the Domain Name and does not give any distinctiveness.

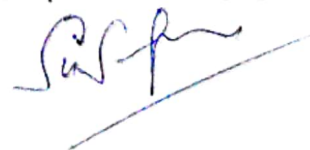
Respondent's Contentions

The respondent has not responded to the notice issued by this panel.

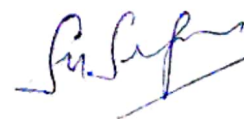
B. The Respondent has no rights or legitimate interests in respect of the Domain Name.

Complainant's Contentions

The Complainant has contended that Respondent has no rights or legitimate interests in or to the <valero88.in> domain name. The Complainant further contended that the Respondent has never been commonly known by the domain name; has not used or made demonstrable preparations to use the domain; and is not making a legitimate noncommercial or fair use of the domain without intent for commercial gain. The Complainant submitted that Complainant has not licensed to Respondent the right to use the VALERO® mark, and Respondent is not otherwise authorized to act on Complainant's behalf. The Complainant further submitted that to the contrary, Respondent is engaged in



an elaborate, criminal investment scheme using the Complainant's trademarks and images of its refineries and personnel that have been downloaded by Respondent from the Internet. The Complainant further submitted that the Respondent is using the <valero88.in> domain to operate an illegal investment scheme whereby the Respondent encourages website visitors to create an account, upload their credit card or banking information and purchase fake "investment plans" promising daily passive income earnings with returns that would provide unrealistically high returns, all using Complainant's trademarks. The Complainant further contended that all documents submitted hereto embody Complainant's Trademarks contain unauthorized, infringing uses of Complainant's Trademarks. The Complainant further submitted that, as set forth in the Respondent's landing page, there is nothing on the record showing that Respondent presently is preparing to use the corresponding disputed domain name for any legitimate purpose, given the full incorporation of Complainant's mark in the disputed domain name, and the fact that the Respondent is totally unrelated to Complainant." The Complainant has relied on Arkema France v. Arkema Global, Arkema Group, Arkema Corp and Arkema Cloud, WIPO Case No. D2014-2010. The Complainant has also relied on Valero Energy Corp. v. Lisa Katz, WIPO Case No. 2015-0787. The Complainant has contended that the conduct described above does not constitute a bona fide offering of goods or services under or a legitimate noncommercial or fair use under Policy. The Complainant has relied on Valero Energy Corporation v. Navigation Catalyst Systems, Inc., WIPO Case No. D2011-1227; Valero Energy Corporation v. Transure Ent.,



Ltd./Oworested Domain Privacy; WIPO Case No. D2011-0920; The Complainant has also relied on Société des Produits Nestlé S.A. v. Oworested Domain Privacy, Shu Lin, Shu Lin Enterprises Limited, WIPO Case No. D2010-1882 wherein there is no bona fide offering of goods or services where the disputed domain name resolves to a website with sponsored links. The Complainant has also relied on Davidoff v. Darnell, Case No. FA 97331 (NAF July 23, 2001) wherein a respondent's offering of goods or services cannot be bona fide if the Respondent is trading on the fame of a complainant's mark. It is, to the contrary, fraudulent and criminal conduct.

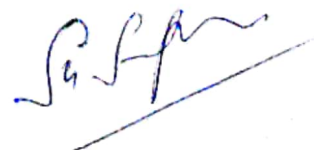
Respondent's Contentions

The respondent has not responded to the notice issued by this panel.

C. The Domain Name was registered or is being used in bad faith

Complainant's Contentions

The Complainant submitted that the Complainant has owned and continually used the VALERO[®] mark in commerce for more than 37 years. The Complainant further submitted that at the time the domain name was registered on October 17, 2022, Complainant was listed as the 30th largest company in the United States according to *Fortune* magazine. The Complainant has further contended that the Respondent was aware of Complainant's prominence in the business world when it registered the subject domain. The Complainant further submitted that notwithstanding Respondent's knowledge of the fame associated with the VALERO[®] mark, Respondent intentionally registered, for



Commercial gain, a domain that is comprised of the Complainant's Trademarks. The Complainant has relied on Smith v. Barney Rubble, Case No. FA 587480 (NAF Dec. 5, 2005) wherein intentional registration of well-known mark for commercial gain is evidence of bad faith. The Complainant has further submitted that Paragraph 3 of the Registrant's Terms and Conditions provides that:

"Any kind of proxy services are not allowed, and if the data is wrong or masked out by any proxy/ privilege protection services, the Registrant shall not be recognized as the owner of the domain name."

The Complainant further contended that the registrant is hiding his or her identity behind a proxy service and, therefore, cannot be recognized as the owner of the domain under the Policy and in addition, there are dozens of videos available on YouTube

([youtube.com/results?search_query=valero88](https://www.youtube.com/results?search_query=valero88))

wherein registrant has used the domain in an attempt to defraud as many people as possible. The Complainant has contended that Paragraphs 4 and 5 of the Registrant's Terms and Conditions provide that the registrant will not use the domain name for illegal purposes, but here the registrant is using the domain name to operate an illegal investment scheme scam. The Complainant submitted that one person has already complained to Valero about being scammed by the registrant, and lost money to the registrant's unlawful scheme. The Complainant has further submitted that In addition to



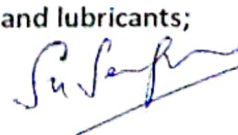
the criminal conduct and non-use of the domain for a website as described above, it is well established that the concept of a domain name "being used in bad faith" is not limited to positive action; inaction is within the concept. The Complainant has further submitted that it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith. The Complainant has relied on *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. The Complainant has contended that the Respondent has registered a domain name that prevents Complainant from registering a domain name that embodies the VALERO[®] mark owned by Complainant. The Complainant submitted that Panels have concluded "lack of respondent's rights or legitimate interests in the domain name is undoubtedly indicative of registration in bad faith." The Complainant has relied on *Puerto 80 Projects SLU v. Domains By Proxy, LLC*, *DomainsByProxy.com* and *Jupiter Miguel Tarrero Gallo*, WIPO Case No. D2012-1563 (citing *J. García Carrión, SA v. José Catalán Frías*, WIPO Case No. D2000-0239).

Respondent's Contentions

The respondent has not responded to the notice issued by this panel.

7. Discussion and findings

The Complainants are Valero Energy Corporation and Valero Marketing & Supply Company, based in Texas, USA. The Complainant is in the business of goods and services such as Oil and Gas Exploration, Production, Processing, and Distribution Services; Retail store services featuring convenience store items, food products, toiletries, fuels, and lubricants;



Convenience store services; Automobile Service Station services and car wash services; Chemical processing services, namely, processing of petroleum feed stocks and chemicals, namely, mixed xylenes, benzene, toluene, propylene petroleum refining; production of lubricant base stocks for others; Credit card services; Gasoline and diesel fuel; lubricant base oil and Retail store services featuring gasoline and diesel fuel and convenience store items. The Complainant is owner of various VALERO mark and this mark is distinctive and also registered by the Complainant to protect it from unauthorized use. The Complainant is using the Valero mark for more than three decades. The Complainant has spent substantial amount on advertising, marketing and promotion of its 'mark' through different channels in many countries. These marks are valid and constitute invaluable intellectual property which need to be protected against misuse by unauthorized persons. The domain <valero.com> was registered by the Complainant many years before registration of disputed domain <valero88.in> in 2022 by the Respondent. The disputed domain name <valero88.in> contains the Complainant's mark 'VALERO' in full and is almost identical to mark of the Complainant except addition of generic number 88. The top level domain ".in" is irrelevant and does little to make it different. The Complainant has not licensed , authorized or given consent to the Respondent to use/utilize the Complainant's registered trademark in any manner. The nearly identical disputed domain is likely to be taken as business associates of the Complainant by ordinary internet users. The respondent has failed to rebut the contentions of the Complainant as he has preferred not to respond to the notice issued by this panel. The purpose of respondent appears to profit from the reputation of the Complainant by registering a nearly identical domain. The disputed



domain is likely to attract internet traffic intended to the Complainant's domain. The registration of disputed domain name chosen by the Respondents shows his intent of using nearly identical mark of the Complainant to divert an ordinary internet user who may consider disputed domain name to be business associate of the Complainant. The Respondent failed to produce any evidence of bonafide or legitimate use of disputed domain as he has preferred not respond to notice issued by this panel

Respondent's Default

The INDRP Rules of Procedure require that Arbitrator must ensure that each party is given fair opportunity to present its case. Rule 8(b) reads as follows;

"In all cases, the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

Rule 12 empowers arbitrator to proceed with an ex party decision in case any party does not comply within the time limits or fails to reply against the complaint. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and /or the directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance with the law."

The respondent was given notice of administrative proceedings in accordance with Rules.

The panel finds that the Respondent has been given fair opportunity to present his case.

The Rules paragraph 12(a) provides that the Arbitrator shall decide the complaint on the

basis of the Complainant's contention and documents submitted in accordance with Rules and any other law which Arbitrator deems fit to be applicable. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions, evidence and inferences as the respondent has not replied.

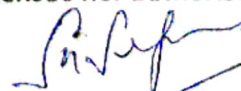
The domain name <valero88.in> is nearly identical or confusingly similar to trademark or service mark in which the Complainant has rights.

The Complainant has been able to prove that it has trademark rights and other rights in marks 'VALERO' by submitting substantial documents. The mark is widely used by the Complainant in different advertising, marketing and promotion through different channels. The disputed domain contains name which is nearly identical to mark 'VALERO' as the disputed domain contains Complainant's mark completely. Addition of top level domain (CCTLD) extension '.in' is insignificant and does little to make it different. There can't be coincidence that the respondent has chosen domain name confusingly similar to the marks of the Complainant. The top level domain <valero.com> was registered by the Complainant years before registration of disputed domain <valero88.in> by the Respondent in 2022. The respondent has failed to reply to the notice issued by this panel to rebut the contentions of the Complainant.

Bases on the forgoing analysis, I am of the opinion that the disputed domain name is nearly identical and confusingly similar to the complainant's mark.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark 'VALERO'. The Respondent is neither a licensee nor authorized by

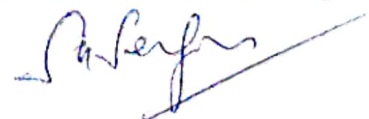


the Complainant, to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest by rebutting the contentions of the Complainant. The Respondent is involved in soliciting customers to investment schemes using Complainant's trademarks. The Respondent failed to submit his response to justify legitimate non commercial use of disputed domain name. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the respondent. The Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name but the Respondent has not filed any response to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

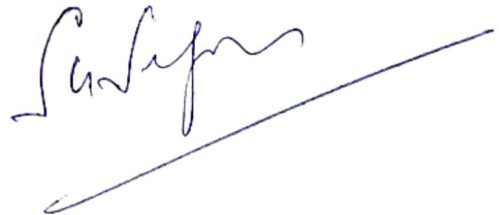
The Domain Name was registered or is being used in bad faith

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating well known mark of the Complainant. The Complainant has been the using

A handwritten signature in blue ink, appearing to read 'Anker', with a long horizontal line extending to the right.

the mark for several years when the Respondent registered the disputed domain name in 2022. The panel finds that the Respondent has used the mark VALERO of the Complainant in disputed domain name giving impression that this site is affiliated to the Complainant. The sole purpose of the respondent is to create confusion to an ordinary internet user. The respondent is using disputed domain to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel also takes notice of the fact that the Respondent has preferred not reply to the notice issued in these arbitration proceedings.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.

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Decision

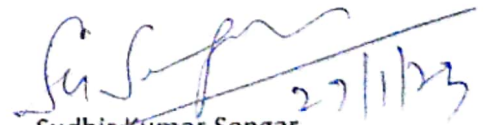
Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has failed to file any response to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is nearly identical/confusingly similar to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name <valero88.in> be transferred to the Complainant, with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

January 27,2023


Sudhir Kumar Sengar 27/1/23

Sole Arbitrator