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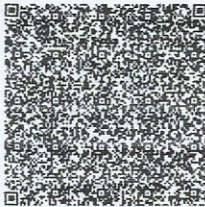
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NATIONAL INTERNET EXCHANGE OF INDIA
9th Floor, B-Wing, Statesman House
148, Barakhamba Road,
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Google LLC, USA vs. Koniecki Alfons Wawozowa, Poland.

INDRP Case no. 1704

Arbitrator: Mr. P.K.Agrawal

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AWARD

1. The Parties

The Complainant is M/s Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America.

The Respondent is Koniecki Alfons Wawozowa, 23 m, 10, Warszawa - 02-796, Poland.

2. The Domain Name and Registrar

The disputed domain name is < **googletranlateservice.in** >. The said domain name is registered with the Registrar – Endurance Digital Domain Technology LLP (IANA ID: 801217). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D5159498-IN
- b. Date of creation: July 11, 2011.
- c. Expiry date: July 11, 2023.

3. Procedural History

- (a) A Complaint dated 29.05.2023 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on

31.05.2023 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 31.05.2023. The Complainant was advised to send copy of the complaint (physical delivery) to the Respondent's address as reflected in WHOIS details. The Respondent was given 14 days' time by the Arbitrator through Notice dated 31.05.2023 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was returned undelivered. The Complainant submitted & served the amended complaint through email, and through "DHL" courier on 02.06.2023. The Complainant, through his email dated 02.06.2023 has submitted the proof of dispatch of the Complaint and annexures to the Respondent through DHL courier. He submitted that his Email has returned undelivered. In view of this, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. The Respondent has not responded to the Complaint nor submitted detailed reply or defence. The Complainant informed vide email dated 13.6.2023 that the Complaint sent through courier was undelivered and it appears from the tracking details that the consignee has moved from the given address. Hence, in view of the above, these proceedings have to be conducted *ex parte*.

4. Factual Background

The Complainant in this arbitration proceedings is M/s Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America.

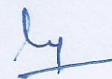
As per complaint, the Complainant is a company duly registered under laws of Delaware in the United States of America. Ever since its formation in the year 1998, it has been carrying on business in internet related services and products, which include advertising technologies, internet search, cloud computing and software, and mobile and computer hardware. The Complainant is the operator of one of the most highly recognized, and widely used internet search engines in the world under the trademark **GOOGLE**. In addition to search technologies and related activities, the Complainant is well-known for a wide range of goods and services, including online advertising, web browser software, email services, mobile phones, laptops, and its accessories.

The trademark **GOOGLE** is used in connection with providing a search engine service that was developed by the Complainant back in 1998. The search engine service under the trademark **GOOGLE** is available in

more than 150 interface languages. The trademark **GOOGLE** is also a part of the Complainant's company name i.e., Google LLC, as well as various other trademarks of the Complainant. Thus, the trademark **GOOGLE** is not only associated with search engine services but also with various other goods and services that the Complainant offers.

Among the Complainant's various products and services, is the free translating tool under the trademark **GOOGLE TRANSLATE**. The said tool was launched in 2006 and as of today, provides translation in over 100 languages and over 5,000 language pairs. Users can translate any text, image or speech, download a particular language for offline translations and even conduct cross-platform translations. Its popularity can be gauged from the fact that it undertakes over 100 billion translations daily and has a user base of over 500 million users worldwide. The Complainant's translating tool runs on a web browser as well as on hand-held devices supported by Android and iOS operating software. The said translating tool is available for download on the Google Play Store and the Apple App Store.

The Complainant claims that it has a significant global presence with more than 150 offices worldwide and their products and services reach more than 150 countries worldwide. The trademark **GOOGLE** is also a part of the Complainant's company name i.e., Google LLC as well as various other trademarks of the Complainant. The Complainant owns and operates over 190 **GOOGLE** based domains where search can be accessed. Additionally, The Complaint is based on the **GOOGLE Trademarks**, registered in favour of the Complainant. The **GOOGLE Trademarks** enjoy an international character as the Complainant's goods/services offered under the trademark **GOOGLE** are spread all over the world including in Algeria, Argentina, Andorra, Albania, Australia, Austria, Bahamas, Belgium, Belize, Brazil, Belarus, Canada, Chile, Croatia, Cuba, Denmark, Egypt, Finland, France, Germany, Ghana, Hong Kong, Iceland, Indonesia, Ireland, Italy, Japan, Jordan, Kenya, Kuwait, Malaysia, Mexico, New Zealand, Nepal, Oman, Pakistan, Portugal, Qatar, Russian Federation, Singapore, Spain, South Africa, Sweden, Switzerland, Taiwan, UAE, USA, the United Kingdom, Vietnam, Zambia etc. to list a few. The Complainant owns numerous registrations for the **GOOGLE Trademarks** (*earliest registration for the trademark **GOOGLE** dating back to September 16, 1998 in the United States of America*) in various jurisdictions.



The Complainant has registered its **GOOGLE Trademarks** in various classes in India. In particular, Google is the owner of the following marks in India:

Mark	Class	Regn No.	Date
Google	42	2297910	13.3.2012
Google	9	1404165	6.12.2005
GOOGLE	9	845041	12.3.1999
GOOGLE	16	1351910	20.4.2005
Google	99	3178084	5.2.2016

According to the Complainant, ever since its adoption, the Complainant has extensively and continuously used the trademark **GOOGLE** both on a stand-alone basis as a word mark, and the stylized logo and also as a prefix to a number of other marks. The **GOOGLE Trademarks** have been used to represent a variety of goods and services offered by the Complainant over the years.

The Complainant has successfully pursued domain name complaints before the WIPO and various National Arbitration Forums and obtained favourable decisions in respect of numerous infringing domain names such as *googleplace.in*, *googleseoservices.in*, *googlepays.in*, *googleblog.com*, *google-0.com*, *chotagoogle.com*, *google-montenegro.me*, *google-sina.com*, *google-vietnam.com*, *google-plaiys.net*, *iran-google.ir*, *googled.co*, *googleklantenservicenederland.nl*, *googlemeet.co.in*, *googleclassroom.in*, *www.googlersoftwareolutions.com* etc. All these decisions acknowledge the Complainant's proprietorship over the trademark **GOOGLE**.

Respondent's Identity and Activities

The Respondent's activities are not known as per WHOIS details. The Respondent has not responded to the Notice sent to him through email or courier. The Respondent has, therefore, not presented any substantive reply or evidence to defend himself.

5. Parties Contentions

A.Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the disputed domain name <googletranlateservice.in> is confusingly similar to the **GOOGLE TRANSLATE** Mark.

The Disputed domain <googletranlateservice.in> entirely subsumes the Complainant's trademark **GOOGLE**, with only addition of the terms 'TRANLATE' (which is merely a misspelling of TRANSLATE) and 'SERVICE'. The additional terms in the Disputed domain do not affect the overall impression, as the dominant part of the Disputed domain remains the trademark **GOOGLE**. In fact, the additional term 'TRANLATE' aids in creating a wrongful impression as it is nearly identical to the Complainant's trademark **GOOGLE TRANSLATE** and appears as if the Disputed domain is intended for the Complainant's translation services under the trademark **GOOGLE TRANSLATE**.

Numerous UDRP panels have agreed that supplementing or modifying a trademark with descriptive words does not make a domain name any less "identical or confusingly similar" for purposes of the Policy - *Inter Ikea Systems B.V. v. Polanski*, WIPO Case No. D2000-1614 (transferring <ikeausa.com>); *General Electric Company v. Recruiters*, WIPO Case No. D2007-0584 (transferring <ge-recruiting.com>); *Microsoft Corporation v. Step-Web*, WIPO Case No. D2000-1500 (transferring <microsofthome.com>); *CBS Broadcasting, Inc. v. Y2K Concepts Corp.*, WIPO Case No. D2000-1065 (transferring <cbsone.com>).

The Complainant submits that irrespective of the inclusion of the additional terms, the fact that the Disputed domain comprises the Complaint's trademark **GOOGLE** in its entirety, has the potential to cause consumer confusion. Consumer recall behind the Complainant's trademark **GOOGLE** and their popular translating tool under the trademark **GOOGLE TRANSLATE** is such that if any person comes across the Disputed domain, they will automatically associate the same with the Complainant only and none other.

In several UDRP decisions as well, various panels have found that the fact that a domain name wholly incorporates a Complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy- *PepsiCo. Inc. v. PEPSI SRL*, D2003-0696 (WIPO Oct. 28, 2003), *Oki Data Americas, Inc. v. the ASD, Inc.* (WIPO Case No. D2001- 0903), *Go Daddy.com, Inc. v. Shoneye's Enterprise* (WIPO Case No. D2007-1090), *Qalo, LLC v. Chen Jinjun and Magnum* (WIPO Case No. D2018-2215) *Piering Inc v. The Mudjackers* (WIPO Case No. D2000-1525). Similar findings were made by NIXI in various INDRP decisions

against the domains *www.googlemaps.in*, *www.googlepays.in*, and *www.googlemeet.co.in* wherein inclusion of the Complainant's well-known trademark **GOOGLE** along with an additional term was still held to be confusingly similar.

The Complainant has used **GOOGLE** as a trademark, trade name, and as a part of various domains, well prior to 11th July 2011, which is the registration date of the Disputed domain. The Complainant submits that the Complainant has established rights in its trademarks **GOOGLE** since 1997. Even the Complainant's translating tool under the trademark **GOOGLE TRANSLATE** was launched in 2006, which is prior to the registration of the Disputed domain.

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that **the Respondent Does Not Have Any Right or Legitimate Interest in <googletranlateservice.in>.**

According to the Complainant, in the present case, the Respondent is not a part of or is related to the Complainant. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use as a part of their trade name, as a part of a trademark or register domain names comprising its trademark **GOOGLE**. As already held in previous Panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name. In the present case, the Respondent is not commonly known by the Disputed domain.

The Complainant has not authorized or licensed the Respondent to use any of its trademarks in any way. Such unlicensed, unauthorized use of the Disputed domain incorporating the Complainant's trademark is strong evidence that Respondent has no rights or legitimate interest in the Disputed domain.

The Complainant argues that the Respondent has registered the Disputed domain solely to mislead consumers. The Complainant is the prior legitimate adopter of the trademark **GOOGLE** and that the Respondent's act of including the same in the Disputed domain to allegedly

offer translation services as that of the Complainant is misleading. This evidences that the Respondent has deliberately attempted to pass off its domain name as that of the Complainant. Further, the adoption and use by the Respondent of the Disputed domain are significantly after the Complainant's adoption of the trademark **GOOGLE**. Thus, the question of the Respondent being known by the Disputed domain does not arise in the first place.

The Complainant submits that in the words of the Sole Arbitrator in *Kraft Foods Global Brands, LLC v. Jet Stream Enterprises Limited, Jet Stream* (Case No. D2009-0547) "...while the overall burden of proof rests with Complainant, panels have recognized that this could result in the often-impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore, a Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, a Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455*; *Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110*." It is submitted that the said threshold has been satisfied in the present case.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the **Domain Name Has Been Registered and Used in Bad Faith**:

The Complainant submits that the Disputed domain name has been registered in bad faith for the following reasons:

- a) As already stated above, the Respondent is a habitual offender who has admitted to having at least more than 10 domain names comprising the Complainant's well-known trademark **GOOGLE** along with other trademarks owned by Complainant.
- b) The Respondent has registered the Disputed domain for the purpose of extorting money from the Complainant by attempting to sell the Disputed domain to the Complainant. The Respondent contacted the legal counsels of the Complainant offering to sell the domains

www.googletranlateservice.in and www.googleanalytics in amongst many others, a copy of which is enclosed with the Complaint. It is apparent that the Respondent aims to illegitimately monetize the Disputed domain either by itself or by selling it at a premium to a third party.

- c) The Respondent's bad faith is further established by the fact that Respondent has made no *bona fide* use of the Disputed domain. As detailed above, the Disputed domain appears as a click bait for the Complainant's translating services under the trademark **GOOGLE TRANSLATE**.

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has not responded to the complaint. All emails and couriers addressed to him on the contact points mentioned in WHOIS details have remained undelivered. He has not submitted any evidence or argument indicating his relation with the disputed domain name <googletranlateservice.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

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

Although Respondent has not offered any arguments to defend himself

on this complaint, the default does not automatically result in a decision in favour of the Complainant. The burden remains with Complainant to establish the three elements of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

The disputed domain name <googletranlateservice.in> was registered by the Respondent on July 11, 2011.

The Complainant is an owner of the registered trademark "GOOGLE" for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <googletranlateservice.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for "GOOGLE" products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <googletranlateservice.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

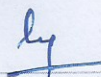
In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

The Respondent has not responded with a detailed reply in this case despite sufficient notice. There is no evidence to suggest that the Respondent has been known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not GOOGLE or **googletranlateservice** as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark "GOOGLE" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <**googletranlateservice.in**> under INDRP Policy, Para- 4(ii).



C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

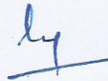
The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by

the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <googletranlateservice.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 19th June, 2023