



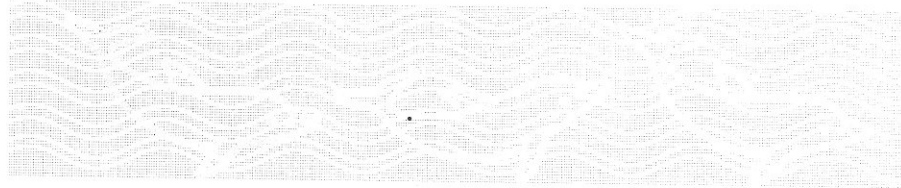
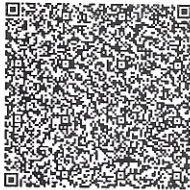
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL58151734691967R
Certificate Issued Date	: 16-Mar-2019 12:13 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP1721919881418332R
Purchased by	: JAYANT KUMAR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: JAYANT KUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: JAYANT KUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

IN THE MATTER BETWEEN

HDR Global Trading Limited

Complainant

v.

Musk E

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.

ARBITRATION AWARD

1. The Complainant in the present proceedings is HDR Global Trading Limited, a company incorporated under the International Business Companies Act of 1994 of the Republic of Seychelles with a company number of 148707. The Respondent is Musk E having its address at 312 Cherry Lane, New Castle, DE, USA.
2. This Arbitration pertains to the disputed domain name <bitmex.co.in> registered by the Respondent. The registrar for the disputed domain name is Key-Systems GmbH.
3. The Sole Arbitrator appointed in this complaint by NIXI is Jayant Kumar. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI.
4. The Complaint was handed over to the Arbitrator by NIXI on July 10, 2019. The Respondent was served with a copy of the complaint along with annexures electronically vide email dated July 11, 2019 by NIXI. The Respondent vide email dated July 18, 2019 was granted two weeks time to file its Reply viz. by August 1, 2019. No Reply was filed by the Respondent by August 15, 2019. The last and final opportunity was granted to the Respondent vide email dated August 16, 2019 to file its Reply by August 21, 2019. The Respondent, however, did not file any Reply and is thus proceeded ex-parte.

Complainant's Submissions

5. The Complainant submits that BITMEX is its Bitcoin-based Peer-to-Peer (P2P) crypto-products trading platform served on its domain name and

website hosted at <bitmex.com>, offering leveraged contract bought and sold in Bitcoin. The Complainant had featured in Fortune – one of the world's leading business media brands in an article by Bloomberg in August, 2017 whereas the disputed domain name was registered by the Respondent in November, 2017.

6. The Complainant owns trademark registration for the mark BITMEX in various countries including Registration No. 01642327 in European Union, Registration No. 2018-013164 in Japan; Registration No. 300201801921 in Singapore, Registration No. 00003218498 in United Kingdom, etc. It is stated that trademark application for the mark BITMEX in India is pending registration, however the details of the said trademark application is not mentioned in the Complaint.
7. The Complainant states that where a Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests, the burden of proof shifts upon the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. The Complainant submits that the Respondent is "Musk E" and there is no evidence that it is commonly known by the name BITMEX in any manner. Further, the Respondent has passively held the disputed domain name since it was created in November, 2017 and there is no active website to which the Respondent resolves the disputed domain name. All these circumstances, as per the Complainant, shows that the Respondent does not have legitimate rights and interest in the disputed domain name.
8. The Complainant submits that the Respondent has used the same Gmail account to register domain name related to BITCOIN cryptocurrency

which shows that the Respondent had actively and deliberately targeted the Complainant's space and was well aware of the Complainant's mark.

9. The Complainant further submits that it had featured in global media networks like Bloomberg and CNBC before November, 2017 (when the Respondent registered the disputed domain name) and given that BITMEX is not a dictionary word, it is certainly likely that the Respondent had searched top level domain extensions for the mark BITMEX before registering the disputed domain name. Further, the Respondent has been passively holding the disputed domain name. The Complainant submitted that all these circumstances lead to a conclusion of bad faith registration and use of the disputed domain name.

Discussion and Finding

10. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:
 - a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
 - b. The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c. The Respondent's domain name has been registered and is being used in bad faith.
11. The Arbitrator finds that the Complainant has registered the mark BITMEX in many countries. The trademark application in India is stated



to be pending. The Arbitrator notices that the Complainant has been held to be the owner of the mark BITMEX in *HDR Global Trading Limited v. mo gyuri, gyuri mo*, INDRP Case No. 1129/2019 (<bitmex.in>). The Administrative Panels in *HDR Global Trading Limited v. \uc 18c\ubbfc \ucd5c*, Claim No. FA1902001829914 (Nat. Arb. Forum March 15, 2019) (<bit-mex.co>) and *HDR Global Trading Limited v. Pamela Ramirez/Crane Tech S. de R.L. de C.V*, Claim No. FA 1902001829913 (Nat. Arb. Forum March 22, 2019) (<bitmex.land>) have also held that the Complainant owns the mark BITMEX. The Complainant is also hosting its website at www.bitmex.com. The Arbitrator is thus of the view that the Complainant has established its ownership in the mark BITMEX.

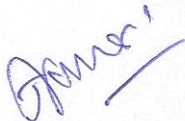
12. The Respondent has chosen to register an identical domain name viz. <bitmex.co.in>. The disputed domain name is therefore held to be confusingly similar with the Complainant's mark BITMEX.
13. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain.
14. The Respondent is not known by the mark BITMEX. The Respondent has also not been authorized by the Complainant to use the mark BITMEX. The Respondent is also not using the disputed domain name in connection with bonafide offering of goods or services. Whereas it is passively holding

the disputed domain name. The Arbitrator is thus of the view that the Respondent's use of the disputed domain name is not bonafide and the Respondent does not have legitimate rights and interest in the disputed domain name.

15. The Arbitrator further agrees with the Complainant's submissions that it is inconceivable that the Respondent was unaware of the Complainant's trademark and its commercial success. This is particularly when the Complainant and the mark BITMEX had featured in the magazine *Fortune* only a few months before registration of the disputed domain name by the Respondent. Further, the Respondent has also registered the domain name <bitcoinmargin.us> which indicates that it is aware about the cryptocurrency. The Complainant has relied upon *Hexaware Technologies Ltd. v. Chandan Chandan*, (INDRP, March 5, 2015) (<hexware.co.in>) to contend that non-use of passive holding is also considered bad faith registration and use. The bad faith use and registration is therefore evident from the aforesaid facts and circumstances. The Arbitrator accordingly finds bad faith use and registration of the disputed domain name by the Respondent.

Decision

16. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <bitmex.co.in> be transferred to the Complainant.



Jayant Kumar
(Sole Arbitrator)

Dated: August 27, 2019