



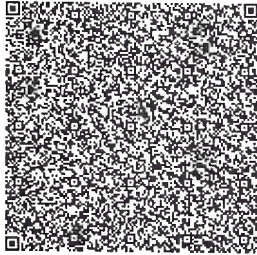
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

<b>Certificate No.</b>	: IN-DL67375738248772P
<b>Certificate Issued Date</b>	: 22-Dec-2017 05:06 PM
<b>Account Reference</b>	: IMPACC (IV)/ dl881103/ DELHI/ DL-DLH
<b>Unique Doc. Reference</b>	: SUBIN-DL88110337730068516730P
<b>Purchased by</b>	: LUCY RANA
<b>Description of Document</b>	: Article Others
<b>Property Description</b>	: NA
<b>Consideration Price (Rs.)</b>	: 0 (Zero)
<b>First Party</b>	: LUCY RANA
<b>Second Party</b>	: NA
<b>Stamp Duty Paid By</b>	: LUCY RANA
<b>Stamp Duty Amount(Rs.)</b>	: 100 (One Hundred only)



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

BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY

(Appointed by .IN Registry- National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <FBPASSWORDHACKER.IN>

IN THE MATTER OF

Facebook, Inc.

1601 Willow Road,  
Menlo Park, California 94025  
United States of America

...Complainant

-----versus-----

Zhou Lu

Room 503

Shaoyang, 422000

Hunan

China

...Respondent

*Dr. Rana*

#### 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.

1. **The Parties**

The **Complainant** in this arbitration proceeding is **Facebook, Inc.**, of the address 1601 Willow Road, Menlo Park, California 94025, United States of America.

The **Respondent** in this arbitration proceeding is **Zhou Lu**, an individual, having address at Room 503, Shaoyang, 422000, Hunan, China .

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

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <**fbpasswordhacker.in**> with the .IN Registry. The Registrant in the present matter is Zhou Lu, and the Registrar is Endurance Domains Private Limited.

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 November 13, 2017, sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure on the same day.

Thereafter, NIXI forwarded the soft copy of the Complaint, along with Annexures, as filed by the Complainant in the matter, to all Parties, including the Arbitrator vide emails dated November 22, 2017.

The hard copies of the domain complaint along with Annexures as filed by the Complainant were received by the Arbitrator on November 27, 2017 and receipt thereof was confirmed vide email on the same day.

On November 28, 2017, NIXI informed the Arbitrator vide email that service of the hard copies of the domain complaint and Annexures as sent to the Respondent's postal address provided in the WHOIS details of the disputed domain had been refused at the said address and sought instructions on how to proceed further. Additionally, vide email dated November 29, 2017, NIXI informed the Arbitrator of another communication from the courier agency charged with delivery of the hard copies of the domain complaint along with Annexures informing that they had spoken to the consignee (i.e. the Respondent) who had refused to accept service of the complaint.

Therefore, the Arbitrator, vide email dated November 29, 2017, announced that the Complaint along with Annexures has been duly served upon the Respondent vide email as is evidenced by the fact that the emails as sent have not bounced back, and as per Rule 2(a)(ii) of the INDRP Rules of Procedure, this constitutes effective service. Further, Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 provides that *"If none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it."* In view also of the courier agency's intimation that the Respondent was not reachable at the postal contact details as provided in the WHOIS details of the disputed domain, it prima facie appears that

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the Respondent has provided incorrect postal contact details in the WHOIS records for the impugned domain. Hence the service of notice was deemed to have been completed upon the Respondent.

Thereafter, the Arbitrator, vide email dated November 29, 2017, informed the Respondent that he is deemed to have been duly served with the Complaint and Annexures thereto and is granted a period of **fourteen (14) days** from the date of receipt of the email in which to file a response to the complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law.

NIXI, vide its email dated November 30, 2017, sought instructions from the Arbitrator whether to have the courier agency, charged with delivering the hard copies of the Complaint and Annexures to the Respondent, return the undelivered consignment to NIXI or to have them destroy it, to which the Arbitrator directed, vide email of the same date, to have the courier agency return the undelivered consignment along with relevant return remarks in light of the Respondent having refused service of the same.

On December 8, 2017, the Respondent replied vide email, inter alia asserting that he had legitimately acquired the impugned domain, in accordance with applicable rules, and that he was willing to consider amicable transfer of the same on payment of consideration of USD 1000.

Thereafter, considering the email as sent to be the Respondent's official response in the matter, the Arbitrator granted a period of **ten (10) working days** from December 8, 2017 to the Complainant to file a further response to the Respondent's email reply if it so wished.

Complainant duly responded vide email dated December 12, 2017 wherein it submitted that the Respondent's offer to sell the domain name vide its email of December 8, 2017 is further indication of its bad faith, over and above as has been submitted by the Complainant vide its Complaint.

The Arbitrator duly took notice of the Complainant's response in this regard and thereafter, vide emails dated December 14, 2017, granted the Respondent **seven (7) days** therefrom to rebut the Complainant's submission should he so wish.

#### 4. Factual Background

The Complainant has submitted that it is the world's leading provider of online social networking services, and is also commonly known as "FB" (for example, its listing on NASDAQ, the US national stock exchange, as "FB"). The Complainant has further submitted that it was founded in 2004 and that it allows internet users to stay connected with friends and family and to share information, primarily via its website [www.facebook.com](http://www.facebook.com). The Complainant has annexed a screenshot of its website's home page as **Annex 3**. Originally restricted to students from Harvard University, the Complainant has stated that Facebook expanded rapidly to encompass all internet users with a valid email address by 2006. The Complainant has submitted that it gathered considerable renown and goodwill and accumulated 1 million active users by the end of 2004, 100 million users by August, 2008, 500 million users by July, 2010 and 1 billion users worldwide by September, 2012.





As of June 2017, as per the Complainant's submissions, Facebook has over 2 billion active monthly users, with 1.32 daily active users on average, worldwide.

The Complainant has submitted that its website, [www.facebook.com](http://www.facebook.com) is currently ranked as the 3<sup>rd</sup> most visited website in the world and the 4<sup>th</sup> most visited in India, according to information company, Alexa. The Complainant has further submitted that 84.5% of its of its daily active users are based outside USA and Canada and that its social networking services are provided in more than 70 languages. The Complainant has also submitted that Facebook is also available as a mobile app which has, in recent years, consistently ranked among the top apps in the market with over 1.74 billion mobile monthly active users and 1.15 billion daily active users, as of January 2017. It is the fourth most downloaded application in India as per App Annie's Top Apps Ranking in 2017. The Complainant has provided screenshots of the websites providing the above statistics as **Annex 4**.

The Complainant has further submitted that Facebook has amassed considerable reputation and goodwill worldwide, including in India, under its abbreviation "FB", and has annexed several newspaper articles released in the Indian press as **Annex 5**, including an article showing that India now has the most Facebook users, published in July, 2017.

Although Facebook is officially inaccessible in mainland China, the Complainant has submitted that it nevertheless remains a popular website there, featuring prominently in search engine results and being referred to in press articles and blog posts. According to the Complainant's information gathered from the information company Alexa, Facebook ranks as the 64<sup>th</sup> most visited website in China.

The Complainant has submitted that it opened its first office in India in Hyderabad in 2010. At the time, the Complainant has submitted that there were already 15 million Indian Facebook users. The Complainant has submitted that there were 150 million Facebook users in India as on May, 2016 and had been looking at a potential target of 241 million active users in India by July, 2017 which would make India the largest audience for Facebook, larger even than the United States of America. Facebook has achieved impressive growth in India, as per the statistics submitted by the Complainant, in that active users have grown by 27% in six months, as compared to only 12% in the United States. The Complainant has additionally annexed its press release of highlights from its fourth quarter and annual report for 2016, along with other press articles illustrating its growth and popularity worldwide, including in China and India, as **Annex 5**.

The Complainant has submitted that given the online nature of the Complainant's social networking business, the Complainant's domain names consisting of its trademarks are not only the heart of its entre business, but also the principal way for millions of users to avail themselves of its services. Therefore, the Complainant is the owner of numerous domain names (gTLD's and ccTLD's) worldwide consisting of or including the mark "FB", such as <fb.com>, <fb.am> (Armenia), <fb.asia> (Asia), <fb.bs> (Bahamas), <fb.co> (Colombia), <fb.fr> (France), <fb.im> (Isle of Man), <fb.ie> (Ireland), <fb.me>, (Montenegro), <fb.pe> (Peru), <fb.pt> and <fb.com.pt> (Portugal), <fb.lk> (Sri Lanka), and <fb.uk> and <fb.co.uk> (United Kingdom). The Complainnat has annexed relevant WHOIS pages of the aforementioned domains as **Annex 6**.

The Complainant has further submitted that it has made considerable investment in developing a strong social presence online by being active on different social media forums such as Twitter, YouTube, LinkedIn and its own official page on Facebook. The Complainant has annexed screenshots of its social media accounts as **Annex 7**.

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The Complainant has also submitted that it has contested and won several prior domain name disputes under the Uniform Dispute Resolution Policy of WIPO and infringing domain names have been ordered to be transferred to the Complainant. The Complainant has annexed several such decisions in its favour as **Annex 8**.

The Complainant has submitted that the combination of letters "FB" is strongly associated with it as is evidenced by the top search results that obtained by entering the same on Google's search engine available at [www.google.com](http://www.google.com) as well as on [www.google.co.in](http://www.google.co.in) and which are further annexed by the Complainant as **Annex 9**.

## 5. Parties' Contentions:

### I. Complainant

The Complainant has submitted that it was recently alerted to the fact that its FB trademark and company name has been registered with the addition of the generic term "passwordhacker" under the .IN country code Top Level Domain (ccTLD) by the Respondent on December 27, 2016. The Complainant has annexed the WHOIS details thereof as **Annex 2**.

The Complainant has further submitted that, at the time of filing, the domain name pointed to a parked page displaying various sponsored links, notably referring to hacking Facebook accounts, as well as those of other online services such as Gmail. The said domain name was also offered for sale at a price of USD 3,999. The Complainant has annexed screenshots of the website associated with the domain name as well as the webpage on which the domain name was offered for sale as **Annex 10**.

The Complainant has also submitted that as per a search carried out by it, it was revealed that the Respondent's name and email address are associated with thousands of domain names including, but not limited to some which infringe other well-known trademarks such as <efacebook.in>, <whatsappmark.in>, <googletranslate.co.in>, <googlele.co.in>, <redditbookmarks.in>, <youtube2mp3mp4.in>, <youtubeonfire.in>, <findus.co.in> and <gazprom.us>. The Complainant has annexed copies of WHOIS records of additional domain names as registered by the Respondent as **Annex 11**.

The Complainant has submitted that on May 24, 2017, the Complainant's lawyers received an email proposing to sell them the domain <efacebook.in> which was registered by the Respondent. On July 31, 2017, the Complainant's lawyers replied with a cease and desist letter to the Respondent asserting the Complainant's trade mark rights and requesting the Respondent to transfer the said domain name as well as <whatsappmark.in> and <fbpasswordhacker.in> to the Complainant to which the Respondent did not reply. The Complainant has annexed copies of the aforesaid correspondence as **Annex 12**.

The Complainant has submitted that given the blatantly abusive registration and use of the domain in issue, i.e. <fbpasswordhacker.in> by the Respondent, it has felt compelled thereby to prefer the present complaint under the .IN Policy to protect its legitimate business rights and interests as well as to protect consumers from being misled as to the source of the website being referred to, especially given the nature of the domain name which suggests that it is possible to "hack"

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Facebook passwords, potentially encouraging unethical and abusive behaviour and putting Facebook users at risk.

The Complainant has thereafter proceeded to substantiate the grounds for its complaint as provided under the relevant provisions of the INDRP.

- i. The Domain Name is identical or confusingly similar to the Complainant's trademarks [Paragraph 4(i) of the INDRP]

The Complainant has submitted that it owns numerous trademark registrations for "FB" in many jurisdictions throughout the world, including in the United States, Canada, Chile, Mexico and the European Union. The Complainant has attached its trademark registration certificates in the aforementioned countries as **Annex 14**.

The Complainant has submitted that "FB" is a trademark that is widely recognized amongst the public worldwide, including in India, and is extensively used with regard to online social media services. The Complainant's "FB" mark, company name and website at www.facebook.com are globally famous. The Complainant has referred to WIPO Case No. D2016-2380, which it has annexed as **Annex 8**, in which the "FB" trademark belonging to the Complainant was recognized as being famous. The Complainant has also referred to its **Annex 5** to establish the fame of its "FB" trademark in India.

The Complainant has further submitted that under Paragraph (i) of the .IN Policy a complainant is not required to have *registered* trademark rights in India, only that it has trade mark rights in a name that is identical or confusingly similar to the disputed domain name(s), and so this dispute is not subject to general principles applicable under trade mark law (such as principle of territoriality or specialty).

In this regard the Complainant has also referred to Paragraph 1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter "WIPO Overview 3.0") as the INDRP is based on the UDRP :

***1.1 What type of trademark rights are encompassed by the expression "trademark or service mark in which the complainant has rights" in UDRP paragraph 4(a)(i)?***

*1.1.1 The term "trademark or service mark" as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.*

*1.1.2 Noting in particular the global nature of the Internet and Domain Name System, the jurisdiction(s) where the trademark is valid is not considered relevant to panel assessment under the first element.*

*Also, the goods and/or services for which the mark is registered or used in commerce, the filing/priority date, date of registration, and date of claimed first use, are not considered relevant to the first element test. These factors may however bear on a panel's further substantive determination under the second and third elements.*

*1.1.3 While the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed.*

*The fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant's standing to file a UDRP case, nor a panel's finding of identity or confusing similarity under the first element.*

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*Where a domain name has been registered before a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent's bad faith.*

*1.1.4 A pending trademark application would not by itself establish trademark rights within the meaning of UDRP paragraph 4(a)(i).*

The Complainant has further submitted that prior panels deciding under the .IN Domain Dispute Resolution Policy have found that a complainant can succeed without having trademark registrations in India, when the trademark at issue is used in India and is globally well-known and registered in many jurisdictions, such as the Complainant's trademark "FB". The Complainant has, in this regard, referred to the following decisions:

- *Starcir Clips Engineering Pvt Ltd v. Shika S. Shukla, IIS and Rainbow Mechanical Engineering Pvt Ltd* [INDRP/574] <starcirclips.in>;
- *Urban Outfitters, Inc v. Machang* [INDRP/601] <anthropologie.in>;
- *PJS International SA and Ape & Partners SPA v. Xiangwang* [INDRP/616] <parajumpers.in>;
- *My Space, Inc v. Joe Joe* [INDRP/091] <myspace.co.in>;
- *Celton Manx Limited v. Rayit Cerrera* [INDRP/623] <sbobet.in>; and
- *EasytoBook holding B.V. v. Gyorgy Vajda* [INDRP/636] <easytobook.in>.

The Complainant has annexed the abovementioned decisions as **Annex 15**.

The Complainant has submitted that in view of its contentions abovementioned, it has established rights in the trademark "FB" and the domain name in question in the present matter is confusingly similar to this trademark in which the Complainant has rights.

The Complainant has further submitted in support of its claim that the domain name in question in the present matter incorporates the Complainant's trademark "FB" in its entirety with the addition of the generic term "passwordhacker", which, it is submitted, is closely linked to the Complainant's online activity. Prior panels deciding under the INDRP have held that such generic terms are insufficient to distinguish a domain name from a complainant's trademark.

The Complainant has submitted that it has been established that where the relevant trademark is recognized within the disputed domain name, the addition of a descriptive or generic term does not prevent a finding of confusing similarity under the first element. The Complainant has referred to the following cases in support of its contention:

- *Dell Inc. v. Biosunlockern* [WIPO Case No. D2008-0879] <dellbiopasswords.com>;
- *SNAP inc. v. Conmtact Privacy Inc. Customer 0146764045/ WhoisGuard Protected, WhoisGuard, Inc./ Privacy, MyPrivacy.net/ James Schrimsher/ Nenad Delic* [WIPO Case No. D2017-0635];
- *Accenture Global Services Limited v. Mr. Upendra Singh* [INDRP/ 0829] <accentureinfotech.in>.

The Complainant has annexed the abovementioned decisions as **Annex 16**.

The Complainant has submitted that it is established under the INDRP that a suffix such as .IN is immaterial when assessing whether a domain name is identical or confusingly similar to a complainant's trademark and has cited the decision in the case *AB Electrolux v. GaoGou of YERECT* [INDRP/616] <zanussi.in> which decision it has also annexed as **Annex 17**.

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As a final argument in support of its contention that the domain name in question in the present matter is confusingly similar to the Complainant's trademark, in accordance with Paragraph 4(i) of the INDRP, the Complainant has submitted that, pursuant to Paragraph 3 of the INDRP, it is the responsibility of the registrant to find out before registration that the domain name to be registered does not violate the rights of any proprietor/existing brand owner. The Complainant has once again referred to the decision in *PJS International SA and Ape & Partners SPA v. Xiangwang* [INDRP/616] <parajumpers.in>.

ii. The Respondent has no rights or legitimate interests in respect of the Domain Name [Paragraph 4(ii) and Paragraph 7 of the INDRP]

The Complainant has submitted in support of its contention that the Respondent has no rights or legitimate interests in respect of the domain name in question that numerous previous panels deciding under the INDRP that "*once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the evidentiary burden shifts to the registrant to rebut showing the showing by providing evidence of its rights or interests in the domain name*".

In this regard, the Complainant has relied on the following decisions:

- *The Vanguard Group, Inc v. Lorna Kang* [WIPO Case No. D2002-1064];
- *HSBC Holdings plc v. Hooman Esmail Zadeh* [INDRP/032] <hsbc.in>;

and also on Paragraph 2.1 of the WIPO Overview 3.0 (reproduced below for reference):

***2.1 How do panels assess whether a respondent lacks rights or legitimate interests in a domain name?***

*The UDRP Rules in principle provide only for a single round of pleadings, and do not contemplate discovery as such. Accordingly, a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed. [See also in this regard sections 4.7 and 4.8.]*

*While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.*

*To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following:*

- (i) before any notice of the dispute, the respondent'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 respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or*
- (iii) the respondent is making a legitimate noncommercial 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.*



*[See respectively sections 2.2, 2.3, 2.4, and 2.5.]*

*Over the course of many UDRP cases, panels have acknowledged further grounds which, while not codified in the UDRP as such, would establish respondent rights or legitimate interests in a domain name. For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP. [See in particular section 2.10.]*

The Complainant has asserted that the Respondent is unable to invoke any of the circumstances as laid out in Paragraph 7 of the INDRP in support of his legitimate rights or interests in the domain name in question in the present matter.

The Complainant has submitted that it has not authorized, licensed or otherwise allowed the Respondent to make any use of its FB trademark, in a domain name or otherwise. The Complainant has referred to the decision in *Wacom Co. Ltd. v. Liheng* [INDRP/634] <wacom.in> which it has also annexed as **Annex 19**.

The Complainant has submitted that the Respondent cannot assert that, prior to any notice of this dispute, he was using or had made demonstrable preparations to use the domain name in question in the present matter in connection with a bona fide offering of goods or services in accordance with Paragraph 7(i) of the INDRP. The Complainant has further submitted that as it has established previously through its submissions and annexures, the domain name in question redirects to a website with sponsored links purportedly offering instructions to hack Facebook accounts and displaying messages such as “Hack FB Account”, “How to Hack Facebook password”, or “FB Hack Software”. The Complainant also submits that such use jeopardizes the safety of Facebook users and only encourages and facilitates illegal behavior which cannot be said to constitute a bona fide offering of goods or services as the Respondent is seeking to profit from the Complainant’s goodwill and renown to attract internet users to his website from which the Respondent or a third party is claimed to be obtaining financial gain. Further, the Complainant has submitted that, as held by previous panels deciding under the INDRP, “misleading users by incorporating others’ trademarks in a domain name gives a false impression to users and does not constitute a bona fide offering of goods and services under the Policy”.

The Complainant has relied on the following decisions in support of the above contentions:

- *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and “Madonna.com”* [WIPO Case No. D2000-0847]; and
- *Consorzio del Prosciutto di Parma of Via Marco dell’ Arpa v. Jim Muller* [INDRP/218] <parmaham.in>.

The Complainant has annexed the abovementioned decisions as **Annex 20**.

The Complainant has submitted that the Respondent cannot conceivably assert that he is commonly known by the term “FB” in accordance with the provisions of Paragraph 7(ii) of the INDRP, and has further not secured or sought to secure any trademark rights in the term “FB”. The Complainant has relied on the decision in *Shulton Inc. v. Mr. Bhaskar* [INDRP/483] <oldspice.in>, which decision it has annexed as **Annex 21**.

The Complainant has additionally submitted that the Respondent cannot assert that he has made or is currently 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, pursuant to Paragraph 7(iii) of the INDRP.

As the Complainant has established through its previous submissions and annexures, the Respondent is currently using the domain name, which identically reproduces the Complainant's trademark "FB" with the addition of the term "passwordhacker" under the .IN extension to misleadingly divert internet users to a parked website with sponsored links offering purported hacking software related to the Complainant's services.

The Complainant has submitted that the aforesaid activity on the part of the Respondent strongly suggests that the Respondent's intention is not primarily to use the domain name in a fair manner but instead to unfairly exploit the goodwill and reputation attached to the Complainant's trademark for his own or a third party's financial gain. Further, the Complainant has submitted that the Respondent has offered the domain for sale directly on the corresponding website which use cannot be considered to be legitimate, non-commercial or fair and is also detrimental to the Complainant and its well-known trademark.

The Complainant has, in this regard, once again referred to the decision in *SNAP inc. v. Conmtact Privacy Inc. Customer 0146764045/ WhoisGuard Protected, WhoisGuard, Inc./ Privacy, MyPrivacy.net/ James Schrimsher/ Nenad Delic* [WIPO Case No. D2017-0635].

As a final submission in support of its contention, the Complainant has submitted that given the Complainant's renown worldwide, including in India and China, where the Respondent appears to be based, it is not possible to conceive of any plausible actual or contemplated active use of the domain name in question in the present matter by the Respondent (or a third party) that would not be illegitimate, as it is claimed to be likely to result in misleading diversion and taking unfair advantage of the Complainant's rights.

The Complainant has referred, in this regard, to the decision in *Telstra Corporation Limited v. Nuclear Marshmallows* [WIPO Case No. D2000-0003] which it has also annexed as **Annex 22**.

iii. The Domain Name was registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)

The Complainant has asserted that the domain name in question in the present matter was registered and is being used in bad faith in accordance with Paragraphs 4(iii) and 6 of the INDRP and as contended by the Complainant as follows:

**a) Registration in bad faith**

The Complainant has submitted in this regard that its "FB" trademark is distinctive and famous throughout the world and has acquired considerable renown and goodwill worldwide, including in India and China. Furthermore, given the nature of the internet, the Complainant has submitted that it almost immediately became known by the abbreviation, "FB".

The Complainant has further submitted that it would be inconceivable for the Respondent to argue that he did not have the knowledge of the Complainant's "FB" trademark at the time of registration of the domain name in 2016, particularly as the Complainant's trademark rights predate registration of the domain name by many years. The Complainant has also submitted that by May, 2016 the Complainant's social networking service had already acquired significant goodwill with approximately 1.65 billion monthly active users worldwide among which 150 million active users were in

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India alone. The Complainant has submitted that the term “FB” is not only protected as a trademark, but also serves as a common abbreviation for the Complainant’s company name and offered services. The Complainant has further submitted that prior panels deciding under the INDRP have acknowledged that it is highly unlikely that a respondent would not have had awareness of the Complainant’s rights in the term “FB” given the nature of the internet and the Complainant’s explosive popularity worldwide. The Complainant has referred in this regard to the WIPO decision in its favour in the case *Facebook, Inc. v. Mirza Azim* [WIPO Case No. D2016-0950].

The Complainant has submitted that the Respondent’s use of the domain name in question in the present matter primarily for a website which points to a parked page containing links that make direct references to the Complainant’s trademark (such as through the messages “*Hack FB Account*”, “*How to Hack Facebook password*”, or “*FB Hack Software*”, leaves no doubt of the Respondent’s awareness of the Complainant’s rights in its trademark at the time of registration of the domain name. The Complainant has also submitted that the fact that access to the Facebook website being blocked in China in 2009 is irrelevant as to the Respondent’s awareness of the existence of the Complainant and the Complainant’s trademark, particularly as the blocking thereof was highly publicized and received wide media coverage by the Chinese as well as the international press.

The Complainant has referred in this regard to the WIPO decision in its favour in the case *Facebook, Inc. v. Lin Allien, Linyingying* [WIPO Case no. D2016-0255].

The Complainant has further submitted that the addition of the descriptive term “passwordhacker” in the domain name is also a strong indication that the Respondent had prior knowledge of the Complainant and its services which include the provision of password protected online social media accounts.

The Complainant has submitted that the Respondent registered the domain name having full knowledge of the Complainant’s rights. The Complainant has further submitted that prior panels deciding under the INDRP have held that actual and constructive knowledge of a complainant’s rights at the time of registration of a domain name constitutes strong evidence of bad faith.

The Complainant has referred, in this regard, to Section 3.2.2 of the WIPO Overview 3.0 (reproduced below for reference) as well as to the following WIPO decisions:

- *eBay Inc. v. Sunho Hong* [WIPO Case No. D2000-1633]; and
- *E & J Gallo Winery v. Oak Investment Group* [WIPO Case No. D2000-1213].

The Complainant has annexed the abovementioned decisions as its **Annex 23**.

### **3.2.2 “Knew or should have known”**

*Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.*





*On the other hand, where the complainant's mark is not inherently distinctive and it also corresponds to a dictionary term or is otherwise inherently attractive as a domain name (e.g., it is a short combination of letters), if a respondent can credibly show that the complainant's mark has a limited reputation and is not known or accessible in the respondent's location, panels may be reluctant to infer that a respondent knew or should have known that its registration would be identical or confusingly similar to the complainant's mark. Particularly noting the Internet's borderless nature, a sweeping respondent disclaimer of knowledge based as such on its (deemed) presence in a particular location different from the location(s) in which the complainant's goods or services are accessible may be seen by panels as lacking in credibility or relevance. In this respect, it is noted that the business of cybersquatting often seeks to exploit the global reach of the Internet, and may in fact purposefully target a location other than that in which the respondent may be "present".*

*In limited circumstances – notably where the parties are both located in the United States and the complainant has obtained a federal trademark registration pre-dating the relevant domain name registration – panels have been prepared to apply the concept of constructive notice. Application of this concept may depend in part on the complainant's reputation and the strength or distinctiveness of its mark, or facts that corroborate an awareness of the complainant's mark.*

The Complainant has submitted that given its visibility and renown at the time of registration of the domain name in question in the present matter, as well as the Respondent's prior knowledge of the Complainant's rights and its renown in India, it is claimed that the Respondent knowingly and deliberately registered the domain name in bad faith, seeking to profit from the Complainant's accumulated goodwill and renown.

The Complainant has referred in this regard, once again, to the decision in the case *Wacom Co. Ltd v. Liheng* [INDRP/634] <wacom.in>.

The Complainant has further submitted that the fact that the Respondent, via a related party, had made an unsolicited offer to the Complainant's lawyers to sell the domain name <efacebook.in>, and that the domain name in question in the present matter directs to a website offering it for sale demonstrates that the Respondent registered the domain name in question primarily for the purpose of selling it to the Complainant for valuable consideration in excess of documented out of pocket expenses directly related to the domain name in question, in accordance with Paragraph 6(i) of the INDRP.

The Complainant has referred, in this regard, to the decision in the case *Educational Testing Service v. TOEFL* [WIPO Case No. D2000-0044] which it has also annexed as **Annex 24**.

The Complainant has also submitted that the Respondent has engaged in a pattern of conduct within the meaning of Paragraph 6(ii) of the INDRP. As the Complainant has submitted previously, the Respondent appears to be the registrant of a number of domain names infringing well-known third party trade marks and so, it has submitted, that the Respondent's pattern of abusive domain name registrations can only be interpreted as a strong indication of its bad faith in the present matter.

The Complainant has referred, in this regard, to the decision in the case *Microsoft Corporation v. Giacchino Zerbo* [WIPO Case No. D2005-0644] which it has also annexed as **Annex 25**.

**b) Use in bad faith**

The Complainant has submitted towards its contention that the Respondent is making use of the domain name in question in the present matter in bad faith that by making use thereof, the Respondent is intentionally attempting to attract for commercial gain internet users to his website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the websites, in accordance with Paragraph 6(iii) of the INDRP.

The Complainant has submitted that the Respondent's use of the domain name in question is intended for commercial gain as outlined under Paragraph 6(iii) of the INDRP, as it redirects internet users to a parked webpage displaying various sponsored/ pay-per-click links targeting the Complainant's trademark (or those of third parties) and from which the Respondent (or a third party) is claimed to be obtaining financial gain.

The Complainant has further submitted that the Respondent is deliberately using the domain name in question which is claimed to be confusingly similar to the Complainant's "FB" mark to attract internet users searching for information about the Complainant and divert them to the Respondent's own website. The Complainant has submitted that such use, from which the Respondent is claimed to be obtaining financial gain by some revenue generating scheme is in bad faith as the Respondent appears to be deliberately seeking to profit from the Complainant's goodwill and renown for his own financial gain.

The Complainant has referred in this regard to the decision in the following cases:

- *HID Global Corporation v. Zhaxia* [INDRP/652] <hidglobal.in>; and
- *Jaguar land Rover Limited v. Yitao* [INDRP/641] <jaguarlandrover.co.in>

which have also been annexed by the Complainant as **Annex 26**.

The Complainant has submitted that given the overwhelming renown and explosive popularity of the Complainant's "FB" trademark worldwide, and the nature of the domain name in question, which is claimed to be confusingly similar to the Complainant's trademark, there cannot be any actual or contemplated good faith use of the domain name as this would result in misleading diversion and taking unfair advantage of the Complainant's rights.

The Complainant has referred, in this regard, to the decision in the case *Emirates v. Inshallah Ltd.* [INDRP/485] <emiratesholidays.in> wch it has also annexed as **Annex 27**.

As a final submission in support of its contention that the Respondent is using the domain name in question in bad faith, the Complainant has submitted that the Respondent's failure to respond to its cease and desist letter as sent on July 31, 2017 is an additional strong indication of his bad faith in this regard.

Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed the following reliefs by means of the present Complaint:

- i) That the Arbitrator order transfer of the domain in question in the present matter to the Complainant; and
- ii) That the Arbitrator award costs in favour of the Complainant as may be deemed fit.

The Complainant has submitted that it is not aware of any other legal proceedings that have been commenced in respect of the domain name in question.

**II. Respondent**

The Respondent, by way of his email response dated December 8, 2017 has inter alia asserted that he had legitimately acquired the domain in question in the present matter, in accordance with applicable rules, and that he is willing to consider amicable transfer of the same on payment of consideration of USD 1000.

**6. Discussion and Findings**

In a domain complaint, the Complainant is required to satisfy 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 Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**  
(Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established its rights in the trademark 'FB' as the acronym of the popular mark 'Facebook' by virtue of its numerous trademark registrations for the same in jurisdictions worldwide, including, but not limited to, in the United States, Canada, the European Union, Mexico and Chile. The Complainant has placed copies of the registration certificates of trademark registrations obtained by it in the aforementioned countries on the record, all of which pre-date the registration of the Respondent's domain name.

It is well established that trade mark registration is recognized as prima facie evidence of rights in a mark. The Complainant, by filing documents of its registered trademarks has established that it has prior statutory rights in the mark 'FB' in jurisdictions around the world.





The Complainant has, in support of its arguments, further quoted Paragraph 1.1 of the WIPO Overview of WIPO Panel Views on Select UDRP Questions, which does not consider the jurisdiction(s) where a trademark is valid to be relevant to the considering Panel's assessment under the first element, having regard to the global nature of the Internet and the Domain Name System. Since the INDRP is modelled on the UDRP, it may be said that the Complainant's contention that it is therefore not required to have registered trademark rights in India for the purpose of establishing its rights in its trademark under the INDRP has thereby been established.

The Complainant has also referred to several prior panel decisions under the INDRP which have held that a complainant may succeed without registrations of its trademark in India, provided such trademark is used in India, and is globally well-known and famous and has obtained trademark registration in other jurisdictions.

The Complainant has submitted a number of annexures, as described above, to establish the extent of use and popularity of its website Facebook.com in both India and China. Further, the Complainant has submitted evidence of use of the acronym 'FB' as referring to its operations and services under the name/mark 'Facebook' as well as the popularity of the acronym as such among users of the Complainant's website and services around the world, including in India and China.

It may be stated that the disputed domain name 'FBPASSWORDHACKER.IN' is confusingly identical/similar to the Complainant's trade mark 'FB' and completely incorporates the said trade mark of the Complainant. It has been held by prior panels deciding under the INDRP that there exists confusing similarity where the disputed name incorporates the Complainant's trade mark, such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, *Indian Hotel Companies Limited v. Mr. Sanjay Jha, INDRP/148 <Gingerhotels.co.in>*, *Carrier Corporation, USA v. Prakash K.R. INDRP/238 <Carrier.net.in>*, *M/s Merck KGaA v. Zeng Wei INDRP/323 <Merckchemicals.in>*, *Colgate-Palmolive Company & Anr. v. Zhaxia INDRP/887 <Colgate.in>* and *The Singer Company Limited v. Novation In Limited INDRP/905 <singer.co.in>*.

In view of the aforesaid, the Arbitrator accepts that the Complainant's rights in its trademark 'FB' under Paragraph 4(i) of the INDRP has been established.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)**

The disputed domain name incorporates the mark 'FB' which is confusingly and deceptively identical/similar to the Complainant's trademark FB in which the Complainant has statutory rights by virtue of having valid and subsisting trademark registrations in several jurisdictions around the world and being globally well known, including in India and China.

On the other hand, the Respondent has not submitted any registration certificates for the mark 'FB', or in fact any evidence of its rights in the mark 'FB'. It has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under paragraph 7 of the INDRP.



The Complainant has established a prima facie case of its rights in the mark 'FB', and therefore, in accordance with the holding of previous panels under the INDRP, the evidentiary burden shifted to the Registrant (Respondent) to rebut the showing by providing evidence of its rights or interests in the domain name, which it has failed to do in the current proceedings.

The Complainant has no relationship with the Respondent and has not permitted or licensed the Respondent to use or register the disputed domain name.

Use of such a confusingly and deceptively identical/similar domain name by the Respondent is likely to mislead and misrepresent to the general public and members of the trade as to the source, sponsorship, affiliation or association of the activity being carried on through the website.

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(ii) and 7 of the INDRP.

**iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)**

The Respondent is not making any fair and non-commercial use of the disputed domain name as on date. The Respondent has merely held onto the domain name <fbpasswordhacker.in> by a parked page advertising various sponsored or pay-per-click links targeting the Complainant's trademarks. The respondent's website is, therefore, not bona fide as the respondent is using the disputed domain name to divert/re-direct internet users seeking the Complainant's website and services to its own or to an affiliate's website for financial gain.

Further, the fact that the Respondent has, in the course of the present proceedings, made an unsolicited offer of selling the disputed domain name to the Complainant for a consideration of USD 1000, in addition to earlier having made a similar offer, via a related party, to the Complainant's lawyers to sell another domain name <efacebook.in> only serves to establish that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the said domain to the Complainant for valuable consideration in excess of his out-of-pocket expenses directly related to the domain name, thereby fulfilling the criteria envisaged under Paragraph 6(i) of the INDRP.

The Complainant has also submitted that the Respondent has engaged in a pattern of conduct falling within the provisions of Paragraph 6(ii) of the INDRP in that the Respondent is the registrant of a number of domain names infringing well-known third party trademarks and has annexed sample WHOIS results for such domains as **Annex 11**.

The Respondent's use of the descriptive term "passwordhacker" in the disputed domain name and hosting of sponsored links notably referring to hacking of Facebook



accounts is not only a strong indication of the Respondent's prior knowledge of the Complainant as well as the nature of its website and services, but also of its mala fide intentions towards promoting illegal online activity.

It is pertinent to mention that the Respondent has not submitted any rebuttal to the Complainant's contentions, or evidence in support of its bona fide use of the disputed domain name.

There further appears to be no bona fide reason for the Respondent to register a top-level Indian domain name when he is not hosting any legitimate website thereon and instead is misusing it in promoting illegal online activity for its own financial gain.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

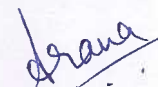
## **7. Decision**

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has statutory and proprietary rights over the trade mark 'FB' and variations thereof. The Complainant has herein been able to prove conclusively 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 <fbpasswordhacker.in> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



**Lucy Rana**

**Sole Arbitrator**

Date: *January 12, 2018*

**Place: New Delhi, India.**