

28 JUN 2019 तमिलनाडु TAMILNADU

D. SARAVANAN

Advocate & Arbitrator

Unit No.20B, 2nd Floor, Beta Wing

Reheja Towers, Near LIC

No.113-134, Anna Salai, Chennai 600 002

BW 203425

P.S. SHANMUGA SUNDARAM
STAMP VENDOR
L.No. B4 / 109 / 88
HIGH COURT CAMPUS
CHENNAI - 600 104. (TAMIL NADU)

**BEFORE THE SOLE ARBITRATOR MR.D. SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

Disputed Domain Name: www.bitmex.in

INDRP Case No.1129

HDR Global Trading Limited,
Second Floor, Capital City,
Independence Avenue,
P.O.Box 1008, Victoria,
Seychelles, Eden Island,
Mahe Seychelles.

.. **Complainant**

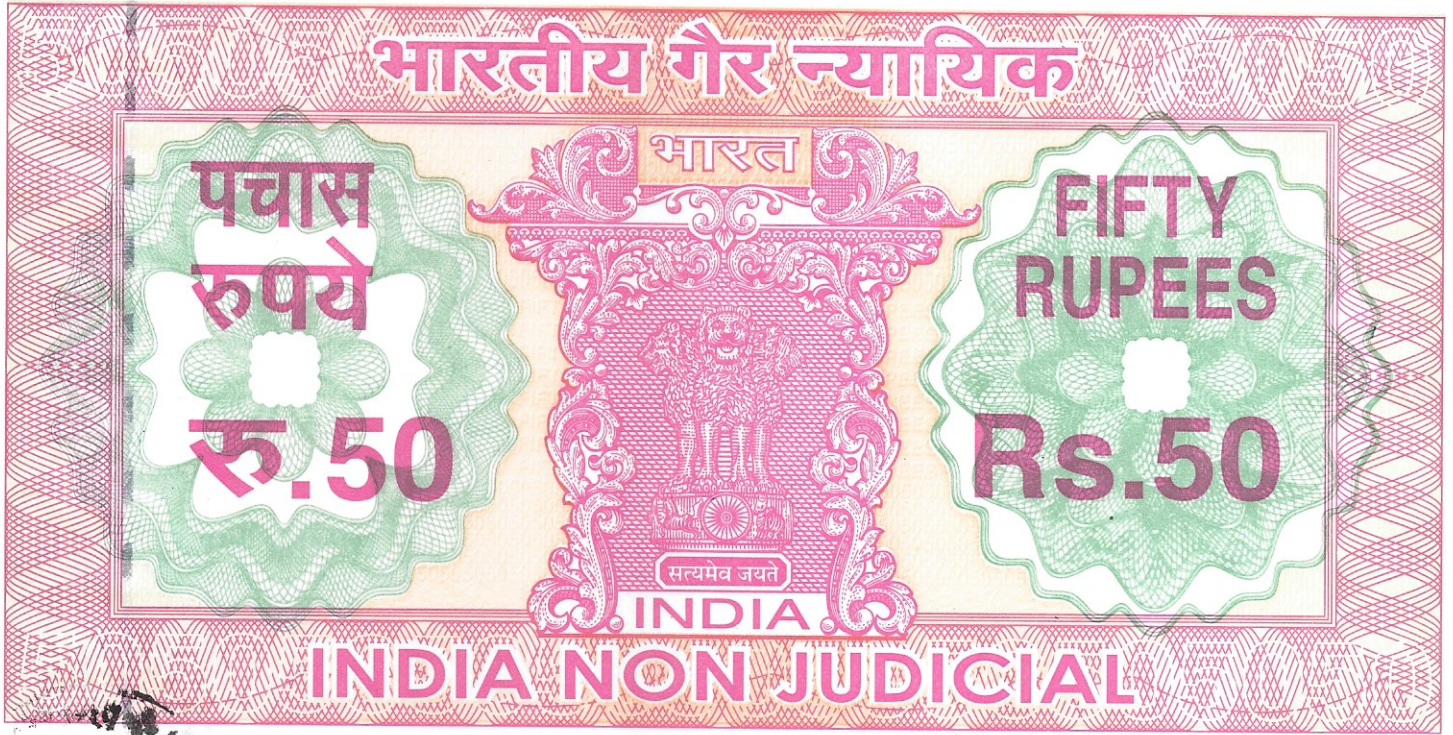
Vs.

mo gyuri, gyuri mo,
60-1 Jungang-ro 36-gil,
Yangcheon-gu,
Seoul, KR 08083
mgrhgh0505@naver.com

.. **Respondent**

..2





தமிழ்நாடு தமில்நாடு TAMILNADU

28 JUN 2019

D. SARAVANAN

Advocate & Arbitrator

Unit No.208, 2nd Floor, Beta Wing

Reheja Towers, Near LIC

-2- No.113-134, Anna Salai, Chennai 600 002

AW 779112

P.S. SHANMUGA SUNDARAM

STAMP VENDOR

L.No. B4 / 109 / 88

HIGH COURT CAMPUS

CHENNAI - 600 104. (TAMIL NADU)

The Parties:

The Complainant is HDR Global Trading Limited having address at Second Floor, Capital City, Independence Avenue, P.O.Box 108, Victoria, Seychelles, Eden Island, Mahe Seychelles, e-mail: legal@bitmex.com. The Complainant is represented by M/s. RiskIQ, Inc., a U.S. Corporation, incorporated in Delaware, through Jonathan Matkowsky, VP, Digital Risk – Cyber Advisor for the RiskIQ Group, 22, Batter Street, 10th Floor, San Fransisco, California – 94043, United States, e-mail: disputes@riskiq.net. A letter of authorization to that effect is marked by the Complainant as **Annexure-2**.

The Respondent is mo gyuri, gyuri mo, 60-1 Jungang-ro 36-gil, Yangcheon-gu, Seoul, KR 08083 , e-mail: mgrhgh0505@naver.com, Phone: +82 1025832221.

..3.



2. The Domain Name and Registrar:

The disputed domain name is www.bitmex.in. The domain name has been registered with .IN REGISTRY through its Registrar 'Tucows Inc', with Registrar URL: <http://www.opensrs.co> and Registry Domain ID: D41440000006213852 – IN.

3. Procedural History:

10 th July, 2019	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
10 th July, 2019	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
25 th July, 2019	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to the Respondent by email while sending the hard copy of the same to the address of the Respondent by NIXI through courier.
27 th July, 2019	:	Notice was sent to the Respondent by e-mail directing the Respondent to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
30 th July, 2019	:	The respondent has sent an email stating that he do not want to dispute anymore and allowed to transfer the domain.



4. Factual Background:

4.1 The Complainant:

The Complainant is HDR Global Trading Limited having address at Second Floor, Capital City, Independence Avenue, P.O.Box 108, Victoria, Seychelles, Eden Island, Mahe Seychelles, e-mail: legal@bitmex.com. The Complainant is represented by Jonathan Matkowsky, VP, Digital Risk – Cyber Advisor for the RiskIQ Group, 22, Batter Street, 10th Floor, San Fransisco, California – 94043, United States, e-mail: disputes@riskiq.net.

4.2 Complainant's Activities:

(i) The Complainant submits that BITMEX is Complainant's Bitcoin-based Peer-to-Peer. (P2P) crypto-products trading platform served on the domain name <bitmex.com>, offering leveraged contracts bought and sold in Bitcoin. It has had a presence on the internet for years, since at least 2015. (**Annexures 8, 9**). While BitMex was known to club members of the Rotary Club of Hong Kong, who are very prominent in the Hong Kong Business world, as early as June 10, 2014, it had already appeared in the global media such as in *Fortune*, one of the world's leading business media brands in an article by Bloomberg in August 2017, on the CNBC top-rated business and financial news network globally in November 2017 and in Bloomberg News (which is disseminated in more than 120 countries) in February 2018. (**Annexure-7**).

(ii) The Complainant submits that "BitMex" has also received coverage on CNN.com, The New York Times (November 2017), Business Insider (December 2017) and in leading digital media for the crypto asset and blockchain technology community, such as in CoinDesk in September 2017. Id. Much of this and other global press recognition is from well before the disputed domain name <bitex.in> was created in June 2018. Id.



4.3 Complainant's Trading Name:

(i) The Complainant submits that BitMex owns valid and subsisting trademark registrations in many jurisdictions throughout the world for the BITMEX mark covering its financial services in International Class 36. Representative Registrations are included in **Annexure 5** and is summarized as follows: European Union: BITMEX (Reg.No.016462327) – Issuance Date: Aug 11, 2017 (Priority: Mar 14, 2017), Int'l Cl.36; Japan: BITMEX (Reg.No.2018-013164) – Issuance Date: Oct 12, 2018 (Priority: Feb 1, 2018) Int'l Cl.36; Singapore: BITMEX (Reg.No.300201801921) – Issuance Date: Aug 30, 2018 (Priority: Feb 1, 2018), Int'l Cl.36; S.Korea: BITMEX (Reg.No.40-1463637-0000) – Issuance Date Mar 26, 2019 (Priority: Nov 10, 2017), Int'l Cl.36; Taiwan: BITMEX (Reg.No.107003649) – Issuance Date: Aug 16, 2018 (Priority: Jan 17, 2018), Int'l Cl.36; United Kingdom: BITMEX (Reg.No.00003218498) – Issuance Date: Mar 14, 2017, Int'l Cl. 36.

(ii) The Complainant further submits that the fact that its Indian trademark application 3834021 in Cl.36 for BITMEX is still pending is irrelevant as any nationally or regionally registered trademark or service mark satisfies the threshold requirement of having trademark rights. *Huolala Global Investment Ltd v. Li Chenggong*, INDRP/1027 (<lalamove.co.in>) (Nov 23, 2018) ("It is well established that if a Complainant owns a trademark, it is sufficient to satisfy the threshold requirement of having trademark rights under the policy."). "The jurisdiction where the trademark is registered is not relevant." Id. (citing *Easton Corp. Pty Ltd. Mr.Dean Chandler*, INDRP Case No. 844).

(iii) Thus, BitMex has established rights in BITMEX for purposes of the first element. This is also consistent with prior decisions specifically finding BitMex has rights in its BITMEX mark for purposes of the UDRP. Eg. *HDR Global Trading Limited v. Pamela Ramirez / Crane Tech S. de R.L. de C.V.* Claim No. FA1902001829913 (Forum Mar.22, 2019) (<bitmex.land>); *HDR Global trading Limited v. \uc18c\ubbfc\ucd5c*, Claim No. FA1902001829914 (Forum Mar 15, 2019) (<bit-mex.co>); CAC Case No.102448 (May 14, 2019) (<bitmex.guide>); CAC Case No.102443 (June 19, 2019) (<bitmex.digital>) **Annexure-6.**



4.4 Respondent's Identity and activities:

(i) From the screenshot of the Whois marked by the Complainant in **Annexure-3** it is seen that the registrant of the impugned domain name www.bitmex.in is mo gyuri, having address at 60-1 Jungang-ro 36-gil, Yangcheon-gu Seoul, KR 08083 and e-mail: mgrhgh0505@naver.com, Phone: +82 1025832221.

(ii) The domain name has been registered with .IN REGISTRY through its Registrar 'Tu cows Inc', with Registrar URL: http://www.opensrs.co and Registry Domain ID: D41440000006213852 – IN.

5. Dispute

The dispute arose when the Complainant came to know about the disputed domain name in the name of the Respondent. The Complainant had also never authorized the Respondent to use the disputed domain name. The Respondent is also not affiliated with the Complainant. In these circumstances, the Complainant requested this Tribunal to transfer the disputed domain name in favour of the Complainant.

6. Parties contentions:

A. Complainant:

(i) The domain name www.bitmex.in is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :

(a) The Complainant submits that the disputed domain name is identical to BITMEX because it incorporates the entirety of BITMEX and it differs from such mark and Complainant's http://www.bitmex.com only by the top-level domain name. It is well established that a different top-level domain does not affect the domain name for the



purposes of this element of the Policy and that it is without legal significance. Eg. *The Hershey Co. v. Rimi Sen*, INDRP/289 - <*hersheys.co.in*>. It is also "well established that the use of the entire mark in the disputed domain name is found to satisfy the first requirement [of the policy]." *Huolala Global Investment Ltd. V. Li Chenggong*, INDRP/1027 (<*lalamove.co.in*>) (Nov 23, 2018) (citing *Siemens AG and Siemens Ltd. V. Gunsung Kim*, INDRP Case No.16)

(b) The Complainant further submits that a mere glance at the disputed domain name shows that the domain name registered by the Respondent contains the entire trademark 'BITMEX' of the Complainant. Eg. *Sparkol Ltd. V. Mr. Shripal*, INDRP/1069 (Mar 8, 2019) (<*sparkol.in*>) (hereinafter referred as the "Sparkol case").

(c) The Complainant further submits that INDRP Arbitrators citing to many UDRP decisions have held that a domain name which wholly incorporates a Complainant's trade mark may be sufficient to satisfy the first element of the Policy. Eg. *Sparkol case*. It is very natural for an internet user who wishes to visit the website of Complainant to type its brand name followed by the country specific Top-Level Domain <.in>, which will lead the internet user to believe that the Complainant is associated or owns the website bearing the domain name <bitmex.in>. Eg. *Sparkol case*.

(d) Thus, the Complainant submits that it has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

(ii) **The Respondent has no rights or legitimate interest in the domain name www.bitmex.in [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of .INDRP] :**



(a) The Complainant submits that while the overall burden of proof rests with a Complainant, arbitrators 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. *Huolala Global Investment Ltd. V. Li Chenggong*, INDRP/1027 (<lalamove.co.in>) (Nov 23, 2018) (citing *FDC Ltd. V. Christian Schmidt*, INDRP Case No.913).

(b) The Complainant further submits that the Respondent is not commonly known by the domain name subject of the Complainant as evidenced from the registration contact details (Whois) and has not been authorized by Complainant to use its BITMEX Mark in any domain names.

(c) In May 2019, Respondent used the BITMEX mark in order to divert traffic from those looking for BitMex to an unaffiliated site, *lootbits.io*. (**Annexure-4**). Users are told they can win real bitcoins by interacting with the site, 'open free boxes'. *Id.*, at 6. *Lootbits.io* invites people to register with their personal username, e-mail and password. *Id.*, at 5. Users are told that when they reach the minimum payout threshold, they can withdraw Bitcoins into their Bitcoin wallet address. *Id.*, at 4.

(d) The Complainant further submits that on *Lootbits.io*, a user can collect points by inviting others. *Id.* Respondent, using the alias 'noonbit' on *Lootbits.io*, seeks to commercially benefit from *lootbits.io* by diverting traffic to *Lootbits.io*'s sign-up page. Each



time someone tries to visit the disputed domain name, the visitor is automatically re-directed or "referred" by Respondent to his personal invitation to claim an invitation to win "50 free gems" at Lootbits.io. *Id.* By clicking to claim the free gems, the visitor is then automatically taken to the signup page for Lootbit.io, which then earns Respondent points with Lootbits.io. *Id.*, at 1-6. Given Respondent is targeting people with a BTC wallet address, it is obvious that Respondent incorporated a domain name identical to Complainant's trademark BITMEX in an effort to target an audience that presumably – given that BitMEX is a platform served on <bitmex.com> offering leveraged contracts bought and sold in Bitcoin – would be more likely to have a BTC wallet address, and presumably, would yield higher conversion rates for Respondent's affiliate account by increasing the unique visitors he gets to sign up at Lootbits.io.

(e) The Complainant submits that there is no legitimate interest in using the BITMEX mark to target Internet users with a Bitcoin wallet that may be interested in winning Bitcoin to automatically re-direct them to Lootbits.io when seeking BitMex, all in order for Respondent to collect points from Lootbits.io by increasing the unique visitors he gets to sign up with Lootbits.io. This is not a non-commercial or fair use of the domain name under paragraph 4(ii), and certainly causes a likelihood of confusion when Internet users seeking BitMEX are re-directed to a totally unrelated site Lootbits.io.

(f) Furthermore, on June 20, 2019, Respondent re-directed traffic from the Domain to <https://coinx.tistory.com/93> (**Annexure 4**, at 8, 10-13), where Respondent lures visitors to click on a coupon to receive a 10% discount on BitMEX transaction fees for 6 months. *Id.*, at 14-18. Respondent is thus, attempting to use the disputed domain name in violation of the terms governing BitMex's affiliate program. Cf. **Annexure 4**, at 26, 27 (showing how when someone clicks to get the discount, there is a connection to BitMEX.com using a referral code) with **Annexure 10** (affiliate terms prohibiting incorporating the trademark into a domain name as part of its affiliate program). Respondent has attempted to use the Domain to earn affiliate revenue in violation of the Affiliate program by exploiting direct traffic navigation from the disputed domain name to BitMEX.



(g) The Complainant submits that the Respondent also put the disputed domain name up for sale for a Bitcoin (Id., at 25) by re-directing those that click on ads at the landing page from the Domain to be re-directed to <https://newb.kr/149>, where along with other BitMex domains substantially indistinguishable from the BITMEX mark presumably in the same portfolio, were put up for sale. Id., at 19-25. (The screenshots in **Annexure 4** from June 20 are taken from a video recording).

(h) The Complainant further submits that there is also no legitimate interest in attempting to sell the Domain name for a premium fee of one Bitcoin—648,067.13 Indian Rupee. **Annexure 4**, at 25, and any unauthorized affiliate marketing that is also in actual violation of the BitMex terms is not fair use. Typically, for example, under the UDRP, even a general offer to sell the disputed domain name supports that there is no rights or legitimate interest. E.g., *Fidelity National Information Services, Inc. v. Forest Mead*, Claim No.FA 1901001825022 (Feb.20,2019) (citing *3 M Company v. Kabir S Rawat*, FA 1725052 (Forum May 9, 2017)).

(i) Also, under the UDRP, the consensus view is that fair use defense would not apply where any prior agreement, express or otherwise, between the parties expressly prohibits the registration or use of domain names incorporating the complainant's trademark. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), § 2.8.1 (discussing the "Ok! Data Test") (citing, among others, WIPO Case No.D2010-1284). BitMEX affiliates expressly agree when signing up not to use any trademark owned by BitMex in their domain name, including with keywords or any misspellings, or to bid on the mark as a keyword. **Annexure 10**, at 4. This is in part to protect people from falling victim to phishing. The Complainant further submits that similarly, in INDRP/899 (<upworktest.in>), attempting to drive traffic with a trademark in a domain name without permission, for one's own commercial gain, in contravention of the trademark owner's terms of service, was found to be bad faith registration and use.

(j) The Complainant hence submits that it has satisfied the requirement of paragraph 4(ii) of the INDRP Policy.



(iii) The domain name was registered and is being used by the Respondent in bad faith [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of .INDRP:

(a) The Complainant submits that BITMEX has had a presence on the Internet from well before Respondent registered the disputed domain name. E.g., **Annexure 8**. While BitMex was known to club members of the Rotary Club of Hong Kong, who are very prominent in the Hong Kong business world, as early as June 10, 2014, it had already appeared in the global media well before the disputed domain name was registered, such as in Fortune – one of the world's leading business media brands in an article by Bloomberg in August 2017, on the CNBC top-rated business and financial news network globally in November 2017, and in Bloomberg News (which is disseminated in more than 120 countries). **Annexure 7**. There is no dictionary meaning for BITMEX, and hence it certainly seems that Respondent had searched top level domain extensions for the second level domain name "BitMex" before registering the disputed domain name, and found the existence of the website *www.bitmex.com*, and there were also pages and pages of Google search results from more than six months prior to when the disputed domain name was registered. **Annexure 9**. Given that Respondent likely chose a domain specifically identical to BitMex's mark, a mark that is distinctive with no dictionary meaning, it seems reasonable to infer there is likely on the balance of probabilities, an intent to confuse or extract value specifically from its trademark significance.

(b) The Complainant further submits that registration and operation of <bitmex.in> has been done in bad faith and dishonest intentions to mislead the public into believing that the Lottbits.io website offering users a chance to win bitcoins by providing their personal information to sign up, is from BitMex, or is otherwise authorized, sponsored or endorsed by BitMex. The adoption of the trademark is only to confuse the public as the relevant section of the public are bound to be deceived into thinking that the landing page at Lootbits.io from <bitmex.in> is from BitMex, or is otherwise authorized, sponsored or endorsed by



BitMex. The Domain Name <bitmex.in> has been registered to create initial interest confusion among Internet users by taking advantage of Complainant's goodwill, thereby luring them to Lootbits.io, which is used on or in connection with the Domain Name <bitmex.in> by Registrant having set up an automatic "re-direct" from <bitmex.in> to <Lottbits.io>.

(c) The Complainant submits that by using <bitmex.in>, Registrant has intentionally attempted to attract Internet users to the Registrant's on-line location, i.e. the URL path "/?invite=8403S4" on Lottbits.io so he can win more points from Lottbits.io, which is used to track which of the Registrant's "leads" automatically re-directed from <Bitmex.in> will convert to new sign-ups, by creating a likelihood of confusion with the Complainant's BitMEX platform and BITMEX mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or a product or service on the Registrant's website or location.

(d) The Complainant further submits that targetting Complainant's audience for Bitcoin giveaways shows that Respondent was aware of the trademark of Complainant when it procured the registration of <bitmex.in> in June 2018 because BitMEX is Complainant's Bitcoin-based P2P crypto-products trading platform offering leveraged contracts bought and sold specifically in Bitcoin. Cf. *Dell Inc. v. Mr. Ranjeet Singh Rana*, INDRP/865 (<laptopservicecenterdell.in>) (Mar 23, 2017). Diverting Internet users seeking BITMEX or BitMex to an unrelated website offering free Bitcoins is also disruptive to Complainant's business because if visitors do not receive their expected Bitcoin give away from Lottbits.io, they are likely to have a negative impression of BitMex.

(e) Furthermore, attempting to capitalize on traffic for BITMEX by diverting them to Respondent's on-line locations to profit from affiliate revenue in violation of the BitMEX affiliate Program terms prohibiting use of BITMEX in any domain names used in the affiliate programme, or as a way to advertise a portfolio of infringing BITMEX domain names for a premium, is disruptive to BitMex's business, and causes a likelihood of confusion with the



Complainant's BitMEX platform and BITMEX mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or a product or service on the Registrant's website or location. A general offer to sell the domain for a premium is also evidence of bad faith. *AXA SA v. Akshay Radia*, INDRP/094 (<axai.in>) (May 4, 2018).

(f) The Complainant hence submits that the Respondent has also apparently attempted to "corner the market" by registering other domains with the BITMEX mark, which is disruptive, and an additional indicator of bad faith registration and use. **Annexure 4**, at 25.

B. Respondent:

The respondent has sent his response by email on 30th July, 2019 stating inter-alia that he can't speak and read English; he is having difficulty in English and using a translator; he received email and post; his domain can be taken; he is no longer want to use the domain bitmex.in; domain can be taken immediately; he do not want to be dispute anymore; and he is allowing to transfer the domain.

7. Discussion and Findings:

Now, it has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant.

Under paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements to establish its case, that:

(i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;



- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and ;
- (iii) The Respondent's domain name has been registered or are being used in bad faith.

(a) Identical or confusing similarity:

- (i) The Arbitral Tribunal observes from the perusal of **Annexure 5** marked by the Complainant that they have registered the trademark 'BITMEX' in various jurisdictions throughout the world for the BITMEX mark covering its financial services in International Class 36 and is continuously using the same in relation to their Bitcoin-based Peer-to-Peer(P2P) crypto-products trading platform offering leveraged contracts bought and sold in Bitcoin. The first of such registrations is on 11.08.2017 in the European Union.
- (ii) *Per contra*, the Respondent has created the impugned domain name, www.bitmex.in much later to Complainant's registration of the mark, in August 2018. The same is evident from the Whois database of the Respondent marked as **Annexure 3** by the Complainant. The impugned domain name also contains the mark of the Complainant in its entirety.
- (iii) This Tribunal relies on the case submitted by the Complainant in *Huolala Global Investment Ltd. V. Li Chenggong*, INDRP/1027 (<lalamove.co.in>) (Nov 23, 2018) (citing *Siemens AG and Siemens Ltd. v. Gunsung Kim*, INDRP Case No.16) wherein it was held that "the use of the entire mark in the disputed domain name is found to satisfy the first requirement [of the policy]."
- (iv) In the light of the above, this Tribunal observes that the Respondent has used the identical mark of the Complainant.
- (v) The Arbitral Tribunal therefore concludes that the Complainant has established paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.



(b) Respondent's Rights or Legitimate Interests:

- (i) The Complainant contends that the Respondent has no legitimate interest in the disputed name.
- (ii) As observed *supra*, the Complainant is the prior and authorized user of the mark 'BITMEX' which relates to the impugned domain name and as such, the Respondent has no right or legitimate interest in the usage of the impugned domain name.
- (iii) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of Paragraph 4 (ii) of the Policy.
- (iv) It is observed from the WHOIS lookup in **Annexure 3**, it relates the Respondent to the Disputed Domain name. However, it identifies the registrant as 'mo gyuri', which does not have a slightest connection to the Disputed Domain name. The Respondent is found to have acted in a way that tarnishes the Complainant's well known mark "Bitmex", by using the mark without any proper authorization.
- (v) This Tribunal further observes from the perusal of the web-excerpts related to the use of Domain Name subject of Complaint marked as **Annexure-4** the Respondent through the disputed domain name is automatically redirecting to his personal invitation to claim an invitation to win 500 free gems at Lootbis.io and by clicking to claim the free gems, the visitor is then automatically taken to the signup page for Looptbit.io, which then earns Respondent points with Lootbits.io. The above establishes that the Respondent does not have any rights or legitimate interest in the domain name and it intends to make unjust commercial profits. Moreover, the respondent himself has admitted that he do not want to dispute anymore as he has no longer want to use the domain bitmex.in.
- (vi) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there



any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

(vi) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

(i) The Respondent has registered the Disputed Domain Name by adopting the Complainant's earlier well-known trade mark 'BITMEX'.

(ii) From the perusal of **Annexure-5** marked by the Complainant, this Tribunal acknowledges the Complainant's prior use in the mark "BITMEX" in relation to its Bitcoin-based Peer-to-Peer(P2P) crypto-products trading platform offering leveraged contracts bought and sold in Bitcoin.

(iii) The fact that the Respondent used the well-Known mark of the Complainant in relation to his laptop services in which the Complainant is having global market will *prima facie* establish that the use of the Complainant's mark by the Respondent is registration and use in bad faith. The Complainant has also not authorized the Respondent to use their mark 'BITMEX'.

(iv) Such adoption of well-known trademark by the Respondent is more likely to create confusion among the general public and internet users that the Respondent's domain name is the domain name that is created by the Complainant for its Bitcoin-based Peer-to-Peer(P2P) crypto-products trading platform.

(v) Further, from the perusal of **Annexure-4** this Tribunal observes that registration and operation of <bitmex.in> by the Respondent is in bad faith and dishonest intentions to



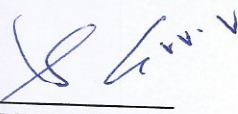
mislead the public into believing that the Respondent's lootbits.io website which offers the users a chance to win bitcoins by providing their personal information to sign up is actually from BitMex, or is otherwise authorized, sponsored or endorsed by BitMex. The adoption of the trademark is only to confuse the public as the relevant section of the public are bound to be deceived into thinking that the landing page at lootbits.io from <bitmex.in> is from BitMex, or is otherwise authorized, sponsored or endorsed by BitMex.

(vi) Further, from **Annexure-4**, this Tribunal observes that the Registrant has intentionally attempted to attract Internet users to the Registrant's on-line location, i.e. the URL path "/?invite=8403S4" on Lootbits.io so that users can win more points from Lootbits.io, which is automatically re-directed from <Bitmex.in> and will convert to new sign-ups, by creating a likelihood of confusion with the Complainant's BitMEX platform and BITMEX mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or a product or service on the Registrant's website or location. This Tribunal places reliance on *AXA SA v. Akshay Radia*, INDRP/094 (<axai.in>) (May 4, 2018) submitted by the Complainant and reiterates that "a general offer to sell the domain for a premium is also evidence of bad faith".

(vii) From the above, this Tribunal finds that the registration of the impugned domain name by the Respondent is registration and use in bad faith. Hence, the Arbitral Tribunal is satisfied that the Respondent used the Complainant's domain name in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied. That apart, as observed above, the respondent himself has expressed that he has no objection for transferring the domain name.

8. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "BITMEX" and also the disputed domain name **www.bitmex.in** be transferred to the Complainant.



D.SARAVANAN
Sole Arbitrator
5th August, 2019
Chennai, INDIA