

हरियाणा HARYANA

R 955371

RACHNA BAKHRU

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

HOLA, S.L.
Miguel Angel, 1
28010 Madrid
Spain

.....Complainant

Viraj Malik
PK Online Ventures Pvt. Ltd.
NR-2, Ground floor
DLF Phase 3
Gurgaon- 122001
Haryana

..... Respondent

Disputed Domain Name: www.hello1.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is HOLA, S.L., a company organized and existing under the laws of Spain having its principal place of business at Miguel Angel, 1, 28010 Madrid, Spain. The Complainant is represented by its authorized representatives Remfry & Sagar, Remfry House at the Millennium Plaza Sector-27, Gurgaon-122 009 who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Viraj Malik, PK Online Ventures Pvt. Ltd. NR-2, Ground floor DLF Phase 3 Gurgaon- 122001 Haryana as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.hello1.in. The Registrar is GoDaddy.com, LLC (R101-AFIN)

The Registrant is Viraj Malik, PK Online Ventures Pvt. Ltd. NR-2, Ground floor DLF Phase 3 Gurgaon- 122001 Haryana.

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

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

In accordance with the Rules 2(a), 4(a) and 4(b), NIXI formally notified the Respondent of the Complaint and appointed Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

A handwritten signature in black ink, appearing to be 'Rachna Bakhru', is written over the text of the final paragraph. The signature is fluid and cursive, with a long horizontal stroke at the end.

The complaint was produced before the Arbitrator on November 05, 2015 and the notice was issued to the Respondent on November 06, 2015 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent submitted its response on November 14, 2015. On November 19, 2015 the Arbitrator called upon the Complainant to file its Rejoinder in response to the Respondent's written statement within deadline period of 10 days or not later than November 30, 2015. Allowing the Complainant's request for additional time for one week, rejoinder was filed on December 04, 2015.

At the request of the Respondent, oral hearing was appointed. The matter for listed for hearing before the Arbitrator on December 28, 2015 for arguments. The Arbitrator then directed both the parties to file brief written arguments within period of one week which were submitted by them within the stipulated time. The Respondent also submitted the sworn Affidavit asserting due diligence in adoption of mark/domain hello1. The Complainant filed counter responses to Respondent's Affidavit vide email dated January 07, 2016.

In view of the above, the complaint is being decided based on materials and evidence submitted by both the parties and contentions put forth by them. Also in view of extensive evidence adduced by both parties and oral hearing being appointed, the complaint could not be decided within 60 days and additional 30 days as per INDRP Rules were needed due to exceptional circumstances.

Grounds for administrative proceedings:

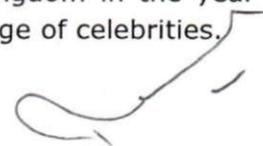
- A. The disputed domain name is identical with or confusingly similar to Complainant's trademark;
- B. The Respondent has no rights or legitimate interests in respect of the domain name;
- C. The domain name has been registered or is being used in bad faith.

4) Summary of the Complainant's contentions:

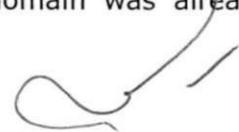
The Complainant in support of his case has made the following submissions

- The Complainant, HOLA, S.L., is a company organized and existing under the laws of Spain. The Complainant is amongst the leading international publisher of well-known magazines and periodicals having circulation across the globe.
- The Complainant's premiere magazine was created in the year 1944 and was introduced under the mark HOLA! which is Spanish for "Hello" and has since enjoyed a great reputation for prestigious and historic coverage of celebrities and royals through its 71 years of publication. With the growing popularity and circulation of the Spanish magazine HOLA!, an offshoot of the magazine under the

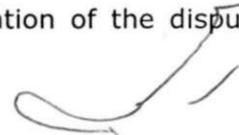
mark HELLO!/ **HELLO!** was launched in the United Kingdom in the year 1988 and quickly became popular for its excellent photo coverage of celebrities.



- The Complainant has registered number of domain names comprising the mark HELLO like <Hello-magazine.co.uk> created on August 26, 1996; <Hellomagazine.com> created on September 22, 1997 and <hellotv.com> created on December 15, 1999. The websites www.hellotv.com and www.hellomagazine.com, disseminates information concerning the trade mark HELLO! and its publication and are accessible from India as well. The goodwill and reputation of the Complainant as regards the trade mark HELLO! pervades both the real world as well as cyber space.
- Twenty seven years since its launch, the current print circulation figure of the Complainant's publication under the mark HELLO! is 270,347 per week, more than 1 million(10 lakhs) copies every month. There are about 13 editions of the Complainant's magazine with combined readership of more than 12 million readers generating substantial financial revenues for the Complainant.
- The Complainant has applied for/secured registration of the mark HELLO! and/or HELLO! formative marks in numerous jurisdictions of the world including Albania, Algeria, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, China, Croatia, Cuba, India etc. The earliest registration for the mark HELLO! dates back to June 24, 1987 in the United Kingdom in classes 16 and 41. In India, the mark **HELLO!** was registered in class 38 on Dec 08, 2003 and is pending in class 16, trademark application of which was filed on Feb 19, 1999. It is contended that the mark HELLO is a dominant feature of the trade mark registration secured by the Complainant in India.
- The trade mark HELLO! on account of extensive and continuous use and trade mark registrations throughout the world, including in India, has become exclusively identified with the Complainant and its goods and business. In India, publications under the trade mark HELLO! are distributed by the Complainant's licensee, viz. Worldwide Media Private Limited, Mumbai since the year 1999. The reputation and goodwill enjoyed by the Complainant in their magazines Hello! percolated into India as a result of constant interchange of visitors between India and other parts of the world and extensive advertising in the international media including the internet
- The HELLO! trademark is representative of the Complainant's products, brand identity, business reputation and public identification throughout the globe including India. The Complainant has invested years of time, capital, efforts and resources and attained immense goodwill and reputation in the trade mark HELLO! Therefore, a secondary meaning stands attached in respect of the said trade mark, which is exclusively associated by members of the trade and public with the Complainant and its products.
- The Complainant desirous of extending its rights on the internet endeavored to register the domain name 'hello1.in'. However, the said domain was already registered in the name of the Respondent.



- The Complainant viewed the contents of the website at 'www.hello1.in' and found that website pertaining to the said domain enables visitors to subscribe to Live TV channels, watch Movies-on-Demand, download video content etc. and claims to be a one-stop shop for all entertainment needs.
- The Complainant submits that registrant's impugned domain name 'hello1.in' is identical to and comprises in entirety the Complainant's trade mark HELLO, which is registered in numerous countries, including India. This is apparent from the fact that the services mentioned by the Registrant on the website under the impugned domain name are identical to that of the Complainant, i.e. pertaining to entertainment, TV, films and lifestyle. This is a clear case of violation of the Complainant's statutory rights and tantamount to infringement and passing off.
- The Complainant contends that that the impugned domain name 'hello1.in' is identical to various Hello formatted domain names registered in the name of Complainant/its affiliates.
- The complainant contends that the Complainant has prior rights in the trade mark/domain name comprising HELLO. The disputed domain name 'hello1.in' was created on January 13, 2012 in the name of the Registrant, whereas the Complainant's domain 'hellotv.com' was created on December 15, 1999. Further, the earliest registration for the trade mark HELLO! was secured by the Complainant on June 24, 1987 in UK. In India, the trade mark comprising HELLO as a dominant feature was registered on December 08, 2003, which is prior to creation of the impugned domain name by the Registrant.
- The Complainant contends that given the well-known nature of the Complainant's mark HELLO! its widespread use and repute throughout the world, including India and the factum of the Registrant being in the same line of business, it is clear that the Registrant is well-aware of the said mark and its adoption thereof to provide services under the impugned domain name is not bona fide. It is trite law in respect of domain name proceedings that use which intentionally trades on the fame of another cannot constitute a '*bona fide*' offering of goods and services.
- The Respondent is not commonly known by the said domain name and is not authorized or licensed to use Complainant's trademark or to apply for any domain name incorporating the Complainant's trademark. Therefore, the Respondent cannot claim to have been commonly known by the domain name for any reason/s whatsoever.
- The Complainant submits that Respondent is not making any legitimate non-commercial or fair use of the domain name. The Respondent is making unfair use of the domain name via subscription services with an intention to reap profits; tarnishing the goodwill and reputation enjoyed by Complainant's well-known trade mark Hello! The Respondent has no prior rights or legitimate interests in the disputed domain name as both the registration of the HELLO! trademarks and the Complainant's own domain name precedes the registration of the disputed domain name by many years.



- The Complainant submits that it is beyond doubt that Respondent registered the impugned domain name with *mala fide*, knowing fully well of Complainant's goodwill/reputation as well as its registrations vesting in the trade mark HELLO! world over. The Complainant owns and manages several TLDs/ccTLDs comprising the mark 'HELLO' since the year 1996. Further, the mala fide of the Registrant is reflected by the fact that it has sought to secure rights in the trademark .in, in India, which has been opposed by the Complainant.
- The Complainant contends that the conduct of Registrant amply proves its *mala fide* to attract internet users to its website by creating a likelihood of confusion with Complainant as to the source, sponsorship, affiliation or endorsement of Registrant's website. The risk of confusion is high as the Complainant offers web based identical services. Further, since the Registrant is providing subscription based services, it is evident that its intent is *mala fide* and solely aimed at making undue gains. Bad faith on the part of the Registrant is thus evident.
- In the rejoinder, the Complainant states that Registrant has not filed even single shred of evidence to show any rights in the impugned domain name <hello1.in> and has relied on purported evidence pertaining to the mark HELLOWTV and the domain hellowtv.in to sustain its registration for the impugned domain name hello1.in. No independent reasoning has been given to evidence legitimate rights or interest in respect of the impugned domain name <hello1.in>. The Complainant had already filed an INDRP proceeding against the domain name <hellowtv.in> of the Respondent.
- The complainant further states that the Registrant has in paragraph No. 25 of its Written Statement unequivocally admitted that its domain name bears resemblance to that of the Complainant's but made a futile attempt with claim of uniqueness which is uncorroborated by facts as well as evidence.
- The Complainant in its rejoinder contends that that the Respondent has not given any *bona fide* reason for adopting the domain name hello1.in and concocted a false and frivolous story justifying the dishonest adoption; annexing Annexure G, an undated letter with no mention the name of the addressee.
- Citing *Kate Spade, LLC v. Darmstadter Designs, WIPO case No. D2001-1384*; and *Frehling Enterprises, Inc. v. International Select Group, Inc., 192 F.3d 1330*; the Complainant submits that intentional blindness of the Registrant in failing to conduct a trade mark search as a part of due diligence exercise prior to commencing use of the mark HELLO as a part of the impugned domain name clearly evidences its *mala fide* and satisfies the test of bad faith.
- Complainant submits that Registrant's has taken contradictory pleas in its written statement regarding the issue of payment for services provided on the website hosted under the impugned domain name. Further, the duplicity of the Registrant is apparent from the fact that it has claimed that the mark HELLO to be common

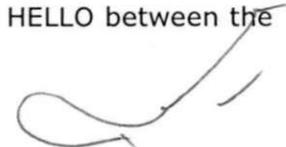


but has filed applications seeking registration of the same. The fact that the Registrant itself has sought to claim proprietary right and monopoly in the mark HELLOTV.IN, it does not lie in its mouth to say that the same is a generic expression.

5) Summary of the Respondent's contentions:

The Respondent in support of his case has made the following submissions

- The Registrant, Mr. Viraj Malik, has more than 20 years of experience with organizations like Infosys, Global Telesystems, registered the domain in the name of PK Online Ventures Pvt. Ltd. Registrant's company Percept Knorigin Solutions Private Limited was founded in 2007, name changed in 2009 to PK Online Ventures Pvt. Ltd. provides consultation services in terms of media and technology to the companies for building their digital prints in the relevant fields of business since then. The website <hello1.in> registered since 2012 with the intent of making entertainment accessible to everyone, and is in use since then by the registrant. The product is a mobile content storefront, there is no direct customer store front for the same. It is available to the consumers of Vodafone and Idea, i.e., when the data subscribers/users of both the network providers type <hello1.in> domain on to their mobile's internet search engines, it redirects them to the v.hello1.in site from where users can buy content. The idea behind the product is to provide similar multiscreen Live TV and Video services available as a direct to customer services as well as provided by the registrant through partnership with BSNL on bsnlhellotv.in. The website has long since enjoyed great success and popularity in the country, for it provides for the Live Streaming of various popular TV Channels, inclusive of various popular regional channels who are the content owners. It is submitted that the website of <hello1.in> when not used on the platforms of Vodafone and Idea networks, redirects the users to the page hellotv.in which is the more popular and widely accessed website of the registrant of the present domain.
- The Respondent claims that its website allows for the users/subscribers to create their own videos and share across the website. Hellotv.in redirected from hello1.in when used on non Vodafone/Idea networks streams the contents of popular, reputed, premier media channels on the website. Although most of the content on Hello1.in/Hello TV is absolutely free, one can also subscribe to the premium content at very affordable pricing.
- The registrant also filed applications for its marks and several others for the benefit of protection for its unique device mark which forms striking part of its a of its brand image at website <hellotv.in><hello1.in>.
- The Respondent detailed out list of applications which were filed between the years 2011 and 2014 and domain names containing the word HELLO between the year 2009 and 2015.



- The registrant prior to the adoption of the mark HELLOTV was in talks with the Govt./Public Undertaking unit Bharat Sanchar Nigam Limited, which already had a service feature popular as the HelloTunes. It is in reference to this that the registrant company and its co-investor Percept Limited, chose the name HELLOTV after great deliberation and consideration of several factors.
- The Respondent has heavily invested in extensive advertisement of the domain hellotv.in (also redirected from hello1.in when used on non Vodafone/Idea networks) and its services, HELLOTV. The Registrant has developed various apps for the benefit of the users/subscribers to access live streaming of channels over mobile phones.
- Both the domains/websites cater to different sect of seekers of information over the internet where registrant's website appeals to an audience of existing TV Channels and movies; the complainant's website appeals to an audience seeking information into the celebrity world predominantly, or related to cuisine, travel and beauty.
- The registrant has a very limited audience and appeals to the Indian users/public. The website offers various Indian languages as a preferred language apart from English, proving that the targeted population is the Indian audience at large.
- That that the present registrant's use of the domain name/mark HELLO1.in is not deceptive. The present domain name of the registrant does not confuse the general public as to the source of its origin with that of the complainant's domain/mark.
- That the registrant is agreeable to furnish a disclaimer over the website, for any browser to be made certain of there being no existence of any relationship/common agreement/likewise between the complainant and the registrant.
- That the registrant stands to suffer irreparable damages and loss, if an order for the transfer of the domain name, or any adverse order is passed against the present registrant who is an honest adopter and user of the challenged domain name/mark.

6) Hearing:

Both the representatives of the Complainant and the Respondent presented their sides and reiterated their contentions in the hearing. The Complainant contended that the Respondent has not filed any evidence pertaining to the disputed domain <hello1.in> and provided evidence only for HelloTV.in. The complainant's counsel further submitted that the Respondent has admitted in para 25 of its written statement that the domains are identical however, there is difference in streaming services of parties. The Complainant contended that the business may be legal however that does not authorize the Respondent to use someone's prior registered mark in their alleged domain. The very adoption of the mark HELLO

and its use as a part of the impugned domain name being dishonest, any reliance on agreements, advertising expenses, subscribership figures etc. cannot aid the case of the Registrant. The Complainant submitted that Registrant's omission to conduct a trade mark search or google search as a part of due diligence exercise prior to commencing use of the mark HELLO as a part of the impugned domain name evidences its mala fide and the use of disclaimer wouldn't help the case.

The Respondent stated that the term HELLO stands for salutation or greeting in English language and has been documented since the year 1883. The term was adapted into the telephonic parlance credited to scientist T A Edison. The term HELLO is not a coined term and is dictionary word and is descriptive having alteration in other language formats. The use of the descriptive term cannot be restricted or available for protection in the exclusive monopoly of a single entity while being denied to any other. The Complainant is trying to monopolize the word HELLO which cannot be permitted and the same may be used by any entity in a bonafide manner or with modifications. There are plenty of trademark applications and registration which constitute hello along with some distinctive element added.

The Respondent relied on ratio in McCain International Limited vs. Country Fair Foods Limited & Another [1981] RPC 72 pertaining to coexistence of descriptive marks; "...On the contrary if the plaintiffs introduce a novel product with novel words but they take risk of choosing descriptive words, then they run risk that the defendants cannot be prevented from using those same descriptive words so long as they make it clear that their brands of the products are not the same as the brand of the plaintiffs.""

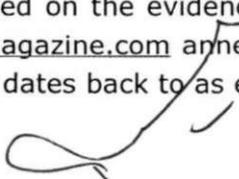
7) Discussion and Findings:

Based on the elaborate submissions and documents submitted by both the sides, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below.

- (1) the Respondent's domain name is identical or confusingly similar to the Complainant's trademark in which he has rights;

The submissions and documents provided by Complainant supports that the Complainant is the international publisher of well-known magazines and periodicals having circulation across the globe including its premiere HELLO! magazine. The Complainant has produced evidence dating the year 2001 and various online extracts/magazines/articles/excerpts where the HELLO! branded magazine of the Complainant has been produced/annexed/discussed/referred. Thus it can be said that

- a) the Complainant has been providing its goods and services under the brand name HELLO! for many years and based on the evidence placed on record, web extracts of the website at www.hellomagazine.com annexed as Annexure- A, the issues of the Complainant's magazines dates back to as early as the year 1998.



b) the earliest registration for the mark HELLO! dates back to June 24, 1987 in the United Kingdom under Registration No. 1313965 in Classes 16 and 41 which has been filed in Annexure D and

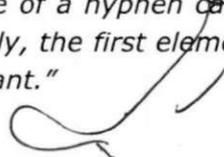
c) the Complainant had secured various domain registrations for HELLO formatted marks as early as the year 1996 and the domain <hellotv.com> was registered on Dec 15, 1999.

Having decided that Complainant has statutory and common law trademark rights in the mark HELLO!, the next consideration is whether the domain name <hello1.in> is identical to or confusingly similar with Complainant's mark.

For a domain name to be regarded as confusingly similar to the complainant's trademark; there must be a risk that Internet users may actually believe there to be a real connection between the domain name and the complainant and/or its goods and services. This risk can be assessed keeping in mind, factors such as the overall impression created by the domain name, letters or numbers in the domain name additional to the relied-upon mark, etc. The applicable top-level domain (e.g., ".com", ".in" wherein .in is the Internet country code top-level domain (ccTLD) for India) would usually be disregarded under the confusing similarity test (as it is a technical requirement of registration).

Further, figurative, stylized or design elements e.g. exclamation (!), semi-colon (;) etc. in a trademark are generally incapable of representation in a domain name, such elements are typically disregarded for the purpose of assessing identity or confusing similarity, with such assessment generally being the dominant textual components of the relevant mark.

In ***Ralph Anderl v. Kui Jiangqiang Case No. D2014-0716***, the disputed domain name was <ici-berlin.com> wherein the Complainant established rights in the IC! BERLIN Marks based on longstanding use and its numerous international trademark registrations for the IC! BERLIN Marks. The Disputed Domain Name consisted of the letters "ici", followed by the geographic designation "berlin" connected by a hyphen, and followed by the generic top-level domain ("gTLD") ".com". The Panel concluded that *"the Disputed Domain Name is confusingly similar to the Complainant's IC! BERLIN Marks. First, the absence of the exclamation point is immaterial for purposes of the Policy. In fact, the use of the exclamation point in the Disputed Domain Name is easily associated with the letter "i". The omission of the exclamation point from the Disputed Domain Name is irrelevant since exclamation points are not permitted in domain names. Moreover, even if an exclamation point were permitted, its absence would not sufficiently differentiate the Complainant's mark from the Disputed Domain Name. See Brett Habenicht v. Plantation Coffee Roasters, Inc., WIPO Case No. D2003-0770 (since "javajava" in the domain name differs from the Complainant's trademark JAVA! JAVA! only by the omission of the exclamation points, the absence of punctuation does not alter the fact that the domain name is identical to the trademark.). Second, the presence of a hyphen cannot on its own avoid a finding of confusing similarity...Accordingly, the first element of paragraph 4(a) of the Policy has been met by the Complainant."*



I find that the second level domain name in <hello1.in> is confusingly similar to the Complainant's mark HELLO! Based on precedents set by aforementioned case decisions, it can be concluded that the absence of the exclamation point in the domain is immaterial for purposes of the Policy since exclamation points are not permitted in domain names. However, it is relevant to note that substitution of the exclamation point in HELLO! by numeric "1" in the Disputed Domain Name seems like an attempt to closely relate to the Complainant's mark HELLO! as it can be easily associated with "!". Therefore, I find that the requirement of the INDRP Policy paragraph 4(i) is satisfied. The disputed domain name is identical to Complainant's mark 'HELLO!' and the mark HELLO forms key part of the disputed domain name.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

While the overall burden of proof rests with the Complainant to prove that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a Complainant is generally deemed to have satisfied paragraph 4(ii) of the INDRP policy.

Paragraph 7 of INDRP Policy lists three non-exhaustive factors by which the Respondent may show that it has rights or legitimate interests in the Disputed Domain Names which includes (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; (ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In ***Advance Magazine Publishers Inc. v. Vanilla Limited/ Domain Finance Ltd./Minakumari Periasany Case No. D2004-1068*** where the Respondent has registered 23 Vogue formative domain names, the panel was of the view that *"a legitimate interest cannot be established where the evidence suggests that registration was for the purpose of benefiting from the Complainant's trade mark, even where that trade mark can also be used as a common term. In the Panel's view, the Respondent has failed to rebut the Complainant's assertion that it registered the Disputed Domain Names for the purpose of taking advantage of the Complainant's established rights in the VOGUE mark."* The panel directed that all the disputed domains be transferred in favour of the Complainant.

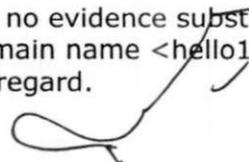


In **Yahoo! Inc., v. Silicon City and Osama Al-Ayoub Case No. D2000-1711**, the Panel noted that *Paragraph 4 (c) (i) of the Uniform Policy recognizes the use, prior to a Complaint, of a Domain Name in connection with a bona fide offering of goods or services; however that clearly does not legitimise an otherwise non-legitimate use of a Domain Name. Evaluation of all of the evidence in the present matter, including the adoption of a Domain Name confusingly similar to that of a well-known corporation and competitor, leads the Administrative Panel to the conclusion that any purported offering of goods or services was superficial, part of an overall scheme of bad faith use of the Domain Name, and not bona fide. In respect of Paragraph 4 (c) (ii) of the Uniform Policy there is no evidence that the Respondent as an individual or as a business has been commonly known by the disputed Domain Name. The Respondent's submission includes reference to an "investment" of \$US 5000 in development of the site, and to the presentation or hosting of auctions, car dealers, real estate and other activities of a commercial nature on the disputed website. Notwithstanding the appearance of a "non-profit" disclaimer on later versions of the disputed web site, the only realistic interpretation of the evidence is that the Respondent created the site as a skeleton commercial operation for sale as a going concern. In respect of Paragraph 4 (c) (iii) of the Uniform Policy there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the Domain Name. While acknowledging that the circumstances listed under Uniform Policy Paragraph 4 (c) are without limitation, the Administrative Panel finds that the Respondent does not have any rights or legitimate interest in the Domain Name. The Complainant succeeds under Paragraph 4 (a) (ii) of the Uniform Policy."*

The Respondent has asserted that the Complainant's mark HELLO! is a common word and cannot be allowed to monopolize use of the word HELLO. Based on Complainant's contentions and evidence placed before me, it is not disputed that the Complainant's mark HELLO! was used on worldwide basis since the year 1988 including in India, garnering goodwill and reputation amongst people of trade. In the Arbitrator's view, the Respondent being in the same line of business namely media and entertainment industry, it is hard to believe that the Respondent was not aware of the Complainant's rights and use of the HELLO! mark moreso when the Complainant's magazines under the name HELLO! have been actively available in India since the year 1999 through the Complainant's distributor licensee. Therefore, registration of a confusingly similar domain by the Respondent in respect of similar services even though the Complainant's mark may be a common word, seems to suggest that the Respondent's such act was to benefit from the fame of the Complainant's prior existing mark.

Therefore, even though the Respondent may have been using the subject domain name for offering bonafide services, such use clearly does not legitimise an otherwise non-legitimate use of a Domain Name which is confusingly similar to a prior well established trade mark of the Complainant.

Further, I find that the Respondent has produced no evidence substantiating that it has been commonly known by the disputed domain name <hello1> and hence the Complainant has sustained its burden in this regard.



Moreover, the Respondent is making commercial use of the disputed domain name therefore there is no non-commercial fair use of the subject domain so as to attract exception under Paragraph 7(iii) outlined above. Based on the above, I find that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

(3) the domain name has been registered in bad faith.

Paragraph 6 of the INDRP policy states that "**Evidence of Registration and use of Domain Name in Bad Faith-** For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

Based on prior adoption, use and various trademark and domain name registrations of HELLO! and Hello formatted marks, it is believed that the Respondent was well aware of the Complainant's business, its products and services, its reputation and rights in the trade mark HELLO! on worldwide basis. It is not disputed that the Respondent had also registered other domain names like 'hellotv.in' which is identical to the Complainant's domain name <hellotv.com> which shows that the Respondent is actively taking actions engaging in this pattern of conduct to prevent the Complainant from registering the domains in its name. Acquiring the domain comprising HELLO and numeric 1(which is substitute for exclamation mark as explained earlier) necessarily devours the Complainant's rights in its HELLO! mark and prevent it from exercising his subsisting rights. Therefore, in my opinion, the circumstance provided in Paragraph 6(ii) is present.



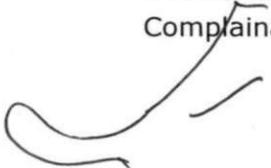
It is to be noted that the Respondent has not explained the origin or coinage of the mark HELLO1 and has instead explained the alleged adoption of the mark HELLOTV by it based on HelloTunes services of BSNL which is not relevant to present case. The Respondent has not provided any evidence to show that the mark <hello1> and disputed domain name <hello1.in> was bonafidely adopted and used for its business prior to the date/year in which the Complainant had garnered substantial goodwill and reputation.

Further, it is pertinent to mention that the services covered by both Complainant and Respondent are overlapping i.e. media and entertainment industry. The services provided by both the websites are web based entertainment services pertaining to TV, films, etc. Therefore, the Arbitrator is of the view that the registration of a confusingly similar domain name <hello1> for offering similar services as that of the Complainant seems to be in bad faith with a view to attract web traffic and create confusion with the Complainant's name or mark.

Therefore, in my opinion, the circumstance provided in Paragraph 6(iii) is also present.

8. Decision:

In view of the foregoing, I am convinced that the Complainant has made its case and the complaint is accordingly allowed. The Respondent's domain name www.hello1.in is confusingly similar to the Complainant's trademark HELLO! in which it has statutory and common law rights. Thus, the registration of the disputed domain name in which the Respondent has no legitimate rights was registered in bad faith. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.hello1.in be transferred to the Complainant.



**RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA**

January 27, 2016