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Stamp Duty Paid By	: BINNY KALRA
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BEFORE THE SOLE ARBITRATOR
C/O NATIONAL INTERNET EXCHANGE OF INDIA

DISPUTED DOMAIN NAME <geicopharma.co.in>

INDRP CASE NO. 1275

(This stamp paper forms part of the Award)

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**ARBITRATION AWARD
IN REGISTRY**

(C/O NATIONAL INTERNET EXCHANGE OF India)

Before the Sole Arbitrator, Binny Kalra

Disputed domain name <www.geicopharma.co.in>

In the matter of:

Government Employees Insurance Company,
5260 Western Ave.
Chevy Chase, MD
USA 20815

Complainant

vs

MD Industries
313 Royal Square, Utran, Surat
Gujarat 395010, India
chiragkumbhani3654@gmail.com

Respondent

INDRP Case No: 1275

1. The Parties:

The Complainant is Government Employees Insurance Company ('GEICO'), an insurance provider incorporated under the laws of the State of Maryland, United States of America, who is represented in these proceedings by Mr. Raja Pannir Selvam of Selvam and Selvam, Old No. 9, Valliammal Street, Kilpauk, Chennai 600 010, Tamil Nadu, India. The Respondent is MD Industries, who has not made any representations either itself or through counsel during these proceedings.

2. The domain name, Registrar, and Policy:

The present proceedings pertain to a dispute regarding the domain name www.geicopharma.co.in (hereinafter referred to as the "**Disputed Domain Name**"). The Registrar for the Disputed Domain Name is Endurance Domains Technology LLP, having its address at 10 Corporate Drive, Suit 300, Burlington, Massachusetts 01803, United States of America. The present arbitration is being conducted in accordance

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with the Arbitration and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy ("**Policy**") and the INDRP Rules of Procedure ("**Rules**").

3. Procedural history:

- 21 October 2020: The .IN Registry appointed Ms. Binny Kalra as an arbitrator in these proceedings
- 22 October 2020: Consent of the arbitrator along with a declaration of impartiality and independence was given to the .IN Registry
- 26 October 2020: A notice from the .IN Registry to the parties informing them of the appointment of the arbitrator was sent along with the complete set of papers comprising the Complaint and its annexures.
- 28 October 2020: Notice of commencement of arbitration proceedings was sent to all parties by the arbitrator and a period of 30 days, until 27 November 2020, was given to the Respondent to submit a statement of defence
- 30 November 2020: No communication had been received from the Respondent by the stipulated date and even until 30 November 2020. A notice of forfeiture of the right to file a statement of defence by the Respondent was sent by email by the arbitrator to all concerned parties and the matter was reserved for passing an ex parte award.

4. The Complainant's case:

The Complainant claims to be an internationally well renowned insurance company that has been in the industry since 1936. The Complainant states that it offers insurance inter alia for automobile, motorcycle, homeowners, rental, condominium, flood, mobile home, personal umbrella, and overseas insurance. The mark GEICO is claimed to be known exclusively in relation to the Complainant.

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The Complainant states that it is based out of the United States with operations in several countries.

The Complainant has further made the following relevant factual claims, *inter alia*:

- The Complainant is the registered proprietor of the mark GEICO and its variants, and has placed on record various trademark registrations for the mark GEICO issued by the United States Patent and Trademark Office and the Office for Harmonization in the Internal Market (Trade Marks and Designs) of the European Community, with respect to insurance-related services, as **Annexure-C** to the complaint.
- The Complainant is a leader in its industry, offers insurance services to consumers across the globe and has made extensive use of its distinctive GEICO mark in connection with its services. The Complainant has been trading under the GEICO mark for nearly 80 years.
- The Complainant has invested large sums of money to promote the GEICO mark, including through the internet, and owns and operates the domain name www.geico.com (incorporating the GEICO mark) since 1997. The Whois record for www.geico.com as well as other webpages from this website have been placed on record as **Annexure-D** to the Complaint.
- The popularity of the Complainant's services has been continuously increasing since the date of adoption and use of the GEICO mark. This has been supported by copies of webpages from the Complainant's website www.geico.com, which has been placed on record as **Annexure-E** to the Complaint.
- The Complainant maintains an active social media presence on multiple platforms such as Facebook, Instagram, Twitter, LinkedIn and YouTube, and its pages have thousands of followers from across the world. Extracts of these webpages have been placed on record as **Annexure-F** to the Complaint.
- The Complainant has been awarded several accolades over the years. A print-out of a webpage from the Complainant's website, enumerating these accolades, have been placed on record as **Annexure-G** to the Complaint.
- The Complainant has impeccable goodwill and reputation across the globe, and the word GEICO is exclusively associated with the Complainant and its services.

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- The Disputed Domain Name registered by the Respondent resolves to a generic "lorem ipsum" placeholder website, which features the Complainant's logo, blue-and-white colour scheme, and favicon (tab icon). A copy of the webpage corresponding to the Disputed Domain Name has been placed on record as **Annexure-H** to the Complaint.
 - The Complainant has not authorised the Respondent to register the Disputed Domain Name. In fact, after becoming aware of the Disputed Domain Name, the counsel for the Complainant contacted the Respondent to request that the Respondent cease its use of the GEICO mark and transfer the Disputed Domain Name to the Complainant. However, there has been no response from the Respondent. This correspondence has been placed on record as **Annexure-I** to the Complaint.

5. Legal grounds:

Under Paragraph 4 of the Policy, the Complainant must establish the following three elements to succeed:

- (a) the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (c) the Disputed Domain Name has been registered or is being used in bad faith.

6. Discussion and findings:

The Respondent has chosen not to participate in the present proceedings and has not filed any statement of defence. Therefore, the claims of fact made by the Complainant as summarized in paragraph 4 of this decision, shall be accepted by the Arbitrator if they are found to be *prima facie* valid. The discussion will therefore proceed on this basis.

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A. Whether the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights

The Disputed Domain Name is <www.geicopharma.co.in>. The Complainant has claimed rights in the mark GEICO. The evaluation of Issue A shall therefore be twofold:

a. Whether the Complainant has rights in the mark GEICO

The Complainant has attempted to establish its rights in the mark GEICO by making the following claims:

- It holds various trademark registrations for the mark GEICO issued by the United States Patent and Trademark Office and the Office for Harmonization in the Internal Market (Trade Marks and Designs) of the European Community, with respect to insurance-related services;
- It is an industry leader who has been trading under the mark GEICO for nearly 80 years;
- It owns and operates the domain www.geico.com and maintains an active social media presence;
- The popularity of its services has been continuously increasing and it has won several accolades over the years; and
- It has impeccable goodwill and reputation across the globe, and the word GEICO is exclusively associated with the Complainant and its services.

The Arbitrator finds each of these claims to be *prima facie* valid, based on the documents placed on record as Annexures C, D, E, F and G to the Complaint. It may be noted that although the Whois record for the Complainant's domain name www.geico.com (Annexure-D to the Complaint) is not found to be proof of the Complainant's ownership of such domain since the details of the Registrant remain masked, the claim made by the Complainant as to its ownership of this domain is accepted, given the lack of contradiction by the Respondent.

Given that these claims have been found to be valid, the Arbitrator finds that the Complainant has goodwill and reputation in the GEICO mark across the world,

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including India, and therefore has common law rights in the GEICO mark in India. It may be noted that the Complainant has not claimed to have any trademark registrations for the mark GEICO in India, and therefore has no statutory rights for such mark in India.

b. Whether the Disputed Domain Name is identical and/or confusingly similar to the mark GEICO

In agreement with the claims made by the Complainant and as the result of independent analysis, the Arbitrator finds that the Disputed Domain Name is confusingly similar to the mark GEICO, for the following reasons:

- The Disputed Domain Name <www.geicopharma.co.in> wholly contains the word 'geico', which forms the entirety of the GEICO mark in which the Complainant has rights.
- The mark GEICO has been accepted by the Arbitrator to be exclusively associated with the Complainant. The mere addition of the non-distinctive term "pharma" to the word 'geico' is not sufficient to distinguish the Disputed Domain Name from the Complainant's mark GEICO and it is likely that consumers who access the website corresponding to the Disputed Domain Name will associate it with the Complainant, believing it to be a pharmaceutical venture of the Complainant. Similar reasoning has been upheld by several courts, including by the Hon'ble High Court of Delhi in *Citigroup Inc. v. Citicorp Business & Financial Pvt. Ltd.*, (2015) 216 DLT 359.
- The other possible point of difference between the Disputed Domain Name and the Complainant's mark GEICO is that while the Complainant's domain name is www.geico.com (with the Top Level Domain .com), the Disputed Domain Name has the Country Code Top Level Domain of .co.in. However, it is well-settled and stands to reason that differences in TLDs and ccTLDs are not sufficient to render two marks or domain names dissimilar. An internet user familiar with the trademark of an entity and searching for this name online may not distinguish between a .com TLD and a .co.in ccTLD. In *India Express (P) Ltd. v. Nishu Raj*, 2018 (SCC Online Bom 11553) the Hon'ble High Court of Bombay

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has directed that the domain name 'youngindianexpress.co.in' be transferred in favour of the owner of the trademarks 'INDIAN EXPRESS.COM'.

It bears pointing out that the Complainant's claim insofar as it relies on the similarity in the colour scheme/look and feel between the websites corresponding to the Disputed Domain Name and the Complainant's website www.geico.com, is irrelevant to the analysis of whether the Disputed Domain Name itself is identical or confusingly similar to the Complainant's mark GEICO. However, such claim is relevant for the purpose of analysing whether the Disputed Domain Name has been registered or is being used in bad faith by the Respondent, as discussed below.

For the above reasons, the Arbitrator finds that the Disputed Domain Name is confusingly similar to the mark GEICO in which the Complainant has rights.

B. Whether the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name

The Complainant's claim that its correspondence with the Respondent, requesting that the Respondent cease its use of the GEICO mark and transfer the Disputed Domain Name to the Complainant has not been responded to by the Respondent, must be accepted by the Arbitrator in light of the document placed on record at Annexure-I to the Complaint and absent any contradiction by the Respondent. *Prima facie*, this indicates the lack of any rights or legitimate interest in the Disputed Domain Name by the Respondent as any entity who claims any rights or interest in any asset (such as a domain name) can reasonably be expected to defend such right or interest, when challenged.

This Complainant's claim could have been disproved by the Respondent by demonstrating, *inter alia*, the existence of any of the elements in Paragraph 6 of the Policy. However, the Respondent has chosen not to participate in these proceedings.

Therefore, the Arbitrator finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

Arbitrator

It is clarified that the claim made by the Complainant that the use of the Disputed Domain name by the Respondent does not constitute a *bona fide* offering of goods or services or a legitimate non-commercial fair use by the Respondent, has no bearing on the findings of the Arbitrator on the lack of rights or legitimate interests of the Respondent in the Disputed Domain Name, for the following reasons:

- The said claim corresponds to Paragraph 6 of the Policy.
- However, Paragraph 6 states only that if the registrant of a domain name is found to have used the domain name in connection with a *bonafide* offering of goods or services, or is making a legitimate non-commercial or fair use of the domain name, then such circumstances shall demonstrate the registrant's rights to or legitimate interests in the relevant domain name.
- Paragraph 6 of the Policy does not state the converse, i.e. that in the absence of such circumstances, the registrant (the Respondent in this case) shall be proved to have no rights or legitimate interests in the relevant domain name.

Further, the claim made by the Complainant that "criminal fraud" demonstrates that the Respondent has no legitimate interests in the Disputed Domain Name is not accepted since the Complainant has not placed on record any evidence to demonstrate fraud - criminal fraud would require a higher standard of proof.

However, the non-acceptance of the above claims does not affect the Arbitrator's finding that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

C. Whether the Disputed Domain Name has been registered or is being used in bad faith

A perusal of Annexure-H to the complaint, consisting of webpage extracts from the website corresponding to the Disputed Domain Name, unequivocally demonstrates that the Disputed Domain Name resolves to a website which:

- Is a generic "lorem ipsum" placeholder website which does not appear to contain any information about the Respondent or its services;

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- Features a blue-and-white colour scheme that is similar to the colour scheme of the Complainant's website www.geico.com whose extracts are at Annexure-D to the Complaint; and
- Prominently features the word/mark "GEICO" at the top of the webpage, which is stylized in a manner nearly identical to the GEICO mark on the Complainant's website.

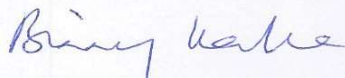
The above three observations demonstrate that the Respondent is not making use of the Disputed Domain Name for any commercial or *bonafide* purpose since the corresponding website displays no information about the Respondent or its services and appears to have some elements that are deceptively similar to those of the Complainant's website www.geico.com. The claim made by the Complainant that a legitimate domain name owner would create an active working website and keep it live, if the domain name were adopted in an honest manner, is accepted.

Therefore, based on this conclusion and considering the confusing similarity between the Complainant's GEICO mark and the Disputed Domain Name, the Arbitrator finds that the Disputed Domain Name has been registered and is being used in bad faith.

7. Decision: For the reasons described above, the Arbitrator finds that the Complainant has satisfied all three elements required under Paragraph 4 of the Policy to obtain the remedy of transfer of the Disputed Domain Name.

Therefore, the Arbitrator directs that the Disputed Domain Name **<www.geicopharma.co.in>** be transferred to the Complainant.

Signed:



Ms. Binny Kalra

Arbitrator

Date: 9 December, 2020