

AWARD

1. The Parties

The Complainant is M/s Belmond Ltd., Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda.

The Respondent is Mr. Rahul Hinge, Pioneer Solutions, Office No 2 and 4, Galleria Karve Road Kothrud, Nr Vidya Sahakari Bank, Pune, Maharashtra-411029 IN.

2. The Domain Name and Registrar

The disputed domain name is <www.belmondspa.in >. The said domain name is registered with the Registrar – GoDaddy.com, LLC (IANA ID: 146), 14455 North Hayden Rd, Suite 219, Scottsdale AZ 85260, US.

The details of registration of the disputed domain name (as per Annexure-B to the Complaint) are as follows:

- a. Domain ROID: DD813C2DBE9624E12A7D9F9C6B214B1F2-IN
- b. Date of creation: November 14, 2019
- c. Expiry date: November 14, 2020

3. Procedural History

- (a) A Complaint dated 16th August, 2021 has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Advocate and former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

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- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were served by the National Internet Exchange of India on 8.9.2021 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint with annexures to the parties through email on 8.9.2021. The Respondent was given 14 days for reply to the complaint. The Complainant sent the copies of complaint & annexures by courier to the Respondent on 10.9.2021 (delivered on 14.9.2021) and confirmed it through email on 14.9.2021 to all parties including the Registrar of the domain name. The Complaint and its annexures have thus been served properly through courier and email to the Respondents as per INDRP rules. Since, the Respondent has not responded to the repeated notices served through courier as well as emails the present proceedings have to be conducted ex-parte as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. Factual Background

From the Complaint and the various annexures to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant in this arbitration proceeding is M/s Belmond Ltd., having its principal place of business at Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda. Headquartered in London, UK, Belmond was established in 1976 with the purchase of the Hotel Cipriani in Venice and then shortly thereafter with the recreation of the Venice Simplon-Orient-Express, linking Paris and Venice, along with other European cities. Belmond was formerly known as Orient-Express Hotels and rebranded as Belmond in 2014. It owns and/or operates 46 luxury properties delivering luxury experiences at many places across the countries.

According to the Complainant, their trademark BELMOND is a globally recognised brand famous for its hotel, restaurant, train and river cruises businesses in 24 countries. Belmond's properties include hotels like Cipriani, a Belmond Hotel, Venice, Splendido, a Belmond Hotel, Portofino, Copacabana Palace, a Belmond Hotel, Rio de Janeiro, Le Manoir aux Quat' Saisons, a Belmond Hotel, Oxfordshire, Grand Hotel Europe, a Belmod Hotel, St. Petersburg, Maroma Resort & Spa, a

Belmond Hotel, Mexico, Hotel das Cataratas, a Belmond Hotel, the Iguassu National Park, Brazil, and Cap Juluca, a Belmond Hotel, Anguilla. Luxury trains, such as the Venice Simplon-Orient-Express and Belmond Royal Scotsman and exceptional river cruises such as the Belmond Afloat in France fleet, complete a portfolio that offers extraordinary experiences with curated activities and personal service to a globally diverse, highly refined customer. The trademark was registered by USPTO in 2015, by the European Union in 2014, by WIPO in 2017 and by the Registrar of Trade marks, India for vide Registration no. 3649514 on 4.10.2017 and vide Registration no. 3649515 on 4.10.2017. The Complainant is doing business in various parts of the world including Europe, America and Asia.

The "BELMOND" mark has acquired a high degree of public recognition and distinctiveness among customers around the world and symbolizes valuable goodwill for the Complainant. The Complainant is well known to its customers as well as in business circles as "BELMOND".

Respondent's Identity and Activities

The Respondent's activities, except the fact that he is running spa business through the disputed domain name, are not known. The Respondent has not responded to the Notice and complaint.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant contends that by virtue of its trademark and service mark registrations, the Complainant is the owner of BELMOND trademarks. The country code top level domain (ccTLD) ".in" can be disregarded for purposes of assessing similarity of the domain names to the trade marks. The Complainant has referred to Morgan Stanley v. Bharat Jain, INDRP/156 (NIXI Oct. 27, 2010) (regarding morganstandleybank.co.in); EH Europe GmbH v. Sabari V, INDRP/843 (NIXI Feb. 14, 2017) (regarding enersys.co.in).

The Complainant contends that in creating the Disputed Domain Name, Respondent has added the generic, descriptive term "spa" to Complainant's BELMOND trademark, thereby making the Disputed Domain Name confusingly similar to Complainant's trademark. The fact that such term is closely linked and associated with Complainant's brand and trademark only serves to underscore and increase the confusing similarity between the Disputed Domain Name and the Complainant's trademark. More specifically: "spa" – the Complainant provides spa retreat packages in its resorts around the world. Complainant is also the owner of the domain name acquired on October 17, 2019.

The Complainant contends that past panels have consistently held that a disputed domain name that consists merely of a complainant's trademark and an additional term that closely relates to and describes that complainant's business is confusingly similar to that complainant's trademarks. The Complainant has referred to *Belmond Limited v. Belmond Spa*, D2019-1907 (WIPO, Sep. 26, 2019), where Panel found that "the main name is confusingly similar to the BELMOND mark as it incorporates the BELMOND mark in its entirety at the head of the disputed domain name. The addition of the descriptive term "spa" after the BELMOND mark does not distinguish the disputed domain name".

Additionally, Respondent's use of the Disputed Domain Name contributes to the confusion. Respondent is using the Disputed Domain Name to host a website featuring the BELMOND trademark and promoting spa retreat packages, which suggests that Respondent intended the Disputed Domain Name to be confusingly similar to Complainant's trademark as a means of furthering consumer confusion. As per the Complainant, although the content is usually disregarded under the first element of the UDRP, the WIPO Jurisprudential Overview 3.0 allows for instances where "panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name" (Paragraph 1.15). As a result, Respondent's use of the Disputed Domain Name to resolve to a website that promotes and offers similar spa retreat packages is further evidence that the Disputed Domain Name is confusingly similar to Complainant's trademark.

Therefore, the disputed domain name is confusingly similar or identical to the registered trademark of the Complainant under the Policy

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any legitimate interest in using the disputed domain name. The granting of registrations by the IPI, USPTO, EUIPO,

and the WIPO to Complainant for the BELMOND trademark is prima facie evidence of the validity of the term "BELMOND" as a trademark, of Complainant's ownership of this trademark, and of Complainant's exclusive right to use the BELMOND trademark in commerce on or in connection with the goods and/or services specified in the registration certificates. Respondent is not sponsored by or affiliated with Complainant in any way and Complainant has not given Respondent permission to use Complainant's trademarks in any manner, including in domain names. "In the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed." The Complainant has referred to Sportswear Company S.P.A. v. Tang Hong, D2014-1875 (WIPO December 10, 2014).

Further, Respondent is not commonly known by the Disputed Domain Name, which evinces a lack of rights or legitimate interests. The Complainant has referred to World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe, D2008-0642 (WIPO June 6, 2008) (finding that a respondent, or his/her organization or business, must have been commonly known by the at-issue domain at the time of registration in order to have a legitimate interest in the domain). In the instant case, the pertinent Whois information as disclosed by .IN Registry on August 6, 2021, identifies the Registrant as "Rahul Hinge / Pioneer Solutions," which does not resemble the Disputed Domain Name in any manner – thus, where no evidence, including the Whois record for the Disputed Domain Name, suggests that Respondent is commonly known by the Disputed Domain Name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the Disputed Domain Name. In Moncler S.p.A. v. Bestinfo, D2004-1049 (WIPO, Feb. 8, 2005) (in which the panel noted "that the Respondent's name is "Bestinfo" and that it can therefore not be "commonly known by the Domain Name" [moncler.com]).

Respondent is making neither a bona fide offering of goods or services nor a legitimate, noncommercial fair use of the Disputed Domain Name. On the website available at the Disputed Domain Name, Respondent offers and attempts to sell products that directly compete with Complainant's own offerings. Past Panels have consistently held that selling competing goods, coupled with the unauthorized use of a complainant's trademarks in a confusingly similar domain name, does not qualify as a bona fide offering of goods or services under Policy. As such, the Respondent here should be held to possess no legitimate rights or interests in the Disputed Domain Name. See Am. Online, Inc. v. Fu, D2000-1374 (WIPO Dec. 11, 2000) ("[I]t would be unconscionable to

find a bona fide offering of services in a respondent's operation of [a] web-site using a domain name which is confusingly similar to the Complainant's mark and for the same business").

Further, Respondent registered the Disputed Domain Name on November 14, 2019, which is significantly after Complainant's registration of its domain name on February 24, 2014 and its domain name on October 17, 2019, much after registration of BELMOND trademark with the IPI, USPTO, EUIPO, and the WIPO, and also significantly after Complainant's first use in commerce of its trademark on 2014.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the **element (iii)**, the Complainant contends that the Complainant and its BELMOND trademark are known internationally, with trademark registrations across numerous countries including in India. The Complainant has marketed and sold its goods and services using this trademark since 2014, which is well before Respondent's registration of the Disputed Domain Name on November 14, 2019.

The Complainant further contends that by registering a domain name that incorporates Complainant's BELMOND trademark in its entirety along with the related term "spa", Respondent has created a domain name that is confusingly similar to Complainant's trademark and its domain, and identical to Complainant's domain. As such, Respondent has demonstrated a knowledge of and familiarity with Complainant's brand and business. Moreover, Respondent is using the Disputed Domain Name to host a website featuring the BELMOND trademark and offering for sale services that compete directly with Complainant's own offerings. According to the Complainant, in light of the facts set forth within his Complaint, it is "not possible to conceive of a plausible situation in which the Respondent would have been unaware of" the Complainant's brands at the time the Disputed Domain Name was registered. The Complainant has referred to *Telstra Corp. Ltd. v. Nuclear Marshmallows*, D2000-0003 (WIPO Feb. 18, 2000) & *Parfums Christian Dior v. Javier Garcia Quintas*, D2000-0226 (WIPO May 17, 2000). Stated differently, BELMOND is so closely linked and associated with Complainant that Respondent's use of this mark, or any minor variation of it, strongly implies bad faith – where a domain name is "so obviously connected with such a well-known name and products...its very use by someone with no connection with the products suggests opportunistic bad faith." Further, where the Disputed Domain Name is confusingly similar to Complainant's BELMOND trademark and

domain, while being identical to Complainant's domain, "it defies common sense to believe that Respondent coincidentally selected the precise domain without any knowledge of Complainant and its trademarks." Asian World of Martial Arts Inc. v. Texas International Property Associates, D2007-1415 (WIPO Dec. 10, 2007).

According to the Complainant, the Respondent has ignored Complainant's attempts to resolve this dispute outside of this administrative proceeding. Past Panels have held that failure to respond to a cease-and-desist letter may properly be considered a factor in finding bad faith registration and use of a domain name. Encyclopedia Britannica v. Zuccarini, D2000-0330 (WIPO June 7, 2000) (failure to positively respond to a demand letter provides "strong support for a determination of 'bad faith' registration and use"). RRI Financial, Inc., v. Chen, D2001-1242 (WIPO Dec. 11, 2001) (finding bad faith where "The Complainant alleges that it sent numerous cease and desist letters to [r]espondent without receiving a response"). The Complainant's Cease and Desist Letters sent to Respondent did not fetch any response. The Complainant concludes that finally, on balance of the facts set forth above, it is more likely than not that the Respondent knew of and targeted Complainant's trademark, and Respondent should be found to have registered and used the Disputed Domain Name in bad faith. Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc., D2014-1754 (WIPO Jan 12, 2014) ("the Panel makes its finding regarding bad faith registration by asking whether it is more likely than not from the record of the evidence in the proceeding that Respondent had the ELECTRIC FOOTBALL trademark in mind when registering the Domain Name.")

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.belmondspa.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint

on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

Although Respondent has failed to respond to the complaint, the default does not automatically result in a decision in favour of the Complainant, nor is it an admission that Complainant's claims are true. The burden remains with Complainant to establish the three elements of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

The disputed domain name <www.belmondspa.in> was registered by the Respondent on November 14, 2019.

The Complainant is an owner of the registered trademark “BELMOND” in many countries including India for the last many years. The Complainant is also the owner of other domains as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <belmondspa.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser

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looking for "BELMOND SPA" products in India or elsewhere would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <www.belmondspa.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (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; or
- (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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is Mr. Rahul Hinge. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "BELMOND" or to apply for or use the domain name incorporating said trademark. The

domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

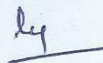
As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <www.belmondspa.in> under INDRP Policy, Paragraph 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the 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.



The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

The foregoing circumstances lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.belmondspa.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal
Sole Arbitrator

Dated: 24th September, 2021