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Property Description : Not Applicable
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INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

SOLE ARBITRATOR: SUDHIR KUMAR SENGAR

HIOX Softwares Private Limited

Vs

RahulHackz Official

ARBITRATION AWARD Disputed Domain Name: www.hioxindia.in

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1. The Parties

The complainant in these proceedings is HIOX Softwares Private Limited., having its address at No 7A-F, Ganesha Complex Campus, N.K.Palayam Road, Singanallur, Coimbatore, Tamilnadu, India - 641005. The Complainant is represented by Mr. Senthil kumar G. J., HIOX Softwares Private Limited, (Email : abuse@hioxindia.com Tel : 989473167).

The Respondent in these proceedings, is Rahul Hackz Official, 438/21, Old GTL, Guntakal, Andhra Pradesh 515801 (Phone : 91-7095819016, Email rahulhackz.me@gmail.com)

2. Domain Name and Registrar

(i) The disputed domain name is <hioxindia.in>.

(ii) The Disputed Domain Name is registered with the domain registrar Endurance Domains Technology LLP, Goregaon(E), Mumbai, Maharashtra, India - 400063

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure ("the Rules") which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

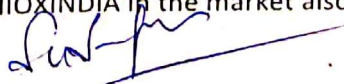
On February 8, 2022, I submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on February 8, 2022 and served an electronic copy of the complaint on the respondent. I informed the Parties about commencement of arbitration proceeding on February 8, 2022 and the Respondent was directed to submit a response within 7(seven) days. The respondent filed his response by email dated 08.0.2022.

4. Grounds for Administrative Proceedings

1. The disputed domain name is identical or confusingly similar to a name, trademark or service in which the Complainant has rights.
2. The respondent has no rights or legitimate interests in respect of the domain name.
3. The registered domain name has registered the domain name in bad faith.

5. Background of the Complainant

The Complainant, Hiox Softwares Pvt. Ltd., submits that "it is a Domain Registration and Web Hosting company with over 15000+ active customers across the globe. The Complainant owns and has used its corporate website hioxindia.com as the domain registration and web hosting services since 2004, and continues to do so." The Complainant further submits that it has significant presence of its brand and trademarks HIOX, HIOXINDIA in the market also



through various promotional and advertising activities. The Complainant further submits that the Complainant has been marked as one of the top Domain Registration Company by the NIXI. The Complainant further submits that the Complainant owns and has used the brand and trademarks HIOX, HIOXINDIA and variations thereof (hereinafter collectively referred to as the "HIOX Marks") for over the years in relation to Domain Registration and Web Hosting, as well as related services such as advertising services, etc. The Complainant further submits that the Complainant owns trademark registrations for the HIOX Marks and the Complainant owns the domain name <hioxindia.com> and operates its corresponding primary website at www.hioxindia.com, through which it conducts a significant portion of its business and where information about HIOX and its business is easily accessible and available to millions of internet users, who may be current or potential consumers. The Complainant contends that the Complainant's domain name in its entirety incorporates its registered trademark HIOX and HIOXINDIA, thus further augmenting its proprietary rights to the trade marks. The aforementioned domain name <hioxindia.com>, as evident, is based on the corporate name of the Complainant's company, Hiox Softwares Private Limited, and was created/registered on and has been regularly renewed since November 21, 2003. The Complainant further contends that by virtue of the said domain's association with the Complainant for over a decade now, it has become synonymous with the Complainant and its business. The Complainant submits that the Complainant is also the owner of the domain <hiox.com>, which was created/registered on and has been regularly renewed since December 27, 2002. The Complainant submits that internet users are redirected from the Complainant's website at www.hiox.com to www.hioxindia.com. The Complainant further submits that as a result of and to leverage its internet based business model, the Complainant has also set up a dedicated international domain name and website <hiox.hosting> that allows internet users away from India to buy domain and hosting services from Hiox Softwares Pvt. Ltd. The Complainant further submits that the domain <hiox.hosting> was created/registered on and has been regularly renewed since February 26, 2015. The Complainant submits that the Complainant is also the owner of several other domain names containing its registered trademark HIOX viz. <hiox.in>, <hiox.org>, <hioxcdn.com>. The Complainant further submits that besides its websites, the Complainant's HIOX Marks and services are prominently advertised and promoted on major social networking sites such as Facebook, Instagram, Linked.In, Twitter and YouTube - which collectively have thousands of followers / views who may arguably be considered as potential, if not existing customers. Given the fact that these websites attract masses from every social, geographical, economic and age demographic worldwide, the HIOX Marks have consequently been exposed to an exponentially large section of both Indian and international public.

The Respondent

The Respondent is RahulHackz Official, 438/21, Old GTL, Guntakal, Andhra Pradesh 515801 (Phone : 91-7095819016, Email rahulhackz.me@gmail.com). The Respondent registered the identical disputed domain name <hioxindia.in> on January 26, 2021.



6. Legal Grounds

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

Complainant's Contentions

The Complainant contends to be the owner of the domain <hiox.com>, which was created/registered on and has been regularly renewed since December 27, 2002. The Complainant submits that the internet users are redirected from the Complainant's website at www.hiox.com to www.hioxindia.com. The Complainant further contends that as a result of and to leverage its internet based business model, the Complainant has also set up a dedicated international domain name and website <hiox.hosting> that allows internet users away from India to buy domain and hosting services from Hiox Softwares Pvt. Ltd. The domain <hiox.hosting> was created/registered on and has been regularly renewed since February 26, 2015. The Complainant further submits that the Complainant is also the owner of several other domain names containing its registered trademark HIOX viz. <hiox.in>, <hiox.org>, <hioxcdn.com>. The Complainant further submits that besides its websites, the Complainant's HIOX Marks and services are prominently advertised and promoted on major social networking sites such as Facebook, Instagram, Linked.In, Twitter and YouTube - which collectively have thousands of followers/views who may arguably be considered as potential, if not existing customers. The Complainant submits that given the fact that these websites attract masses from every social, geographical, economic and age demographic worldwide, the HIOX Marks have consequently been exposed to an exponentially large section of both Indian and international public. The Complainant further submits that the Complainant recently learnt of the Respondent's registration of the Disputed Domain name and use of its corresponding fraudulent website at www.hioxindia.in for offering web hosting and domain name registration and other web hosting related services identical to those of the Complainant. The Complainant submits that the disputed domain

name is identical with and/or confusingly similar to the Complainant's HIOX Marks. The Complainant contends that the Disputed Domain Name incorporates the Complainant's registered trademark HIOX in its entirety. The Complainant further contends that it is indisputable that the Disputed Domain Name comprises the Complainant's registered trademark HIOXINDIA in its entirety. The Complainant has relied on Six Continent Hotels, Inc. v. The Omnicorp, WIPO Case No. D2005-1249 in which "the fact that a domain name wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy" (quoting Oki Data Americas, Inc. v. Asd, Inc.com, WIPO Case No. D2001-0903). The Complainant has also relied on Britannia Building Society v. Britannia Fraud Prevention, WIPO Case No. D20015-0505; PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS) - WIPO Case No. D2003-0696; and Hoffmann-La Roche AG v. Andrei Kosko, WIPO Case No. D2010-0762. The Complainant further contends that the mere addition of the domain name extension '.in' to the Complainant's

registered trademark HIOXINDIA is incapable of lending the Disputed Domain Name any distinctiveness or reduce its similarity with the Complainant's HIOX Marks and on the contrary, enhances the degree of similarity between the rival brand. The Complainant contends that the services mentioned in the respondent's domain name <hioxindia.in> is in fact identical to those offered by the Complainant under the HIOX Marks. The Complainant submits that the Complainant is known globally as a renowned domain registration and web hosting firm since 2003 and hence use of the Disputed Domain Name <hioxindia.in>, in all likelihood, make internet users believe that it originates from the Complainant, when that is not the case. The Complainant submits that, therefore, the inclusion of the domain extension '.in' to the registered trademark HIOXINDIA, is not sufficient to avoid confusion between the Disputed Domain Name and the HIOX Marks of the Complainant. The Complainant further submits that "a search for the registered HIOX marks on popular search engine google.com leads to the Complainant's genuine websites. The Complainant further submits that it is relevant to mention that a mere search for the Disputed Domain Name, i.e. 'hioxindia.in' too, on the popular search engine Google.com shows the Complainant's genuine websites, upon which millions of users are misled to have a conclusion that the disputed domain name 'hioxindia.in' is also one of the genuine websites of the Complainant." The Complainant contends that this result establishes beyond doubt that the disputed domain name is associated with the Complainant alone and none else. The Complainant submits that the Complainant has been continuously and extensively using the registered trademark HIOX in commerce since its adoption in 2003 - both internationally as well as in India - and thus its rights in the HIOX Marks are beyond reproach. The Complainant further submits that since the Disputed Domain name has only been registered recently on January 26, 2021, it is vastly subsequent to the Complainant's adoption, usage and statutory rights in the HIOX Marks.

B. The Respondent has no rights or legitimate interests in respect of the Domain Name.

Complainant's Contentions

The Complainant contends that "Under Paragraph 6 of the INDRP, the following conditions (in particular but without limitation) must be met for the Registrant to have rights or legitimate interests in the disputed domain name:

- (a) 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 bonafide offering of goods or services;
- (b) 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
- (c) 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 Complainant contends that the Respondent in the present case has not fulfilled any of the aforementioned conditions for it to have demonstrable rights or legitimate interests in the Disputed Domain Name. The Complainant further submits that the mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. The Complainant further submits that the Respondent has not used nor made any demonstrable preparations to use the Disputed Domain Name in connection with a "bonafide offering of services or goods ". The Complainant further submits that the Respondent's use of the Disputed Domain Name is for fraudulent purposes, namely, to imitate a legitimate, well-reputed and trustworthy entity, i.e. the Complainant, so as to deceive customers into purchasing services that may be false/inaccurate or never provided. The Complainant further submits that to the Complainant's knowledge, the Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name. The Complainant contends that a general Google search for the string 'HioxIndia' or 'Hiox' does not reveal the Respondent's impugned website or any site that leads to information on the Respondent or reflecting its association with the word 'HIOX' - again clearly signifying that the Respondent is not known by the Disputed Domain Name. The Complainant contends that the Respondent neither has rights or legitimate interests in the Disputed Domain Name nor has the Complainant assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or make use of its registered trademarks HIOX or HIOXINDIA. The Complainant submits that the inclusion of the domain name extension '.in' along with the registered trademark of the Complainant (hioxindia) in the Disputed Domain Name amply reflects that the intention of the Respondent is to deceive the public into believing that some association or commercial nexus exists between the Complainant and the Respondent and cash-in on such deception. The Complainant further submits that the Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name. The Complainant submits that the Disputed Domain Name has been registered for commercial gain by misleading and diverting consumers and/or tarnishing the Complainant's brand and HIOX Marks, and therefore also the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant has relied on The Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516 wherein it was held "It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii) when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark". The Complainant has also relied on Orange Brand Services v. Fayaz/Exuberant Services and Solution Pvt. Ltd. <orangeinfosolutions.in> INDRP/522, wherein "the Complainant is well-known with its trademark. Due to the strong reputation of the trademarks ORANGE, Internet users will apparently and reasonably expect it an offer of the Complainant or authorized or affiliated enterprises under 'orangeinfoolutions.in". The Complainant contends that there is no justification for the Respondent's registration and/or use of the Disputed Domain Name. The Complainant further contends that by virtue of a dishonest adoption and mala fide intent of the Respondent together with its brazen usage of the Complainant's HIOX Marks, there is no scenario wherein the Respondent can claim to make legitimate non-commercial or fair use of the Disputed Domain Name. The Complainant contends that



"a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. The Complainant further submits that once such prima facie case is made, 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".

C. The domain name has been registered/used in bad faith.

Complainant's Contentions

The Complainant submits that as per Paragraph 7 of the INDRP, it is evident that registration and use of a domain name is in bad faith when (c) 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. The Complainant further submits that the Respondent has clearly adopted the Disputed Domain Name with the intention to create confusion with the HIOX Marks and show false nexus between itself and the Complainant. The Complainant contends that the Complainant is vested with statutory and common law rights in its HIOX Marks since the year 2003 and in such circumstances, the Respondent's usage of the Complainant's trade name and mark HIOXINDIA in conjunction with the domain name extension '.in' is of concern as it is fraught with the likelihood of creating confusion in the minds of public at large. The Complainant submits that it is highly probable that consumers looking for the Complainant's HIOX branded services may perceive the Disputed Domain Name to be another domain name of the Complainant for registering domain names and web hosting and this misconception is highly likely to be amplified when such unwary consumers would receive fraudulent communications from the Respondent which would prominently bear the impugned term 'HIOX' with any domain name extension - the use of which would deviate consumers into a false sense of security, leading to the incorrect assumption that the Respondent's communication and services are genuine and originating from the Complainant itself. The Complainant submits that it is exactly this sort of scenario that the Respondent is seeking to create and is in itself evidence of its bad faith and malafide intention. The Complainant further submits that the Respondent, being in an identical industry and dealing with same or similar services, is bound to have knowledge of the world-renowned reputation of the Complainant. The Complainant contends that it has no cause for adoption of an identical trademark or domain name, except in bad faith and with malafide intention. The Complainant contends that the Disputed Domain Name was registered in January 26, 2021, i.e. post 12 years of filing of trademark applications by the Complainant in India for registration of its HIOX Marks and 18 years of the Complainant actually using its said Marks in commerce. The Complainant further contends that the Respondent cannot escape the liability of knowledge of the Complainant and its business - and by extension, its HIOX Marks - since no level of coincidence can lead to the Respondent adopting a name / trademark identical to the Complainant's much prior adopted, used and registered HIOX Marks. The Complainant has relied on *Compagnie Generale des Etablissements Michelin v. Terramonte Corp*, Domain Manager (WIPO Case No. D2011-1951), wherein "it is clear in this Panel's view that at the



time the disputed domain name (<mchelin.com>) was registered, Respondent had actual knowledge of Complainant's preexisting rights in the MICHELIN trademark. The Panel, therefore, concludes that Complainant has established that Respondent registered the disputed domain name in bad faith". The Complainant contends that in the present case, at the time of registration of the Disputed Domain Name, the Complainant had been known by its business / corporate / trade names HIOX, HIOXINDIA for much over a decade and had already enforced its rights against several infringers and even so, the Respondent chose to register the Disputed Domain name so as to misappropriate the Complainant's HIOX Marks in an unabashed and unauthorized manner. The Complainant submits that there can be no doubt that the Respondent was aware of the Complainant's HIOX Marks when it registered the Disputed Domain name, which clearly suggests "opportunistic bad faith" in violation of the Policy. The Complainant has relied on Orange Brand Services Limited v. Anshul Agarwal/Orange Electronics Pvt. Ltd. <orangeindia.in> INDRP/579 wherein "Given the fame of the Complainant's trademark and domain name, it is not possible to conceive a use of the same by the Respondent, which would not constitute an infringement of the Complainant's rights in the trademark". The Complainant further submits that HIOX is a well-known, internationally recognized and renowned mark and this suggests that the Respondent must have not only been aware of the Complainant's HIOX brand but should also have known of the Complainant's related domain names and its services, which constitutes strong evidence of bad faith. The Complainant has also relied on Amazon.com Inc., Amazon Technologies, Inc. v. Giovanni Laporta/Yoyo.Email (WIPO Case No. D2015-0009) wherein while directing the transfer of the domain name <amazonsupport.email> to the Complainant, the Administrative Panel held that "A further indication of Respondent's bad faith under the Policy is the fact that the AMAZON Mark predates Respondent's registration of the Disputed Domain Name by twenty (20) years." The Complainant further submits that adoption of the trademarks HIOX, HIOXINDIA by the Complainant precedes registration of the Disputed Domain Name by much over a decade. Therefore, it is clear that the Respondent intended to trade on the reputation of the Complainant and its rights in the HIOX Marks. The Complainant contends that the Respondent appears to be using the Disputed Domain Name for the purpose of misleading and extracting illegal benefits from innocent internet users by posting and assuring professional free hosting opportunities, who will be led to believe the Respondent to be the Complainant or at least affiliated with it. The Complainant has relied on Skype Limited v. Sadecehosting.com Internet Hizmetleri San Tic Ltd Sti (WIPO Case No. 1059477) wherein it was observed that "Respondent is using the ... domain name in order to gain access to personal and financial information of Internet users. Such use of the disputed domain name in connection with a phishing scheme qualifies as bad faith registration and use under Policy, i 4(a)(iii)". The Complainant further contends that even if the Respondent were offering actual professional free hosting through the Disputed Domain Name, such use would still support a finding of bad faith use and registration, as these are the same services offered by the Complainant under its famous and registered HIOX Marks. The Complainant has relied on Kingston Technology Corp. v. c/o Asiakingston.com (WIPO Case No. FA1464515) wherein the Panel observed that "finding use of domain name incorporating Complainant's trademark in connection with the

sale of competing products to constitute bad faith". The Complainant submits that the Disputed Domain Name was registered and is being used in bad faith and if the Respondent is not restrained from using the Disputed Domain Name and the same is not transferred to the Complainant, loss and hardship will be caused to the Complainant.

Respondent's Contentions

The Respondent has submitted that "its been a huge mistake that one of my team members registered this domain name and i am not aware of the domain registration of hioxindia.in and I extremely apologise if i caused inconvenience to the company of HIOXINDIA."

7. Discussion and findings

The Complainant, Hiox Softwares Pvt. Ltd., is a Domain Registration and Web Hosting company is using website hioxindia.com as the domain registration and web hosting services Since 2004. The Complainant owns the domain name <hioxindia.com> which was registered by the Complainant in November, 2003. The Complainant also owns domain <hiox.com> which was registered in December, 2002. The Complainant also owns the domain <hiox.hosting> which was registered in February, 2015. The Complainant has been able to prove its trade mark rights and other rights in mark HIOX and HIOXINDIA by submitting substantial documents. The Complainant is also the owner of several other domain names containing its registered trademark HIOX viz. <hiox.in>, <hiox.org>, <hioxcdn.com>. The Complainant has significant presence on major social networking sites such as Facebook, Instagram, Linked.In, Twitter and YouTube. The disputed domain <hioxindia.in> was registered by the respondent in January, 2021 years after registration of domain <hiox.com> by the Complainant. The disputed domain name contains Complainant's mark "HIOXINDIA" in entirety and is sufficient to prove confusingly identical nature of domain. The purpose of respondent appears to profit from the reputation of the Complainant by registering a nearly identical mark/domain. The disputed domain is likely to attract internet traffic intended to the Complainant's domain. The registration of disputed domain name chosen by the Respondents shows his intent of using nearly identical mark of the Complainant to divert an ordinary internet user who may consider disputed domain name to be business associate of the Complainant. The disputed domain name has been registered by respondent's team by mistake and he is not aware of the registration of disputed domain.

The disputed domain name <hioxindia.in> is nearly identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

The Complainant has been able to prove that it has trademark rights and other rights in marks 'HIOX' by submitting substantial documents. The mark is widely used by the Complainant in different advertising modes and has a strong presence in social media platforms. The disputed domain contains name which is nearly identical and similar to mark 'HIOX' as the disputed domain contains Complainant's mark completely. Addition of top level domain (CCTLD) extension '.in' is insignificant and does little to make it different. There can't be coincidence that the respondent has chosen domain name confusingly similar to the marks of the Complainant. The top level

domain <hioxindia.com> was registered by the Complainant years before registration of disputed domain <hioxindia.in> by the respondent on 26.01.2021.

Bases on the forgoing analysis, I am of the opinion that the disputed domain name is nearly identical and confusingly similar to the complainant's mark.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark "HIOX". The Respondent is neither a licensee nor authorized by the Complainant, to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. This panel is of the view that mere registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the respondent.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

The Domain Name was registered or is being used in bad faith

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating mark and domain name of the Complainant. The Complainant has been the using the mark for several years when the Respondent registered the disputed domain name in January, 2021. The panel finds that the Respondent has used the mark of the Complainant in disputed domain name giving impression that this site is subsidiary of the Complainant's company. The sole purpose of the respondent is to create confusion to an ordinary internet user. The respondent is using disputed domain to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.




Decision

Based on the contentions of the complainant, the attached documents, cited decisions, respondent's submission and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical/confusingly similar to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name be transferred to the Complainant, with a request to NIXI to monitor the transfer. The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

February 28, 2022


Sudhir Kumar Sengar

Sole Arbitrator