



सत्यमेव जयते

INDIA NON JUDICIAL Government of Uttar Pradesh

e-Stamp

Signature.....
ACC Name : SARVESH KUMAR KARDAM, ACC Code : NM14008104
ACC Add : Sub-Register, Noida, Mob. 9116293230
License No. : 114/10, Tehsil & Distt. Dadri, G.B. Nagar, U.P.

Certificate No.	: IN-UP85295845587910T
Certificate Issued Date	: 15-Jun-2021 02:38 PM
Account Reference	: NEWIMPACC (SV)/ up14008104/ NOIDA/ UP-GBN
Unique Doc. Reference	: SUBIN-UPUP1400810458429304677534T
Purchased by	: PUNITA BHARGAVA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	:
First Party	: PUNITA BHARGAVA
Second Party	: Not Applicable
Stamp Duty Paid By	: PUNITA BHARGAVA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



-----Please write or type below this line-----

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY

Arbitral Award in Case No. 1506
Ms. Punita Bhargava, Sole Arbitrator
Disputed domain name: <firstsolargenerza.in>

(Signature)

In the matter of

First Solar, Inc.
350 West Washington Street
Suite 305
Tempe, Arizona 85281
USA

... Complainant

v.

Charles Mark
Universal Studio Hollywood
Los Angeles, California 90001
USA

... Respondent

1. The Parties

The Complainant in this proceeding is First Solar, Inc. of the address 350 West Washington Street, Suite 305, Tempe, Arizona 85281, USA and is represented by J. Damon Ashcraft of Snell & Wilmer L.L.P of the address One Arizona Center, 400 E. Van Buren Street, Suite 1900, Phoenix, Arizona 85004-2202, USA. The Respondent in this proceeding is Charles Mark of the address Universal Studio Hollywood, Los Angeles, California 90001 and email id zwj24250@163.com.

2. Disputed Domain Name and Registrar

This dispute concerns the domain name <firstsolargenerza.in> (the 'disputed domain name') registered on November 17, 2021. The Registrar with which the disputed domain name is registered is Gandi SAS.

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (Policy), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated February 8, 2022 requested availability of Ms. Punita Bhargava to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure (Rules) on the same date.

In accordance with Rules, NIXI vide its email of February 8, 2022 appointed Ms. Punita Bhargava as Sole Arbitrator in the matter.

The Arbitral Tribunal has been properly constituted.

The Arbitrator sent an email to all concerned on February 10, 2022 intimating the commencement of the arbitration proceeding, asking the Complainant to comply with the service requirements, and providing the Respondent time of two weeks to file his reply. The Complainant's representative communicated to the Arbitrator on February

23, 2022 that email to the Respondent with electronic copy of the Complaint and Annexures was served (email did not bounce back), while the physical copy, though dispatched to the Respondent's address in the WHOIS information by traditional mail, may not get delivered as the Respondent's address is not legitimate. Taking due note of this communication and that the Complaint and Annexures were sent to Respondent's last known address and a record of attempt to deliver was provided in line with Section 3(1)(b) of The Arbitration and Conciliation Act, 1996, the Arbitrator waived the requirement of providing proof of delivery of physical service. In any case, communications at various stages of proceedings were through emails which were delivered successfully to the Respondent, so he is deemed served.

No reply was received from the Respondent within the time prescribed. Accordingly, the Arbitrator sent an email to all concerned parties on March 8, 2022 that the award would be passed ex-parte taking into consideration all the material available.

The language of this proceeding is English.

4. Factual and Legal Grounds as submitted by the Complainant

- (i) Disputed Domain Name is Virtually Identical to the Complainant's mark
The Complainant states that it is a leading developer, designer, and operator of photovoltaic solar panels and power plants, providing reliable, dependable, and cost-effective solar energy solutions. It has been offering its goods and services since its inception in 1999, and provides several gig watts each year to various locations over multiple continents.

The Complainant owns the distinctive and well-known trademark FIRST SOLAR, FIRST SOLAR and Design and substantially related marks (FIRST SOLAR Marks), used in connection with solar panel and solar power-related goods and service services. These are as under:



Mark:

Goods and Services: IC 009: photovoltaic modules, namely, an assembly of photovoltaic cells.

IC 037: construction services, construction of photovoltaic namely, planning, laying out an arrays, systems and subsystems; construction information; and construction.

IC 042: technical research and consulting services on energy saving technical research; consultancy in the field of energy saving; quality control; and mechanical research.

India Reg. Date: August 21, 2019

Filing Date: May 24, 2010

Trademark App. No.: 1970277

Trademark Cert. No.: 2258654

Mark: FIRST SOLAR
Goods and Services: IC 011: Solar Photovoltaic Collector Panels.
U.S. Reg. Date: June 5, 2001
Filing Date: November 17, 1998
Trademark Reg. No.: 2457938



Mark:
Goods and Services: IC 011: Solar Photovoltaic Collector Panels.
U.S. Reg. Date: September 4, 2001
Filing Date: October 21, 1999
Trademark Reg. No.: 2486049

Mark: FIRST SOLAR
Goods and Services: IC 009: photovoltaic modules, namely, an assembly of photovoltaic cells.
IC 037: construction services, namely, planning, laying out and construction of photovoltaic arrays, systems and subsystems installation of solar panels and solar power systems; providing information in the field of construction of solar panels and solar power systems
IC 042: design of power plants; design of solar photovoltaic systems; technical research in the field of energy production and energy saving; technical planning of photovoltaic installations and solar energy systems; quality control of solar panels, quality control of the layout, construction and operation of solar panels and photovoltaic arrays.
U.S. Reg. Date: April 24, 2012
Filing Date: March 2, 2011
Trademark Reg. No.: 4130636



Mark:
Goods and Services: IC 009: photovoltaic modules, namely, an assembly of photovoltaic cells.
IC 037: construction services, namely, planning, laying out and construction of photovoltaic arrays, systems and subsystems installation of solar panels and solar power systems; providing information in the field of construction of solar panels and solar power systems
IC 042: design of power plants; design of solar photovoltaic systems; technical research in the field of energy production and energy saving; technical planning of photovoltaic installations

and solar energy systems; quality control of solar panels, quality control of the layout, construction and operation of solar panels and photovoltaic arrays.

U.S. Reg. Date: April 24, 2012

Filing Date: March 2, 2011

Trademark Reg. No.: 4130637

In addition, the Complainant has trademark rights in FIRST SOLAR Marks through creation and extensive use of its website, www.firstsolar.com, the domain corresponding to which was registered in 1999 (FIRST SOLAR Domain).

Based on the above, the Complainant states that it has acquired extensive rights, name-recognition, and goodwill in the FIRST SOLAR Marks and the FIRST SOLAR Domain.

It is the Complainant's case that the Respondent has sought to take advantage of Complainant's goodwill in the FIRST SOLAR Marks by registering the disputed domain name on November 17, 2021 - over 20 years after the Complainant began acquiring rights in the FIRST SOLAR Marks and using the FIRST SOLAR Domain. The Respondent has been fraudulently impersonating the Complainant using the disputed domain name in an attempt to steal funds from innocent third-parties. More specifically, the Respondent is using the disputed domain name, which purposefully imitates the FIRST SOLAR Domain and the FIRST SOLAR Marks, to pose as the Complainant and attract innocent third parties to invest in Respondent's fraudulent scheme. The Respondent is using one of the FIRST SOLAR Marks as a favicon on its Internet browser tabs to further impersonate the Complainant. Further, the Respondent has been communicating to unsuspecting consumers via social media attempting to trick them into surrendering their funds to Respondent as purported investment opportunities. This fraudulent scheme by Respondent is demonstrated in the correspondence on social media - on November 28, 2021 and December 2, 2021 (just days after registration of the disputed domain name) - two separate profiles on Twitter made posts attempting to lure consumers to the disputed domain name to surrender their funds to the Respondent by offering this fraudulent scheme as a business opportunity. On November 30, 2021, a Twitter account for @SirMariri SA used some of the Complainant's actual company details to attract consumers to invest in the Respondent's fraudulent scheme, instructing them to register at the website corresponding to the disputed domain name. The Respondent is also communicating on WhatsApp application with unsuspecting consumers who registered with his fraudulent scheme, again using actual details of Complainant's business to deceive consumers into surrendering their funds to Respondent.

The Complainant states that it is not affiliated with the disputed domain name or the social media profiles used by the Respondent.

The Complainant attempted to contact the Respondent to resolve this dispute amicably and sent a cease-and-desist letter to the Respondent on December 21, 2021 advising the Respondent of its rights in the FIRST SOLAR Marks, and the infringement of its rights by Respondent's use of the disputed domain name. No response was received by the Complainant to this cease-and-desist letter.

On December 22, 2021, the Complainant also wrote to NIXI requesting that the disputed domain name be disabled and transferred to Complainant.

The Complainant submits that the Respondent has imitated the Complainant's FIRST SOLAR Domain by registering the disputed domain name in order to impersonate the Complainant. The disputed domain name includes the Complainant's FIRST SOLAR Marks in their entirety. Therefore, the Respondent is blatantly attempting to capitalize on the goodwill and name recognition that the Complainant has established in the FIRST SOLAR Marks.

Accordingly, the Complainant submits that the disputed domain name is confusingly similar to Complainant's FIRST SOLAR Marks and that Respondent is actively misleading third parties regarding the source and/or ownership of the disputed domain name.

- (ii) Respondent has no rights or legitimate interests in the disputed domain name
The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has registrations and common law rights in the FIRST SOLAR Marks which gives it the exclusive right to use the FIRST SOLAR trademarks at least in the applicable geographic area. The Respondent is not sponsored by or affiliated with Complainant in any way, and the Complainant has never authorized or licensed to Respondent any rights regarding Complainant's FIRST SOLAR Marks.

The Respondent does not and has not conducted any legitimate business under the FIRST SOLAR Marks or any similar marks. The Respondent's provision of a false address is evidence that it has no rights or legitimate interests in the disputed domain name (relying on Lennar Pacific Properties Management, Inc. and Lennar Corporation Maria Montoya, WIPO Case No. D2020 1418 (The Complainants also note that the Respondent has provided a false address and has not replied to the cease and desist letter of the Complainants. Thus, the Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name."))).

The only "business" that the Respondent has conducted involving use of the disputed domain name is the fraudulent scheme to impersonate the Complainant to get unsuspecting third parties to give them funds, offering Respondent's scheme as a business or investment opportunity. This use of the disputed domain name clearly does not give rise to any rights or legitimate interests therein (relying on Drexel Univ. v. David Brouda, WIPO Case No. D2001-0067 ('[R]ights or legitimate interests cannot be created where the [Respondent]...

would not choose such a name unless he was seeking to create an impression of association with the Complainant.")).

For these reasons, the Complainant submits that Respondent has no rights or legitimate interests in the disputed domain name.

- (iii) The disputed domain name was registered, and is being used, in bad faith
The Respondent registered the disputed domain name in bad faith in an attempt to execute a fraudulent scheme by posing as the Complainant. Registering a domain name in order to impersonate another party clearly constitutes bad faith (relying on Golden Goose S.P.A. v. WhoisGuard Protected/Wei Zhang, WIPO Case No. D2018-2442 ("The evidence contained in this docket also proves that the Respondent has impersonated the Complainant. Impersonation constitutes bad faith use under the Policy").

The Respondent is posing as the Complainant on website corresponding to the disputed domain name and on social media, using social media to tout the fraudulent scheme as a business opportunity in order to convince unsuspecting persons to give Respondent money. Accordingly, just based on Respondent's fraudulent actions, alone, bad faith is established (relying on Synesort Incorporated v. Bruce Petersen, Syesort, WIPO Case No. D2020-3100 (it is clear that the Domain Name has been registered in bad faith and for the purpose of intentionally attempting to mislead in order to commit fraud"))

The Respondent's provision of a false address, is further evidence that the disputed domain name was registered and is being used in bad faith (relying on Natixis v. Poisson Marc, WIPO Case No. D2019-0138 (citing LYMI, Inc. d.b.a. Reformation v. hast Metro Host metro, WIPO Case No. D2016-2549, Realm Entertainment Limited v. Ahmet Turk, WIPO Case No. D2015-0965 (use of a false address was evidence of bad faith registration and use)).

The Complainant states that it is not possible to conceive of a plausible reason, other than bad faith, for the Respondent's actions or intentions in registering and using the disputed domain name, especially in light of its impersonation of the Complainant and continuing fraud. A registrant intentionally attempting to cause confusion or impersonates complainant is evidence of bad faith. Accordingly, the Complainant submits that Respondent registered, and is using, the disputed domain name in bad faith.

5. Respondent's default

Despite notice of the present proceeding in terms of the Rules and an opportunity to respond, no response has been received from the Respondent in this matter by the Arbitrator.

6. Discussion and Findings

The Arbitrator has reviewed the Complaint and the Annexures filed by the Complainant as well as the decisions cited by the Complainant.

The Policy requires that the Complainant must establish three elements viz. (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 has no rights or legitimate interests in respect of the domain name; and (iii) the Registrant's domain name has been registered or is being used in bad faith. These are discussed hereunder:

(i) Identical or Confusingly Similar

As regards this first element, the Complainant has established that it has rights in FIRST SOLAR name and mark. The Complainant has been using the FIRST SOLAR name and mark since inception 1999 for photovoltaic solar panels and power plants, providing reliable, dependable, and cost-effective solar energy solutions of which it is the leading developer, designer and operator. The FIRST SOLAR & Design mark is registered in India No. 1970277 in classes 9, 37 and 42 and this registration dates back to May 24, 2010. In USA, the Complainant has registrations for FIRST SOLAR under Nos. 2457938 and 4130636 and for FIRST SOLAR and Design under nos. 2486049 and 4136637. The Complainant also operates the website www.firstsolar.com; it registered the corresponding domain name in 1999.

The Arbitrator has reviewed Annexures 1-6 filed with the Complaint as also the website www.firstsolar.com.

There is no dispute as to the Complainant's ownership of its registered name and mark FIRST SOLAR.

The Arbitrator notes that the dominant part of the disputed domain name is FIRST SOLAR i.e., the disputed domain name wholly incorporates the Complainant's FIRST SOLAR name and mark and this is also the distinctive part of the same. The Respondent has simply taken the Complainant's FIRST SOLAR name and mark and has combined it with GENERZA, and this is not sufficient to escape a finding of confusing similarity under the first element. The addition of a word does not serve to distinguish the disputed domain name from the Complainant's FIRST SOLAR name and mark in any way. It is settled law that when a domain name wholly incorporates a complainant's registered mark, this is sufficient to establish identity or confusing similarity. See *Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304*.

It is also well-settled that for the purpose of comparing a trademark with a disputed domain name, the country code top-level domain (ccTLD) can be excluded.

The Arbitrator accordingly finds that the first element is satisfied and that the disputed domain name is confusingly similar to the Complainant's registered trademark.

(ii) Rights or Legitimate Interests

As regards the second element, the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. With respect to this requirement, a complainant is generally required to make a prima facie case that a respondent lacks rights or legitimate interests and once such prima facie case is made, the burden of proof shifts to the respondent to come forward with evidence demonstrating rights or legitimate interests in the disputed domain name. Paragraph 6 of the Policy contains a non-exhaustive list of the circumstances which, if found by the Panel to be proved, shall demonstrate the respondent's rights or legitimate interests to the disputed domain name.

The Respondent is not commonly known by the disputed domain name, nor authorized by or connected with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Respondent has not been granted any license or authorization to apply for registration of and use the disputed domain name. The documents filed by the Complainant show that the disputed domain name resolves to a website that imitates the website of the Complainant. The Respondent has no due cause to register the disputed domain name and has only done so to impersonate the Complainant and lure customers to coerce money from them. He has also been communicating via social media to attract customers to invest in a scheme offered by him while using the actual details of the Complainant's business to deceive customers. These activities do not accrue any rights on the Respondent and do not confer any legitimacy on him.

The Respondent has also provided a false address and this is also evidence that it has no rights or legitimate interests in the disputed domain name. See Lennar Pacific Properties Management, Inc. and Lennar Corporation Maria Montoya, WIPO Case No. D2020 1418.

Based on the contentions made by the Complainant and a review of Annexures 7-11 filed by the Complainant, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(iii) Registered or Used in Bad Faith

As regards the third element of bad faith, based on the contentions of the Complainant describing its registrations for the FIRST SOLAR name and mark, long standing use thereof and associated business, the Arbitrator accepts that FIRST SOLAR is associated with the Complainant. It's rights significantly predate the registration of the disputed domain name by the Respondent.

It is also the view of the Arbitrator that the Respondent was clearly aware of the Complainant's FIRST SOLAR name and mark at the time of registration of the disputed domain name and has sought to create a misleading impression of association with the Complainant in his choice of the disputed domain

name. This supports a finding of bad faith. See *Starbucks Corporation v. Registration Private, Domains by Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-1991. Not only that, in the present case, the Complainant has also shown that the Respondent has used the disputed domain name and the Complainant's actual details on social media to impersonate the Complainant to mislead customers into believing that he is associated/affiliated with the Complainant and to gain commercially. See *Golden Goose S.P.A. v. WhoisGuard Protected/Wei Zhang*, WIPO Case No. D2018-2442 and *Synesort Incorporated v. Bruce Petersen, Syesort*, WIPO Case No. D2020-3100. Thus, disputed domain name was created and is being used in bad faith and not for any bona fide or legitimate offering of goods or services.

The Arbitrator accepts that the Respondent's provision of a false address is further evidence that the disputed domain name was registered and is being used in bad faith

The Arbitrator also accepts the Complainant's contention that it is not possible to conceive of a plausible reason, other than bad faith, for the Respondent's actions or intentions in registering and using the disputed domain name, especially in light of its impersonation of the Complainant and continuing fraud. A registrant intentionally attempting to cause confusion or impersonates a complainant, is evidence of bad faith.

Thus, the Arbitrator concludes that the Respondent's conduct constitutes bad faith registration and use of the disputed domain name within the meaning of the Policy.

Accordingly, the Arbitrator finds that the Complainant has established all three elements as required by the Policy.

7. Decision

For all the foregoing reasons, the Complaint is allowed and, in accordance with paragraph 10 of the Policy, it is hereby ordered that the disputed domain name be transferred to the Complainant. There is no order as to costs.

This award has been passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Punita Bhargava
Sole Arbitrator

Date: March 15, 2022