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Sheetal vohra

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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY**

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

INDRP CASE NO: 1766

**ARBITRAL TRIBUNAL CONSISTING OF SOLE ARBITRATOR
DR. SHEETAL VOHRA, LLB, LLM, PHD (LAW) ADVOCATE,
COMPLAINT UNDER .IN DOMAIN NAME DISPUTE RESOLUTION
POLICY (INDRP)**

IN THE MATTER OF:

Wartsila Technology Oy Ab
Hiililaiturinkuja 2
Helsinki
00180
Finland

...Complainant

Versus

guy manson
1087 networking road
Chandigarh
Delhi 600000
India

...Respondent

ARBITRATION AWARD

I. THE PARTIES:

1. COMPLAINANT

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The Complainant in this administrative proceeding is **Wartsila Technology Oy Ab**, having its registered office of Hiililaiturinkuja 2 Helsinki 00180 Finland, which has filed the present complaint under rules framed under the INDRP.

The Complainant's contact details are as below:

Name: Wartsila Technology Oy Ab

Address: Hiililaiturinkuja 2 Helsinki 00180 Finland

Telephone: +44 (0) 1908 200022

Email: legal@safenames.net

The Complainant's authorized representative in this administrative proceeding are:

Name: Safenames Ltd

Address: Safenames House, Sunrise Parkway, Linford Wood, Milton Keynes, MK14 6LS, United Kingdom

Telephone: +44 (0) 1908 200022

Fax: +44 (0) 1908 325192

Email: emily-jane.james@safenames.net; legal@safenames.net

A Power of Attorney has been submitted along with Complaint, allowing Safenames Ltd as representatives to file this Complaint.

The Complainant's preferred method to receive communications directed to the Complainant in the administrative proceeding is as follows:

Electronic-Only Material

Method: Email

Contact: Miss Emily-Jane James

Email: emily-jane.james@safenames.net; legal@safenames.net

Phone: +44 (0) 1908 200022 Ext: 267

Material Including Hard Copy

Method: Courier

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Address: Miss Emily-Jane James, c/o Safenames Ltd, Safenames House, Sunrise Parkway, Linford Wood, Milton Keynes, MK14 6LS, United Kingdom

Telephone: +44 (0) 1908 200022

Fax: +44 (0) 1908 325192

Email: emily-jane.james@safenames.net; legal@safenames.net

2. RESPONDENT

Name: guy manson

Address: 1087 networking road Chandigarh Delhi 60000 India

Telephone: +91 741740066

Email: guymanson1337@gmail.com

The Respondent did not engage any counsel / advocate in the present administrative proceeding and neither did the Respondent file any reply to the instant domain complaint. Hence, this Complaint has been proceeded *ex-parte*.

II. DISPUTED DOMAIN NAME & REGISTRAR:

The following domain name is the subject of this Complaint:

[Rule 4(b) (iv)]

wartsilaindia.in;

The Disputed Domain Name is: **wartsilaindia.in;**

The Disputed Domain Name is registered with National Internet Exchange of India (NIXI).

The accredited Registrar of the Disputed Domain Name is GoDaddy, LLC.

Address: 2155 E GoDaddy Way Tempe AZ 85284 United States

Telephone: +1 4805058800

Email: legal@godaddy.com

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III. PROCEDURAL HISTORY:

20.09.2023	Date of Complaint
04.10.2023	Sole Arbitrator appointed to adjudicate the dispute
04.10.2023	Arbitral proceedings were commenced by sending notice to Respondent through email as per Paragraph 4(c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN Registry to file response to the Complaint within 15 days of receipt of the same.
17.10.2023	Proof of dispatch of Amended Complaint to Respondent and Sole Arbitrator sent by Complainant
19.10.2023	Pleadings completed as Respondent failed and neglected to file its response to the domain complaint within 15 days' time period which commenced on October 04 th , 2023.

IV. FACTUAL AND LEGAL GROUNDS

The Complainant submitted the following Factual Grounds:

1. It was submitted that the Complainant is a Finnish corporation which operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. It was submitted that with in this sector, it places a strong emphasis on sustainable innovation, efficiency and data analytics to maximize the environmental and economic performance of its customers' vessels and power plants. As of 2021, the Complainant had net sales of €4.8 billion with over 17,000 employees. It was submitted that the Complainant has a strong international presence with operations in over 200 locations across 68 countries (**Annex 3**). It was submitted that the Complainant's main website can be located from www.wartsila.com.

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2. It was submitted that the Complainant's activities are centered around two businesses: 'Wärtsilä Marine' and 'Wärtsilä Energy'. It was submitted that the Complainant's Marine Business is concerned with enhancing the business of its marine and oil & gas industry customers by providing innovative products and integrated solutions that eliminate process inefficiencies. It was submitted that the Complainant strives for decarbonization and ecosystem thinking through the implementation of environmentally (and economically) sustainable solutions. It was submitted that the Complainant's Energy Business is engaged in providing services and solutions to enhance the business performance of power generation companies. It was submitted that the achieves this by offering, among other solutions, energy management and storage systems, as well as lifecycle services to improve the efficiency and performance of power plants.

3. It was submitted that the Complainant operates its services internationally, with power plants in locations including but not limited to, India, Hungary, Texas, Indonesia, Kenya, the United Kingdom, and the Caribbean (**Annex 4**). It was submitted that the Complainant supplied a 70MW Power Generation plant in north-eastern India, including seven 34SG engines running on natural gas.

4. It was submitted that the Complainant was established and has been operating continually since 1834. It was submitted that the in its early years, the Complainant operated as a sawmill and iron works company. It was submitted that it gradually moved into other fields and began producing its first commercial engines in 1959. It was submitted that the in 2001 the Complainant expanded into biopower and was later deemed among the 100 most sustainable corporations in the world. It was submitted that the Complainant has made a number of acquisitions over the course of its history. The Complainant's journey, as well as a comprehensive list of its acquisitions and management changes, has been reproduced in **Annex 5**.

5. It was submitted that the Complainant has various affiliates, subsidiaries, and

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associated companies, listed in **Annex 6**. It was submitted that the Complainant's subsidiary Wärtsilä India Ltd has overlooked the Complainant's operations in India since the early 1980s. It was submitted that the complainant with 550 employees, 250 power plants, and 6 offices throughout India, the Complainant's operations in India are significant.

6. It was submitted that the Complainant's presence in India is substantial (**Annex 7**). It was submitted that the Complainant was listed in the Top 20 Machinery Companies in India this year by Inventiva). It was submitted that Hon'ble Prime Minister Shri Modi commissioned India's first indigenous aircraft carrier that saw widespread media coverage, referencing equipment and machinery by Wärtsilä. It was submitted that the Complainant's shift to a more economical and environmentally friendly neighbourhood in Chennai, India in 2010 saw the Complainant described by Construction Week India as a "*thought leader in the power sector and has been instrumental in changing the dynamics of the industry in India...*"

7. It was submitted that in accordance with the Policy, the Complainant has brought this Complaint on the basis of its substantive rights and interests in the WÄRTSILÄ/WARTSILA mark. The Complainant submitted and contended that it has established such rights and interests through exclusive, extensive, and consistent use of the term within the global marketplace. It was submitted that the Complainant, its affiliates, subsidiaries, and associated companies own trademarks for the WÄRTSILÄ/WARTSILA mark across a number of jurisdictions. It was submitted that these are exhibited and publicly available at <http://www.wipo.int/branddb/en/>. It was submitted that the Several of the Complainant's trademark registrations are listed below:

Trademark	Country	Registration Number	Registration Date	Classes Covered
WARTSILA	India	649320	20-12-1994	7
WARTSILA	India	1241984	08-10-2003	37

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WARTSILA	United States	2078313	15-07-1997	7
WARTSILA	European Union	000838466	21-02-2000	7, 12, 37
WARTSILA	International	1005789	22-05-2009	7, 9, 11, 12, 35, 37, 41, 42

8. It was submitted that the Complainant has spent a considerable amount of time, money and effort promoting, marketing and using the WÄRTSILÄ/WARTSILA mark to identify and distinguish its services domestically and internationally. It was submitted that as a result of this, the WÄRTSILÄ/WARTSILA mark has acquired distinctiveness in the market worldwide with customers that rely on the brand's name and quality. It was submitted that the Complainant submits several copies of its registered trademarks for the Panel's reference (**Annex 8**).

9. It was submitted that the Complainant further utilises the WARTSILA term as part of its brand logo:



10. It was submitted that the Complainant operates from its main domain, <wartsila.com>, which it uses to advertise its products and services, in addition to promoting its WÄRTSILÄ/WARTSILA mark globally. It was submitted that the Complainant holds a portfolio of over 400 active domain name registrations. It was submitted that this includes a number of domain names

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incorporating the Complainant's mark with ccTLD extensions (e.g. <wartsila.cm>) as well as registrations with gTLD extensions (e.g. <wartsila.careers>) (**Annex 9**).

11. It was submitted that the Complainant has also established a social media presence and uses the WÄRTSILÄ/WARTSILA mark to promote its services under this name (**Annex 10**), in particular on:

- Facebook: <https://www.facebook.com/wartsila/>
- Twitter: <https://twitter.com/wartsilacorp>
- Instagram: <https://www.instagram.com/wartsilacorp/>
- LinkedIn: <https://www.linkedin.com/company/wartsila>
- YouTube: <https://www.youtube.com/user/wartsilacorp>

12. The Complainant submitted the following Legal Grounds:

A. Respondent's domain name is identical or confusingly similar to Complainant's trademark

13. It was submitted that the Complainant holds many trademarks for the distinctive WARTSILA mark. It was submitted that these cover numerous jurisdictions, including India. It was submitted that the Complainant also relies on the goodwill and recognition that has been attained under the WARTSILA name, which, through years of use, has become a distinctive identifier of its offerings. The Complainant relied on the case of Wartsila Technology Oy Ab v. Doublefist Limited, Case No. INDRP/1453: “[...the Complainant] has extensively used the [WARTSILA] trademark in commerce for a number of years continuously and the mark is recognized internationally and is well-known, which has substantive value”.

14. It was submitted that it satisfies the identity/confusing similarity requirement of the first INDRP element. It was submitted that the Disputed Domain Name

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incorporates the Complainant's WARTSILA mark in its entirety, with the addition of the geographical identifier 'India'. It was submitted that as established in other '.in' arbitrator decisions, the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identity/confusing similarity. The Complainant relied on the case of Zippo Manufacturing Company Inc. v. Zhaxia, Case No. INDRP/840, the arbitrator noted that: "... *the Respondent has picked up the mark ... without changing even a single letter ... when a domain name wholly incorporates a complainant's registered mark, that is sufficient to establish identity or confusing similarity for purposes of the Policy*". It was submitted that the addition of the geographical identifier 'India' does not negate a finding of confusing similarity. It was submitted that the contrary, it only reinforces the connection with the Complainant, given its operations in India. It was submitted that the addition of the geographical identifier 'India' does not negate a finding of confusing similarity. On the contrary, it only reinforces the connection with the Complainant, given its operations in India. It was submitted that the Complainant notes that the DNS does not allow for the existence of spaces between terms in a domain name: the characters must form one continuous string.

15. It was submitted that the '.in' ccTLD extension should be disregarded under this first element test, as it is merely a technical requirement. It was submitted that this principle has been continually applied in prior INDRP decisions and the Complainant relied on the case of Novartis AG v. Hemaswaroop Dindukurthi Limited, Case No. INDRP/1699: "*it is permissible for the Panel to ignore the country code Top-Level Domain ("ccTLD") ".in"*".

B. Respondent has no rights or legitimate interests in respect of the domain name

16. It was submitted that the Respondent lacks a right or legitimate interest in respect of the Disputed Domain Name. The Complainant submitted that the following submissions made in this section of the Complaint, the burden will

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shift to the Respondent to put forward evidence to show that it has a right or legitimate interest in respect of the Disputed Domain Name.

17. It was submitted that the Paragraph 6 of the INDRP Policy sets out a list of circumstances in which a respondent may demonstrate that it has a right or legitimate interest in a domain name. It was submitted that any of the following circumstances, in particular, but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights to 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 bona fide offering of goods or services;*
- b) *the Registrant (as an individual, business, or other organisation) 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 the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.*

18. It was submitted that the Complainant firstly maintains its legal right to the Disputed Domain Name based on its statutory protection of the WARTSILA mark by way of trademark registrations in multiple jurisdictions, including India. The Complainant also relied on the recognition it has acquired through its use of the WARTSILA mark prior to the Disputed Domain Name's registration in April of this year. It was submitted that to the best of the Complainant's knowledge, the Respondent does not own any recognised rights in WARTSILA, neither by way of trademark registration nor any other protected right.

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19. To rebut any possible legitimate interest held by the Respondent in this matter, the Complainant outlined objections to each of the provisions laid out under Paragraph 6 of the INDRP:

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 bona fide offering of goods or services;

20. It was submitted that the Respondent has not used, nor prepared to use, the Disputed Domain Name in connection with a bona fide offering of goods or services. It was submitted that to the best of the Complainant's knowledge, the Disputed Domain Name has been used to resolve to a blank webpage since its registration in April 2023 (**Annex 11**). It was submitted that it is passively held. It was submitted that the previous cases have found there to be no evidence of a bona fide offering of goods or services where the domain name is passively held in both the INDRP and other domain name dispute resolution policies such as the widely-adopted UDRP. The Complainant relied on the case of *Novartis AG v. Aravind R*, Case No. INDRP/941 and *Infineon Technologies AG v. ANDRE TOULEMONDE*, NAF Claim No. FA 1819671, (2019).

21. It was submitted that the Respondent cannot come within this defence under the INDRP.

b) the Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no Trademark or Service Mark rights;

22. It was submitted that it is a commonly held principle in domain disputes that a respondent's mere registration of a domain name is insufficient to establish rights or legitimate interests. The Complainant relied on the case of *Vestel*

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Elektronik Sanayi vs Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244). It was submitted that to the best of the Complainant's knowledge, the Respondent does not have any protected rights in the WARTSILA term, nor any similar term within the Disputed Domain Name. It was submitted that the Respondent cannot claim to be commonly known by it. It was submitted that this principle has been affirmed in previous INDRP decisions. The Complainant relied on the case of, Mozilla Foundation v. Lina/Doublefist Limited, Case No. INDRP/934: '*... it is a settled position that if the Respondent does not have trade mark right in the word corresponding to the disputed domain name and in the absence of evidence that the respondent was commonly known by the disputed domain name, the Respondent can have no right or legitimate interest.*'.

c) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.*

23. It was submitted that the Respondent has used the reputable WARTSILA brand with the geographical indicator 'India' in order to confuse online users of the source, affiliation or sponsorship of the Disputed Domain Name to the Complainant, given its operations in India. It was submitted that the Disputed Domain Name would be perceived by online users as a website where they could find information about the Complainant's services in India, and may cause frustration among users when they reach a blank webpage, damaging consumer trust.

24. It was submitted that all in all, non-use of a domain name is not indicative of rights or legitimate interests in the domain name. The Complainant relied on the case of Williams-Sonoma, Inc v. GaoGou, Yert International Ltd, Case No. INDRP/912, in which the disputed domain name did not resolve to a webpage, the Panel stated: "*In line with the previous UDRP and INDRP decisions, the*

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Arbitrator concludes that the Complainant has made out a prima facie case that of the Respondent has no right or legitimate interest in the Disputed Domain Name and as such the burden of proof shifts to the Respondent". In light of the comments submitted by the Complainant, the Respondent does not satisfy any of the grounds mentioned above under Paragraph 7.

25. It was submitted that the Respondent will not be able to invoke a right or legitimate interest in the Disputed Domain Name.

C. Respondent's domain name has been registered or used in bad faith

26. It was submitted that the INDRP Policy, under Paragraph 7, sets out a list of circumstances that can be used to demonstrate that a domain name was registered or used in bad faith. It was submitted that the following circumstances, in particular, but without limitation, if found by an INDRP arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- a) 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*
- b) 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*
- c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or*

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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.

d) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor.

27. The Complainant reiterated that it holds prior rights which protect the WARTSILA trademark. It was submitted that the Complainant's earliest WARTSILA, registered in India, precede the registration of the Disputed Domain Name by 29 years. It was submitted that that anyone who has access to the Internet can clearly find the Complainant's protected WARTSILA trademark registrations on publicly accessible trademark databases (WIPO's Global Brand Database were filed as an **Annex 12**), and would have been able to find the above-referenced IN registrations through a search conducted prior to 4th April 2023, when the Disputed Domain Name was registered. It was submitted that the top Google search results for WARTSILA, clearly pertain to the Complainant's offerings (were filed as an **Annex 13**). It was submitted that in view of the above, it is clear that the simplest degree of due diligence would have otherwise made the Respondent aware of the Complainant's established rights in the WARTSILA term.

28. It was submitted that the Respondent has also chosen to ignore a Cease-and-Desist letter sent by the Complainant's representatives on the 25th April 2023 (were filed as an **Annex 14**). It was submitted that this letter put the Respondent on notice of the Complainant's trademark and rights to the Disputed Domain Name. It was submitted that the Complainant submits that the Respondent's disregard of the Complainant's trademark rights is further evidence of bad faith. It was submitted that the Panelists in various domain name disputes have stated that such behavior infers bad faith intentions by the Respondent, such as under the UDRP in the case of Facebook, Inc. and

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Instagram, LLC v. C W / c w, c w, WIPO Case No. D2018-1159. It was submitted that in addition, under the INDRP, not responding to a cease-and-desist letter is a factor indicative of bad faith (see Novartis AG v. Aravind R, Case No. INDRP/941: “*examples of what may be cumulative circumstance found to be indicative of bad faith include [...] no response to the cease-and-desist letter*”).

29. It was submitted that the Respondent has chosen to register the Disputed Domain Name which encompasses the Complainant’s WARTSILA mark in full, with the only addition being the geographical indicator ‘India’, where the Complainant operates. It was submitted that Previous INDRP decisions have recognised the Complainant’s renown such as in, for example, Wartsila Technology Oy Ab v. Doublefirst Limited, Case No. INDRP/1453 “*...it has exclusively used the [WARTSILA] trademark in commerce for a number of years continuously and the mark is recognised internationally and is well-known, which has substantial value*”. It was submitted that the Respondent’s mere registration of the Complainant’s well-known mark in combination with the location of its operations in intrinsically bad faith as it will create confusion among Internet users seeking the Complainant’s online offerings in India.

30. It was submitted that the above evidence is a clear indication of bad faith registration pursuant to the Policy.

31. It was submitted that currently the Disputed Domain Name is passively held. It was submitted that under the INDRP that passive holding does not preclude a finding of bad faith. The Complainant relied on the case of Tata Motors Limited v. Mr. Shay Rahman, Case No. INDRP/929 and Novartis AG v. Aravind R, Case No. INDRP/941, where in the latter, it was stated, “*Panels have found that the apparent lack of so-called active use [...] of the domain name without any active attempt to sell or to contact the trademark holder [...] does not as such prevent a finding of bad faith, but all circumstances of the case must be examined to determine whether the Respondent is acting in bad*

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faith.”

32. It was submitted that the Respondent has clearly registered and used the Disputed Domain Name in order to target and commercially capitalise on the renown attached to the Complainant’s distinctive and protected WARTSILA mark. It was submitted that this amounts to evidence of the Respondent’s bad faith registration and use for INDRP Policy purposes.

V. PARTIES CONTENTIONS:

A. COMPLAINANT

- i. The Disputed Domain Name “**wartsilaindia.in**” is identical and/or confusingly similar to the well-known trademarks ‘**WARTSILA**’ trademarks of the Complainant.
- ii. The Complainant is a Finnish corporation which operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. Within this sector, it places a strong emphasis on sustainable innovation, efficiency and data analytics to maximize the environmental and economic performance of its customers’ vessels and power plants. As of 2021, the Complainant had net sales of €4.8 billion with over 17,000 employees. The Complainant has a strong international presence with operations in over 200 locations across 68 countries
- iii. The Complainant’s subsidiary Wärtsilä India Ltd has overlooked the Complainant’s operations in India since the early 1980s. With 550 employees, 250 power plants, and 6 offices throughout India, the Complainant’s operations in India are significant.

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- iv. The Complainant has brought this Complaint on the basis of its substantive rights and interests in the WÄRTSILÄ/WARTSILA mark. The Complainant has established such rights and interests through exclusive, extensive, and consistent use of the term within the global marketplace. The Complainant, its affiliates, subsidiaries, and associated companies own trademarks for the WÄRTSILÄ/WARTSILA mark across a number of jurisdictions.
- v. The Complainant satisfies the identity/confusing similarity requirement of the first INDRP element. The Disputed Domain Name incorporates the Complainant's WARTSILA mark in its entirety, with the addition of the geographical identifier 'India'. As established in other '.in' arbitrator decisions, the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identity/confusing similarity.
- vi. The Complainant maintains its legal right to the Disputed Domain Name based on its statutory protection of the WARTSILA mark by way of trademark registrations in multiple jurisdictions, including India. The Complainant has acquired through its use of the WARTSILA mark prior to the Disputed Domain Name's registration in April of this year. To the best of the Complainant's knowledge, the Respondent does not own any recognised rights in WARTSILA, neither by way of trademark registration nor any other protected right.
- vii. The Complainant holds prior rights which protect the WARTSILA trademark. The Complainant's earliest WARTSILA, registered in India, precede the registration of the Disputed Domain Name by 29 years. That anyone who has access to the Internet can clearly find the Complainant's protected WARTSILA trademark registrations on publicly accessible trademark databases, and would have been able to find the above-referenced IN registrations through a search conducted prior to 4th April 2023, when the Disputed Domain Name was registered. That top Google search results for WARTSILA, clearly pertain to the Complainant's offerings. That the simplest degree of due diligence would have otherwise made the Respondent aware of the Complainant's established rights in the WARTSILA term.

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- viii. The Respondent has used the reputable WARTSILA brand with the geographical indicator 'India' in order to confuse online users of the source, affiliation or sponsorship of the Disputed Domain Name to the Complainant, given its operations in India. The Disputed Domain Name would be perceived by online users as a website where they could find information about the Complainant's services in India, and may cause frustration among users when they reach a blank webpage, damaging consumer trust.
- ix. The Respondent has chosen to register the Disputed Domain Name which encompasses the Complainant's WARTSILA mark in full, with the only addition being the geographical indicator 'India', where the Complainant operates.
- x. The Respondent's mere registration of the Complainant's well-known mark in combination with the location of its operations in intrinsically bad faith as it will create confusion among Internet users seeking the Complainant's online offerings in India.

B. RESPONDENT

The Respondent did not file his reply to contest the claims of the Complainant and thus this award is based on pleadings and documents filed by the Complainant only.

VI. DISCUSSION AND FINDINGS:

The INDRP (.IN Domain Name Dispute Resolution Policy), adopted by NIXI, provides that a domain name owner must transfer its domain name registration to a complainant/trademark owner if:

- i. The Registrant's domain name is identical or confusingly similar to a name, trademark

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- 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.

I have gone through the pleadings i.e., the Complaint filed by Complainant. I have also gone through documents filed by the Complainant with the Complaint. After giving due consideration to pleadings, documents, facts and legally settled principles, I hold that in the present case all three requirements for transfer of the disputed domain name have been met. I further hold that the disputed domain name of the Respondent is visually, phonetically, structurally and conceptually deceptively similar to the trademark and domain name of the Complainant over which the Complainant, who is prior adopter, prior user and registered proprietor of the well-known 'WARTSILA' trademarks. I hold that the Complainant has absolute and sole rights in trademarks 'WARTSILA'. Consequently, I hold that the Respondent does not have any rights or legitimate interest over the Disputed Domain Name and hence the same needs to be transferred to the Complainant. I hold that the Complainant is prior adopter, prior registered proprietor and prior user of the trade mark 'WARTSILA' and has exclusively and solely become associated and recognized with the Complainant. I hold that due to such exclusive association of the 'WARTSILA' trademarks with the Complainant, and also considering the numerous prior registered domain names of the Complainant containing the 'WARTSILA' marks, the Complainant alone has the right to utilize the 'WARTSILA' trademark as a domain name registered with the .IN Registry. I hold that the Respondent is not entitled to register the disputed domain name as the Respondent has failed to establish any right over the 'WARTSILA' trademark and the same is associated only with the Complainant.

A. Respondent's domain name is identical or confusingly similar to Complainant's trademark

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Disputed Domain Name "warsilaindia.in" is identical and / or confusingly similar to the 'WARTSILA' trademarks in which the Complainant has unquestionable rights for the following reasons:

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33. I find that the Complainant holds many trademarks for the distinctive WARTSILA mark. I submitted that these cover numerous jurisdictions, including India. I find that the Complainant has acquired goodwill and recognition that has been attained under the WARTSILA name, which, through years of use, has become a distinctive identifier of Complainant's offerings.

34. I find that the Complainant has satisfied the identity/confusing similarity requirement of the first INDRP element. I find that the Disputed Domain Name incorporates the Complainant's WARTSILA mark in its entirety, with the addition of the geographical identifier 'India'. I find that as established in other '.in' arbitrator decisions, the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identity/confusing similarity. I find that the addition of the geographical identifier 'India' does not negate a finding of confusing similarity. I find that the contrary, it only reinforces the connection with the Complainant, given its operations in India. I find that the addition of the geographical identifier 'India' does not negate a finding of confusing similarity. On the contrary, it only reinforces the connection with the Complainant, given its operations in India. I find that the Complainant notes that the DNS does not allow for the existence of spaces between terms in a domain name: the characters must form one continuous string.

35. I hold that the '.in' ccTLD extension should be disregarded under this first element test, as it is merely a technical requirement.

D. Respondent has no rights or legitimate interests in respect of the domain name

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Respondent has no right or legitimate interest in the disputed domain name "**wartsilaindia.in**" for the following reasons:

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36. I find that the Respondent lacks a right or legitimate interest in respect of the Disputed Domain Name (the burden of which shifted to the Respondent to put forward evidence to show that it has a right or legitimate interest in respect of the Disputed Domain Name, which it has miserably failed to do. the Respondent lacks a right or legitimate interest in respect of the Disputed Domain Name can be seen from the following:-

37. I find that the Paragraph 6 of the INDRP Policy sets out a list of circumstances in which a respondent may demonstrate that it has a right or legitimate interest in a domain name. I find that any of the following circumstances, in particular, but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights to or legitimate interests in the Disputed Domain Name:

- d) 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;*
- e) the Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no Trademark or Service Mark rights; or*
- f) the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.*

38. I hold that the Complainant has legal right to the Disputed Domain Name based on its statutory protection of the WARTSILA mark by way of trademark registrations in multiple jurisdictions, including India. I find that the Complainant has acquired through its use of the WARTSILA mark prior to the Disputed Domain Name's registration in April of this year. I find that to the Respondent has not shown that it owns any recognised rights in WARTSILA,

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neither by way of trademark registration nor any other protected right.

39. I find that to rebut any possible legitimate interest held by the Respondent in this matter, the Respondent has to demonstrate that it has overcome objections to each of the provisions laid out under Paragraph 6 of the INDRP:

d) 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;

40. I find that the Respondent has not used, nor prepared to use, the Disputed Domain Name in connection with a bona fide offering of goods or services. I find the Disputed Domain Name has been used to resolve to a blank webpage since its registration in April 2023 (**Annex 11**). I find that it is passively held. I find that the previous cases have found there to be no evidence of a bona fide offering of goods or services where the domain name is passively held in both the INDRP and other domain name dispute resolution policies such as the widely-adopted UDRP.

41. I find that the Respondent has failed to overcome below defence under the INDRP.

e) the Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no Trademark or Service Mark rights;

42. I find that it is a commonly held principle in domain disputes that a respondent's mere registration of a domain name is insufficient to establish rights or legitimate interests. I find that the Respondent does not have any protected rights in the WARTSILA term, nor any similar term within the Disputed Domain Name. I find that the Respondent cannot claim to be

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commonly known by it. I find that this principle has been affirmed in previous INDRP decisions.

f) the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.

43. I find that the Respondent has used the reputable WARTSILA brand with the geographical indicator 'India' in order to confuse online users of the source, affiliation or sponsorship of the Disputed Domain Name to the Complainant, given its operations in India. I find that the Disputed Domain Name would be perceived by online users as a website where they could find information about the Complainant's services in India, and may cause frustration among users when they reach a blank webpage, damaging consumer trust.

44. I find that non-use of a domain name is not indicative of rights or legitimate interests in the domain name. I hold the Respondent does not satisfy any of the grounds mentioned above under Paragraph 7.

45. I find that the Respondent has failed to invoke a right or legitimate interest in the Disputed Domain Name.

E. Respondent's domain name has been registered or used in bad faith

I hold that the Respondent has registered the disputed domain name in bad faith as per Paragraph 7(c) of the INDRP for the following reasons:

I find that the Respondent's *malafide* is apparent on account of the following:

46. The INDRP Policy, under Paragraph 7, sets out a list of circumstances that can

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be used to demonstrate that a domain name was registered or used in bad faith. I find that the following circumstances, in particular, but without limitation, if found by an INDRP arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- e) 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*
- f) 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*
- g) 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.*
- h) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor.*

47. I find that the Complainant holds prior rights which protect the WARTSILA trademark. I find that the Complainant's earliest WARTSILA, registered in India, precede the registration of the Disputed Domain Name by 29 years. I find that the Complainant further submits that anyone who has access to the Internet can clearly find the Complainant's protected WARTSILA trademark registrations on publicly accessible trademark databases (WIPO's Global Brand Database and would have been able to find the above-referenced IN

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registrations through a search conducted prior to 4th April 2023, when the Disputed Domain Name was registered. I find that the top Google search results for WARTSILA, clearly pertain to the Complainant's offerings. I find that in view of the above, it is clear that the simplest degree of due diligence would have otherwise made the Respondent aware of the Complainant's established rights in the WARTSILA term.

48. I find that the Respondent has also chosen to ignore a Cease-and-Desist letter sent by the Complainant's representatives on the 25th April 2023. I find that this letter put the Respondent on notice of the Complainant's trademark and rights to the Disputed Domain Name. I find that the Respondent's disregard of the Complainant's trademark rights is further evidence of bad faith. I find that the Panelists in various domain name disputes have stated that such behavior infers bad faith intentions by the Respondent.

49. I find that the Respondent has chosen to register the Disputed Domain Name which encompasses the Complainant's WARTSILA mark in full, with the only addition being the geographical indicator 'India', where the Complainant operates. I note that Previous INDRP decisions have recognised the Complainant's renown such as in, for example, Wartsila Technology Oy Ab v. Doublefirst Limited, Case No. INDRP/1453 "*...it has exclusively used the [WARTSILA] trademark in commerce for a number of years continuously and the mark is recognised internationally and is well-known, which has substantial value*". I find that the Respondent's mere registration of the Complainant's well-known mark in combination with the location of its operations is intrinsically bad faith as it will create confusion among Internet users seeking the Complainant's online offerings in India.

50. I find that the above evidence is a clear indication of bad faith registration pursuant to the Policy.

51. I find that the Disputed Domain Name is passively held. I find that under the INDRP that passive holding does not preclude a finding of bad faith.

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52. I find that the Respondent has clearly registered and used the Disputed Domain Name in order to target and commercially capitalise on the renown attached to the Complainant's distinctive and protected WARTSILA mark. I find that this amounts to evidence of the Respondent's bad faith registration and use for INDRP Policy purposes.

In view of all the above facts and well-known legal precedents, I find and hold as under:

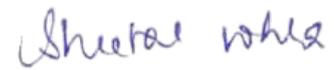
- That the disputed domain name of the Respondent is identical and confusingly similar to the Complainant's '**WARTSILA**' trademarks.
- That the use of the disputed domain name "**wartsilaindia.in**" is likely to lead to enormous confusion *qua* its origin due to the use of the Complainant's trade mark '**WARTSILA**' as a whole in the disputed domain name being phonetically, visually and structurally identical to the Complainant's trademark '**WARTSILA**'.
- That the disputed domain name was registered in bad faith by the Respondent.
- That the disputed domain name is strictly identical to the Complainant's distinctive mark, consumers would certainly mistakenly assume that a website / disputed domain name is operated or endorsed by the Complainant, when such would not be the case.
- That the Respondent has deliberately attempted to create a false impression in the minds of the consumers that the Respondent is somehow associated with or endorsed by the Complainant to ride on the goodwill and reputation associated with the Complainant and to unjustly enrich from the same.
- That the Respondent has no rights or legitimate interests in respect of the disputed domain name.
- That there is also an imminent likelihood of damage which may be caused to the public at large and also cause irreparable damage to the Complainant's reputation and goodwill through the disputed domain name.
- That the Respondent does not have any affiliation or connection with the Complainant and company name / trade name / trade mark / house mark / domain name "**wartsilaindia.in**" consequently it is inconceivable that the Respondent's adoption of the name "**wartsilaindia.in**" which is identical to the Complainant's '**WARTSILA**' amongst other trademarks and domain names with '**WARTSILA**' can be seen as merely

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coincidental.

VII. DECISION

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent “**wartsilaindia.in**” to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 17th day of November, 2023.



Dr. Sheetal Vohra
Sole Arbitrator

Date: 17/11/2023