



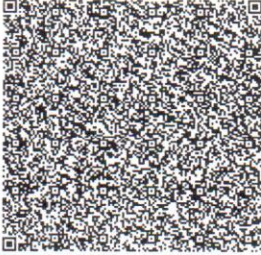
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL53200608124096N
Certificate Issued Date : 04-Jan-2015 06:42 PM
Account Reference : IMPACC (IV)/ dl835403/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL83540303298360446884N
Purchased by : ANKUR RAHEJA
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : ANKUR RAHEJA
Second Party : Not Applicable
Stamp Duty Paid By : ANKUR RAHEJA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

In the matter of:

JAGUAR LAND ROVER LIMITED

... Complainant

versus

YITAO

... Respondent

ARBITRATION AWARD

Dispute Domain Name: www.jaguarlandrover.co.in

1. The Parties:

a. **Complainant:** The Complainant in this arbitration proceedings is: Jaguar Land Rover Limited, Abbey Road, Whitley, Coventry CV3 4LF, England, United Kingdom, represented by Mr Revanta Mathur, Anand & Anand, Sec-16A, Film City, Noida (UP) India.

b. **Respondent:** The Respondent in this arbitration proceedings is Yitao Apex Laboratories Limited. 76, C.P. Rama Road, Hong Kong. Postal Code: 999077, HK (Email: sunong@live.com).

2. The Domain Name and the Registrar:

- a. The Disputed Domain Name is www.jaguarlandrover.co.in.
- b. Disputed Domain Name is registered with Webiq Domains Solutions Pvt. Ltd, Mumbai.

Further, details of the Disputed Domain Name are as follows, as per the publicly available WHOIS details.

Domain Name: JAGUARLANDROVER.CO.IN

Created On: 09-Mar-2011

Expiration Date: 09-Mar-2015

Sponsoring Registrar: Webiq Domains Solutions Pvt. Ltd.

Registrant Name: Yitao

Registrant Organization: Apex Laboratories Limited

Registrant Street: 76, C.P.Rama Road

Registrant City: Hong Kong

Registrant Postal Code: 999077

Registrant Country: HK

Registrant Phone: +852.23838380

Registrant Email:sunong@live.com

Name Server:NS1.BODIS.COM

Name Server:NS2.BODIS.COM

3. Procedural History [Arbitration Proceedings]

This is mandatory Arbitration proceedings in accordance with the .IN Domain Name Dispute Resolution Policy ("INDRP"), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of procedure ("the Rules") were approved by NIXI on 28th June 2005 in accordance with Arbitration and Conciliation Act, 1996. By Registering the Disputed Domain Name with the NIXI Accredited Registrar, the Respondent has agreed to the resolution of the domain disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Ankur Raheja as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and

Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

In this matter, the arbitration proceedings commenced on 29 November 2014 in terms of INDRP Rules. Relevant Dates are as follows:

Sr No	Particulars	Date
1	Arbitration Case referred to Arbitrator & Acceptance given	25 November 2014
2	Date of Handover of Complaint by NIXI	26 November 2014
3	Hard Copy of Complaint received by Arbitrator	27 November 2014
3	Notice of Arbitration issued to the parties, also referred as date of commencement of Proceedings	29 November 2014
4	Soft Copy of Complaint served upon Respondent, (as WHOIS address incomplete/incorrect) with 15 days timeline but no response received	1 December 2014
5	Second Notice to the Respondent, with another 5 days time	16 December 2014
6	Ex-parte Order	22 December 2014

7	Award Passed	05 January 2014
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- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 29th November 2014, with the instructions to file his reply / response within 15 days time.
- That the Hard Copy sent through courier could not be delivered upon the Complainant due to incomplete/incorrect address, therefore Complainant was requested to provide a soft copy of the Complainant along with Annexures to the Respondent, which was duly complied with on 1 December 2014, to expedite the proceedings. And new timeline set was 15 December 2014.
- That on failure of the Respondent to file any response to the complaint, another opportunity was provided to the Respondent but again the Respondent failed to file any response, therefore an order for exparte proceedings was issued on 22 December 2014.
- The communication at various stages of proceedings through emails was duly delivered upon the Respondent and none of the emails bounced back. Some of them were tracked through email delivery notification services and were notified as being duly delivered in the inbox of the Respondent. Therefore,

service of notice was deemed to have been complied with in accordance with Rule 2 of the INDRP rules of procedure.

- No personal hearing was requested / granted / held.

**PECULIAR ISSUES INVOLVED AS TO RESPONDENT'S COMMUNICATION
ADDRESS IN THE PRESENT ARBITRATION CASE:**

A. The WHOIS address Information seems to be incorrect / false There is no such address in Hong Kong as per the information available online and it seems due to the same reason the hard copy of notice dispatched expeditely by .IN Registry/NIXI on 26 November 2014 remained undelivered and was put on hold by courier company on 28 November 2014 for the recorded reasons "Address information needed; contact DHL".

B. Therefore, efforts were made to get the Soft Copy of the Complaint delivered to the Respondent, which was complied with by the Complainant's Representative on 01 December 2014. And we did not hear from the Respondent as to the alternative address, while the hard copy of the complaint was returned back to NIXI by DHL.

C. Therefore, the Complaint along with Annexures could not be served physically upon the Respondent though the soft copy of the same was delivered as herein above provided. And some of the emails were tracked by the Arbitrator as to delivery notification, which tracked back the IP address of the Respondent to 49.82.7.95 & 49.82.93.251 [Location: Nanjing, Jiangsu, China] and language as Chinese [Language of recipient's PC: zh-CN (Chinese/China), zh;q=0.8 (Chinese), en;q=0.6 (English)], which is located far from Hong Kong as declared under WHOIS.

D. Further, the false WHOIS is also evident from the fact the Respondent holds many other Domain Names with similar address as "76, C.P. Rama Road" but country shown as Austria. Further, the online search results shows only one company by the name Apex Laboratories - 'Apex Laboratories Private Limited', whose registered office address is: "38/76, C.P. Ramasamy Road, Alwarpet, Chennai" from where the WHOIS info of the Respondent seems to have been derived.

E. The above very clearly proves that the Respondent has deliberately provided for false WHOIS to save from any legal action/proceedings, which is a total violation of clause 2 of terms and conditions for Registrants and Paragraph 3 of the .IN Domain Dispute Policy as to Registrant's Representations and could

have been a ground for suspension of the Domain Name, if complained to the Domain Registrar.

It can be concluded that the aim of the Respondent is just to encash on famous Trademarks by parking them with some parking service company with an ultimate objective to sell the disputed domain name and has been concealing own identity by providing false WHOIS info. It also vouches for the fact that how the current ICANN's WHOIS policy is being misused by the persons like the Respondent.

4. Factual Background

According to the documentary evidence and contentions submitted:

A. The Complainant company Jaguar Land Rover Ltd, a subsidiary of Tata Motors, is a leading and highly respected UK based manufacturer and supplier of vehicles including sports utility and four-wheel drive vehicles and proprietor of internationally renowned trademarks JAGUAR and LAND ROVER used since 1935 and 1948 respectively. The complainant's primary function deals with the manufacturing and sale of luxury and sports car along with premium 4X4 vehicles & SUV's bearing the marks of Jaguar, Land Rover and Range Rover. Being uniquely and arbitrarily adopted marks, the said Trademarks are inherently and prima facie distinctive of complainant's goods, services and business.

B. The Complainant's products and services under the trade name JAGUAR LAND ROVER LTD. and the Trademarks **JAGUAR** and **LAND ROVER** are extensively sold and marketed directly by the complainant themselves or through its group companies, dealers, etc worldwide and has sales units in various countries including India.

C. The complainant has spent a great amount of resources in the promotion of its said Trademarks and the products there under. Further, the Complainant is known as JAGUAR LAND ROVER LTD. due to which the Complainant has established an impeccable reputation and goodwill for the Trademarks **JAGUAR** and **LAND ROVER** worldwide including India.

D. The Trademarks of the Complainant have been highly rated and have won several awards around the world. And the **JAGUAR** cars have featured in numerous television programmes and films over the years. The extensive use and recognition inherent in the excellence which is synonymous with the trademarks has translated into a high degree of recognition and distinctiveness, thus the identification by the general public to the instant mark is with the Complainant is a foregone conclusion.

E. Complainant is the owner of Top Level Domain Names www.jaguar.com, www.landrover.com and www.jaguarlandrover.com amongst others. Additionally, the complainant is the owner of the .IN domain www.jaguarlandrover.in, which all evidences the use of Complainant's Trade Name 'Jaguar Land Rover Ltd' and the trademarks. Further, complainant has presence in about 142 countries, including country specific websites for customers, including India.

F. Complainant further owns several registrations worldwide for its reputed and well known trademarks **JAGUAR** and **LAND ROVER** across classes for a very wide range of goods and services including inter-alia vehicles, services relating to vehicles, a broad range of spare parts and accessories, and collateral merchandise. And also have statutory rights by virtue of having prior registrations and trademark applications for the same in various jurisdictions worldwide across classes in over 100 countries.

5. The Dispute

- a. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- b. The Respondent has no rights or legitimate interests in respect of the disputed domain name.

c. The disputed Domain Name has been registered or is being used in Bad Faith.

6. Parties Contentions

I. Complainant contends as follows:

A. That Respondent has registered the Disputed Domain Name JAGUARLANDROVER.co.in on March 09, 2011 which incorporates in its entirety the Complainant's reputed trade marks and the Complainant's trade name 'Jaguar Land Rover'. Further the Respondent's domain name is identical to the trading style ("Jaguar Land Rover") and the trademarks ("Jaguar" & "Land Rover") in which complainant has statutory rights as well as common law rights. Further, complainant already has several top level domains ("TLDs") that incorporates the said style and marks. And it is apparent that the Respondent's Domain Name wholly contains the Complainant's trade name and trademarks.

B. That when the said disputed domain name came to the attention of the Complainant in August 2014, Complainant sent a demand letter to the Respondent seeking immediate transfer of the Domain Name. But the letter was returned as undelivered from the address provided in the WHOIS of the disputed Domain Name. While the same was also emailed to Respondent's email

address. The Respondent, in reply to the demand letter sent through email, demanded US \$1990 for the sale of Domain Name, which was reduced by \$200 on further correspondence. Complainant also submits that the Respondent seems to be an habitual offender as he appears to have registered several other Domain Names which incorporates the prior trademarks of other entities. A WIPO case against the Respondent in the matter involving domain www.armanijean.com has been referred as an example.

C. That it has spent huge resources in building up "search engine trust" in the domain name based upon such keywords/trademark. Any internet user searching for the said trademark based keywords could come across the disputed domain name, which enhances the possibility of confusion and/or deception particularly since the user would associate the disputed Domain Name to belong to the Complainant, as general public do not know that there is no affiliation between the two in any form. That is, Respondent's choice of the Complainant's Trademark as part of its Domain Name is totally unnecessary and unwarranted and the Complainant submits that the sole purpose of registering such a Domain Name is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website.

D. That the above proves lack of any rights or legitimate interest in the disputed Domain Name. Further, the Respondent is not making a legitimate

non-commercial use of the Domain Name but is merely blocked the Domain Name. And upon information and belief, JAGUARLANDROVER and/or JAGUAR and/or LAND ROVER is not the Respondent's personal name, neither is the Respondent commonly known by the disputed Domain Name.

E. That disputed Domain Name does not appear to have been registered in good faith as the Respondent would have been well aware of the world famous Trademarks. Further, the Respondent has offered to sell the same to the Complainant, it can be reasonably inferred that the Respondent had the knowledge of the Complainant's trademarks at the time of registration. Given the fact that disputed Domain Name was just registered on 09 March, 2011, it is inconceivable that the Respondent was unaware of the existence of the Complainant at the time of Registration keeping in mind the Complainant has been using the marks **JAGUAR** and **LAND ROVER** for several decades internationally and in India.

F. That there is a likelihood that an actual or potential visitor to the web page of the disputed Domain Name will be induced to believe that the Complainant has licenced trademarks to the Respondent or has authorized the Respondent to register the disputed domain name or the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant, which indicates bad faith.

II. Respondent

A. The Respondent has twice been given opportunities to file his/her response to the Complaint by the Arbitrator by its notice dated 01 December 2014 and 16 December 2014 respectively.

B. The Respondent has however, failed and/or neglected and/or omitted to file any response to the Complaint filed by the Complainant despite being given an adequate notification and several opportunities by the Arbitrator.

C. The Arbitrator, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

7. Discussion and Findings:

I. Procedural Aspects

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules

framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

- (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.

C. Undoubtedly, the Complainant has statutory and common law rights in the words '**Jaguar**' and '**Land Rover**'. The same have been registered as Trademark all across the globe in over 100 countries and also in India since last many decades, the copy of various registration certificates have been annexed to the Complaint. As per the online records available at Trade Mark Registry website, Complainant first applied for 'Jaguar' and 'Land Rover' trademark in India way back in 1945 and 1948 respectively under class 12. And later also has applied for

the same under various other categories since then in various forms and combinations.

D. Further, prima-facie the Respondent does not have any relationship with the business of the Complainants or any legitimate interest in the trademarks or trade name. Moreover, the Complainant has neither given any licence nor authorized the Respondent to use the Complainant's mark. The Respondent has never been commonly known by the domain name in question, of late, registered the Domain Name on 09 March 2011 and no legitimate use of the Domain has been made.

E. Rather the Domain has been parked at Domain Name Parking service company: Bodis.com which is evident by the Domain nameservers provided in the WHOIS info of the disputed Domain Name. And the resulting webpage at the disputed Domain Name displays PPC (pay per click) links related to the Complainant's trademark, causing confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website.

F. The parking page on the top indicates as being listed for sale, further facts also evidence that an offer was made for sale of Domain Name by the Respondent to the Complainant, which all goes to prove bad faith against the Respondent as well.

II. Respondent's Default

It is well established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the Domain Name to rebut this presumption. But the Respondent has failed to come forward with a Response and therefore, in light of Complainant's un rebutted assertion that Respondent has no rights or legitimate interests in the disputed domain name, the Arbitrator may presume that no such rights or interests exist. [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., D2000-1221 (WIPO Dec. 4, 2000)]

The INDRP Rules of Procedure require under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The respondent was given notice of this administrative proceedings in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the respondent of the Complaint.

The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the documents relied upon by the Complainant.

In the matter of Taco Bell Corporation V. Webmasters Casinos Ltd [INDRP/067], it was held that the Respondent registered the disputed domain name maliciously and he shows his depraved intention, in the arbitration proceedings by his act because three notices were sent by the arbitrator but he has submitted no reply of anyone. [INDRP/067 - tacobell.co.in - May 29, 2008]. Also in the matter of Talk City, Inc. v. Robertson, D2000-0009, (WIPO Feb. 29, 2000) it has been held that because Respondent failed to submit a Response, the Panel may accept all of Complainant's reasonable assertions as true.

The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest

the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:

The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

(i) Identical or Confusingly similar with the Trade Mark, etc [Para 4(i) of INDRP Policy]

The Complainant has shown that it has rights in the Trade Marks 'JAGUAR' and 'LAND ROVER' and the Complainant also has been trading under the trade name 'Jaguar Land Rover'. While the disputed Domain Name JAGUARLANDROVER.co.in incorporates the said Trademarks and the Trade name of the Complainant in its entirety. The paragraph 3 of the INDRP policy clearly states that it is the responsibility of the Respondent to find out before

registration that the domain name that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party.

The complainant asserts that Respondent has registered the Disputed Domain Name JAGUARLANDROVER.co.in on March 09, 2011 which incorporates in its entirety the Complainant's reputed trade marks and the Complainant's trade name 'Jaguar Land Rover'. Further the Respondent's domain name is identical to the trading style ("Jaguar Land Rover") and the trademarks ("Jaguar" & "Land Rover") in which complainant has statutory rights as well as common law rights. Furthermore, complainant already has several top level domains ("TLDs") that incorporates the said style and marks. And it is apparent that the Respondent's Domain Name wholly contains the Complainant's trade name and trademarks.

Indeed, numerous courts and UDRP panels have recognized that "the incorporation of a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark." [Philip Morris USA Inc. v. Doug Nedwin/SRSPlus Private Registration, WIPO Case No. D2014-0339 (May 1, 2014)]. Further, it has been held in the matter of Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol [WIPO Case No. D2001-0489] that "domain names that incorporate well-known trademarks can be readily confused with those marks".

Therefore, based on Complainant's clear rights in the Marks, along with the widespread popularity of Complainant's JAGUAR LAND ROVER and the public's resulting association of Complainant's Marks with Complainant, Respondent's registration and use of the Infringing Domain Names is likely to cause confusion to the users as to the relationship between Complainant and Respondent. As such, Respondent's Infringing Domain Names are confusingly similar to Complainant's Marks.

Besides it is also well-established that the extensions such as '.co.in' in a disputed domain name does not affect a finding of similarity. In the INDRP matter of The Hershey Company V. Rimi Sen, it has been held that the addition of the country top level domain ".co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant's mark [INDRP/289 - Hersheys.co.in - February 11, 2012]. Also in UDRP matters, it has been held that it is technically required for the operation of a domain name, and thus it is without legal significance in an inquiry of similarity. [Tumblr, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd., Host Master, D2013-0213 (WIPO March 29, 2013)].

Thus, the Complainant has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

(ii) Rights or Legitimate Interests in the Domain Name [Para 4(ii) of INDRP Policy]

The circumstances has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in atleast one circumstance under this clause in order to prove legitimate interest:

Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name

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 Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii):

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or*
- (ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

(iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

It is well established that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and then the burden shifts to the Respondent to come forward with concrete evidence of such rights or legitimate interests. The Arbitrator finds that the Complainant has made such showing in this case but no information has been submitted by the Respondent on what rights or legitimate interests he may have in the disputed domain name. [Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270]. Also Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the domain names [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., D2000-1221 (WIPO Dec. 4, 2000)].

There is no showing that 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. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but to host PPC (pay per click) links related to the Complainant's trademark. Further, the said

parking page on the top reads as domain for sale: "The domain Jaguarlandrover.co.in is listed for sale. Click here to inquire about this domain name."

The WIPO panel has made clear in *Paris Hilton v. Deepak Kumar*, WIPO Case No. D2010-1364, if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill.

In the WIPO matter of *Express Scripts, Inc. v. Windgather Investments Ltd. / Mr. Cartwright*, the Panel accepted that before notice of the dispute began, the Domain Name was not being used by the Respondent in connection with a bona fide offering of goods and services. The Respondent had apparently "parked" the Domain Name until it could be sold and the advertisements on the site were generated by the parking company. The Panel therefore finds that the Respondent has no legitimate rights or interests in the Domain Name and that the Complainant has therefore satisfied the requirements of the Policy. [WIPO Case No. D2007-0267]

Further, there is no evidence that the Respondent is commonly known by the disputed domain name or a corresponding name or uses a corresponding name in a business. Obviously, the WHOIS does not indicate that Respondent has ever been or is commonly known by the <jaguarlandrover.co.in> domain name.

In the matter of Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum February 10, 2003) it was held: "nothing in Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as one factor in determining that Policy paragraph 4(c)(ii) does not apply. Also in the matter of Gallup Inc. v. Amish Country Store, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) "finding that the respondent does not have rights in a domain name when the respondent is not known by the mark. Therefore, the Arbitrator finds that Respondent is not commonly known by the disputed domain name under Policy paragraph".

Complainant submits that there is a likelihood that an actual or potential visitor to the disputed Domain Name will be induced to believe that the Complainant has licenced trademarks to the Respondent or has authorized the Respondent to register the disputed domain name or the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant, which indicates bad faith. Also that Respondent's choice of the Complainant's Trademark as part of its Domain

Name is totally unnecessary and unwarranted and the Complainant submits that the sole purpose of registering such a Domain Name is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website, which proves lack of any rights or legitimate interest in the disputed Domain Name.

Lastly, it is quite evident from the parked webpage at the disputed domain name that neither any legitimate, non-commercial or fair use of the disputed domain name being made, but the Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark 'JAGUAR' and 'LAND ROVER', in order to capitalize / profit from the goodwill associated with the famous marks, with an ultimate objective to sell the Domain Name. That is, the Respondent is making money from the PPC links displayed on the webpage of disputed Domain Name since last many years, courtesy parking service company BODIS.com. And such parking service companies does not seem to have any checks in place to check for well known trademarks, which is required !

Given the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of

the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO Case No. D2005-0321 – mtvbase.com].

In the circumstances, the Arbitrator concludes that the Complainant has established the requirement of paragraph 4 (ii) of the Policy.

(iii) Registered and Used in Bad Faith [Para 4(iii) of INDRP Policy]

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

Paragraph 6 of the INDRP policy: Evidence of Registration and use of Domain Name in Bad Faith:

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*
- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or*
- (iii) 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.*

Complainant asserts that the disputed Domain Name does not appear to have been registered in good faith as the Respondent would have been well aware of the world famous Trademarks. Given the fact that disputed Domain Name was just registered on 09 March, 2011, it is inconceivable that the Respondent was unaware of the existence of the Complainant at the time of Registration keeping

in mind the Complainant has been using the marks JAGUAR and LAND ROVER for several decades internationally and in India.

In the matter of PepsiCo, Inc. v. "null", aka Alexander Zhavoronkov, WIPO Case No. D2002-0562, it has been held that registration of a well-known trademark as a domain name may be an indication of bad faith in itself, even without considering other elements of the Policy. In the matter of Jaguar Land Rover Limited v. Phnom Penh Prestige, Tuy Sombo [WIPO Case No. D2014-0977], it has been held that "landrover" is recognized as a well-known trademark. Where the Respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may also demonstrate bad faith. [Weetabix Limited v. Mr. J. Clarke, WIPO Case No. D2001-0775].

Respondent registered the disputed domain name on 09 March, 2011, long after Complainant's Marks became well known, and long after Complainant registered its Marks globally. And it is impossible that the Respondent was not aware of the Complainant's rights to the trademarks as the Complainant's trademarks are famous and registered globally further they have active and official websites on various other extensions including .COM and .IN extensions, which were registered in 2005 and 2009 respectively. Respondent seems to have intentionally registered the disputed domain name, which reproduces

Complainant's well-known trademarks 'JAGUAR' and 'LAND ROVER', in order to capitalize / profit from the goodwill associated with the famous marks.

Under the Policy, it is evidence of bad faith registration and use that by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement or your web site or location of a product or service on your web-site or location. In the matter of Jaguar Land Rover Limited v. Registration Private, Domains By Proxy, LLC / OverTerrain.com [WIPO Case No. D2014-1350] the Panel held that the Respondent's use of the disputed domain names to host PPC links related to the Complainant's LAND ROVER trademark falls within the ambit of this Bad Faith.

Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. Where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration. [LEGO Juris AS V. Robert Martin - INDRP/125 - 14 February 2010]

Earlier this year in August 2014, when Complainant sent a demand letter to the Respondent seeking immediate transfer of the Domain Name, the Respondent, in reply to the demand letter sent through email demanded US \$1990 for the sale of Domain Name, which was reduced by \$200 on further correspondence but the Respondent did not even bothered to file a response to the proceedings. Otherwise also, the said parking page on the top reads as domain for sale: "The domain Jaguarlandrover.co.in is listed for sale. Click here to inquire about this domain name."

The above evidences the fact that the Domain Name has been registered by the Complainant primarily for the purpose of selling or otherwise transferring the domain name registration to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name. The registration of a domain name primarily for the purpose of sale, rent or transfer is evidence of bad faith registration and use pursuant to Policy. In the UDRP matter of Wembley Nat'l Stadium Ltd. v. Thomson, D2000-1233 (WIPO Nov. 16, 2000) finding bad faith based on the apparent willingness of the Respondent to sell the domain name in issue from the outset, albeit not at a price reflecting only the costs of registering and maintaining the name.

Also this matter seems to be very similar to the matter of Capital IQ, Inc., Standard & Poor's Financial Services LLC v. Ye Li, wherein the Respondent offered to sell at USD 6,500 – an amount vastly in excess of the Respondent's out of pocket expenses. It is evident that the Domain Name was acquired for the purposes of selling or transferring it for valuable consideration in excess of the Respondent's out of pocket expenses. A reverse Whois search of the Respondent reveals that his email is associated with at least 467 other domains. It is evident that the Respondent is engaged in the business of cybersquatting by registering domain names containing well-known trademarks and making illegal gains by sales or pay-per-click use. The Respondent has been involved (as respondent) in at least five other UDRP cases. [WIPO Case No. D2014-1647].

In a similar manner, the reverse WHOIS for the Respondent reveals approx 200 Domain Names with email sunong@live.com and many more Domain Names with another email ID are owned by the Respondent. This in itself proves Bad Faith, when most of these Domain Names incorporate famous Trade Marks of other entities. Also evidencing pattern of such conduct is the fact that the Respondent has already faced two UDRP proceedings in the following matters, wherein it was found to have registered the disputed domain name in bad faith and did not file a response either:

- Giorgio Armani S.p.A. v. Yitao/ Apex Laboratories Limited [WIPO Case No. D2013-2060]
- Booz Allen Hamilton Inc. v. Yitao [WIPO Case No. D2013-0738]

In the UDRP matter of Giorgio Armani S.p.A. Milan Swiss Branch Mendrisio v. Lizhen Ye [WIPO Case No. D2013-0808] as relied upon by the Complainant, the Panel found that there is beyond all doubt that the Respondent has registered the disputed domain names in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain names and that the Respondent has engaged in a pattern of such conduct. The Panel accepts the Complainant's arguments that the worldwide fame of the trademarks leaves no question of the Respondent's awareness of those at the time of the registration of the disputed domain names which wholly incorporate the Complainant's trademarks, as even recognized by numerous previous UDRP panels (Ga Modefine, Giorgio Armani S.p.A. v. Kim Hontage, WIPO Case No. D2007-0851, etc).

The Respondent seems to be an habitual offender and a cybersquatter. Respondent has knowingly reproduced and appropriated Complainant's Marks – that is, the registered JAGUAR and LAND ROVER trademarks, as well as Complainant's Trade Name and official domain names: JAGUARLANDROVER.COM, JAGUARLANDROVER.IN – verbatim in its infringing Domain Name. Respondent exemplifies a "habitual cybersquatter

engaged in a pattern and practice of registering and using in bad faith domain names corresponding to the well-known trade names and/or marks of third parties." [Apple Computer, Inc. v. PrivacyProtect.org / Private Registrations Aktien Gesellschaft, WIPO Case No. D2012-0879]

In the circumstances, the Arbitrator concludes that the Complainant has established the requirement of paragraph 4 (iii) of the Policy i.e. both registration and use of the Domain Name in bad faith.

8. Decision:

In the lights of the circumstances and facts discussed above, Arbitrator decides, "The disputed domain name is identical and confusingly similar to the registered trademarks and also the trade name of the Complainant in which Complainant has rights and the Respondent has no right or legitimate interests in respect of the Domain Name and the Respondent's Domain Name has been registered and is being used in Bad Faith".

Consequently the Arbitrator orders that the Domain Name <"jaguarlandrover.co.in"> be transferred from the Respondent to the Complainant with the following order as to costs.

Costs:

In the facts and circumstances peculiar to the case as discussed above, additionally, the Respondent is ordered to pay to the Complainant, thrice (three times) the documented costs of these proceedings and relevant expenses. Further for any delays, it shall be accompanied with interest @ 15% p.a. (fifteen percent per annum) from the date of implementation of the decision till the date of payment.



Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 05th January 2015

Place: New Delhi