

తెలంగాణ తెలంగాణ TELANGANA

S.No: 804 Date: 22/11/18 Rs. 100/-

Sold To: Harini Narayana Murthy

S/o. W/o. D/o: B. Narayana Murthy R/o Bangalore

For Whom: Self

S. 899478
B. PAVAN KUMAR

License Stamp Vendor

License No: 16-01-41-2018

Flat No.303, Konark Towers, Moosaramb.

Malakpet, Hyderabad-36. Cell: 7674080

ARBITRATION AWARD

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

INDRP CASE No. 1027

In the Matter of

HUOLALA GLOBAL INVESTMENT LIMITED

Vistra (Cayman) Limited, P.O Box 31119

Grand Pavilion Hibiscus Way,

802 West Bay Road

Grand Cayman, KY1-1205

CAYMAN ISLANDS

Complainant

Versus.

LI CHENGGONG

10, Xucheng

Haidian

Beijing 100876

CHINA

Respondent

Harini Narayana Murthy

1. The Parties

The Complainant is Huolala Global Investment Limited of Cayman Islands, represented in these proceedings by Mr. Vikrant Rana of S.S.Rana & Co., Delhi, India. The Respondent is Li Chenggong of Beijing China.

2. The Domain name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <lalamove.co.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Endurance Domains Technology LLP of Mumbai India. The Arbitration proceedings are conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the "INDRP Policy" or "Policy"), and the INDRP Rules of Procedure (the "Rules").

Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN registry by email on September 25, 2018 and by courier on September 26, 2018. The Arbitrator sent an email notifying the parties regarding the commencement of the arbitration proceedings on September 26, 2018. In the said notification, the Respondent was given twenty-one days to file the Response. The Respondent did not respond in these proceedings.

3. Factual Background

The Complainant is in the business of providing on-demand logistics services in several cities in China and Southeast Asia. The Complainant uses the trademark LALAMOVE and owns trademark registrations for the mark and its Hummingbird logo in Hong Kong and other jurisdictions. The Complainant registered the domain name <lalamove.com> on October 17, 2014 and owns several LALAMOVE formative domain names.

The Respondent, according to the Whois record, is Li Chenggong, of Beijing, China. The disputed domain name <lalamove.co.in>, was registered by the Respondent on November 27, 2014. No active website functions from the disputed domain name but pay per click (PPC) links are displayed on the

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landing page. The PPC links are titled, "Move Free", "Free Movie Downloads", "Moves", "Wireless Cameras" and "Properties".

The Respondent is the registrant of a large portfolio of domain names that contain trademarks belonging to others. The email communications between the parties show that the Respondent has rejected offers made by the Complainant to buy the disputed domain name.

The Parties Contentions

A. Complainant's Submissions

The Complainant states that it was founded by Mr. Chow Shing Yuk, a famous poker player and it is the parent holding company of its group. The other companies of its group are Easy Mobile Logistics Hong Kong Limited, Easyman Express Limited, Easy Van Holdings Limited, Huolala S.E.A. Limited and LalaMove India Limited. The Complainant initially launched its logistics business in Hong Kong as a van hiring service in December 2013 under the name "Easy Van" and later changed its name and trademark to LALAMOVE in 2014. To publicize its rebranding to LALAMOVE, the Complainant states that it had given away up to USD 1 million worth of free deliveries as a promotion. The Complainant has filed evidence showing media coverage at the time it was rebranded to LALAMOVE.

The Complainant states that it grew rapidly from a local van hiring service to an international logistics giant. It offers courier, delivery and moving services to its customers who are mainly business users. The Complainant alleges that it has revolutionized on-demand logistical services due to its reliable and quick deliveries. The Complainant adds that its streamlined and efficient system matches customers and drivers within 12 seconds, local deliveries are fulfilled in 55 minutes and its drivers fleet and routes are optimized to maximize its revenues.

The Complainant states its valuation is over USD one billion and has obtained funding of about USD 160 million from prominent investors such as Crystal Stream Capital, Mindworks Ventures, App Works, Blackhole Capital and Xianghe Capital. The Complainant states that LALAMOVE operates in over 126 cities across China and in South East Asia countries like Singapore, Taiwan, Hong Kong, Vietnam and Philippines. The vehicles used for its delivery services include cars, vans, trucks and bikes. It matches 15,000,000 customers with a pool of about 2,000,000 drivers and has over 2000 employees. The Complainant adds that its mobile application has over 3,00,000 downloads and is popularly dubbed as "Uber for logistics".

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The Complainant has provided evidence of its expenditure on advertisements and states that it has promoted its mark through its website, media, advertisements and through other publicity. The Complainant claims the mark has acquired goodwill and is a well-known mark within the meaning of section 2 (zg) of the Indian Trademark Act 1999 and Article 6 *biz* of the Paris Convention. Indian courts recognize trans-border reputation of well-known marks, and the Complainant argues its mark ought to be protected as such. To show evidence of the reputation associated with the mark, the Complainant has given a list of articles and media reports published about LALAMOVE and has referred to its social media popularity.

The Complainant argues that the disputed domain name is identical or confusingly similar to the LALAMOVE mark in which it has rights. The Complainant states that the Respondent lacks rights or legitimate interest in the disputed domain name and is not authorized to use its mark. The Respondent is not commonly known by the disputed domain name and does not use it for a *bona fide* offering of goods or services, or for any legitimate fair-use purposes.

The Complainant argues that the disputed domain name was registered in bad faith or is being used in bad faith as it creates a false association with its mark. The habitual pattern of registering domain names by the Respondent establishes bad faith. The Complainant requests for cancellation or transfer of the disputed domain name and for costs of the proceedings.

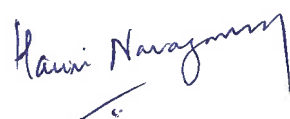
B. Respondent's Submissions

The Respondent did not respond in these proceedings.

4. Discussion and Findings

The Respondent in these proceedings, who is registrant of the disputed domain name, is required to submit to a mandatory Arbitration in the event that a complainant files a complaint in accordance with the INDRP Policy. Under the INDRP Policy, the Complainant is required to establish three elements to obtain the remedy of transfer of the disputed domain name, these are:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainants have rights, and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.



Under paragraph 11 (a) of the INDRP Rules of Procedure, in the event that a party fails to respond within the stipulated time period, the Arbitrator has the discretion to proceed to decide the Complaint in accordance with the law in the absence of any exceptional circumstances. The Arbitrator accordingly decides under the Rules, to proceed to examine the merits of the case based on the Complainant's submissions and the material on record.

Identical or Confusingly Similar

The first element requires the Complainant to prove that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant, in order to demonstrate its rights in the LALAMOVE mark has submitted copies of trademark registration certificates for its mark in several countries. Some of the relevant application / registration numbers are:

Sr no.	Application /Registration Number	Trademark	Class	Country	Date
1	303186432	LALAMOVE &Hummingbird device	42	Hong Kong	3-11-2014
2.	303198952	LALAMOVE &Hummingbird device	9,39,42	Hong Kong	3-11-2014
3.	40201400731Y	LALAMOVE &Hummingbird device	9,39,42	Singapore	27-11-2014
4.	40201612902R	LALAMOVE &Hummingbird device	9, 35,38,39,42	Singapore	10-08-2016
5.	4201600008850	LALAMOVE &Hummingbird device	38,39	Philippines	6-07-2017

The Complainant has submitted that it also owns a trademark registration in India, for the LALAMOVE mark (with hummingbird logo) in classes 9, 35, 38, 39 and 42, under the multi-class

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Application No. 3742257. The Arbitrator however finds that the status of the India trademark application is still pending.

Trademark registration is considered *prima facie* evidence of rights in a mark. See *Goldman Sach & Co, LLC v. Lina, Doublefist Limited*, INDRP Case No. 936 (trademark registrations serve as *prima facie* evidence of Complainant's ownership and validity of the mark which creates a "rebuttable presumption" that the mark is distinctive.) It is well established that if a complainant owns a trademark, it is sufficient to satisfy the threshold requirement of having trademark rights under the Policy.

The jurisdiction where the trademark is registered is not relevant. See for instance *Easton Corp Pty Ltd. v. Mr. Dean Chandler*, INDRP Case No. 844, where the complaint was filed based on the complainant's HOTTIE trademark registrations in Australia and New Zealand. It was found that the trademark registrations in Australia and New Zealand satisfied the threshold requirement of showing rights in the trademark under the INDRP Policy as the jurisdiction of the trademark registration is not relevant. Further, the date of registration or the first use of the mark and the goods or services for which the trademark is registered are not considered relevant for purposes of finding rights in a trademark under the first element.

Regardless of the pending Indian trademark mark application, the Arbitrator finds that the Complainant has demonstrated registered rights in the LALAMOVE trademark as there is evidence that the mark is registered under numerous classes in other jurisdictions such as Hong Kong, Singapore, Philippines and Malaysia. The Arbitrator also notes that the Complainant has filed evidence of several news reports and articles in magazines and newspapers that show third party and media recognition of its mark. Based on the evidence of extensive media publicity for the LALAMOVE trademark along with the Complainant's website traffic figures and its social media the popularity, it is acknowledged websites are accessible from all jurisdictions and that the Complainant has provided a basis to show cross-border reputation of the LALAMOVE trademark.

The disputed domain name incorporates the Complainant's LALAMOVE mark in its entirety. It is well established that the use of the entire trademark in the disputed domain name is found to satisfy the first requirement of identical or confusing similarity of the disputed domain name to the Complainant's trademark. See for instance *Siemens AG and Siemens Limited v. Gunsung Kim*, INDRP Case No.16, where the use of the entire SIEMENS mark in the domain name was found to render the domain name identical or confusingly similar to the complainant's mark in that case.

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The Arbitrator accordingly finds that the Complainant has successfully established the first requirement under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Rights and Legitimate Interests

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. While the overall burden of proof rests with the Complainant, it is recognized that this could result in the often-impossible task of proving a negative, as the required information is likely to be primarily within the knowledge of the Respondent. See *FDC Limited v. Christian Schmidt*, INDRP Case No 913, where it was observed that under the UDRP and the INDRP Policies it has been consistently accepted by panelists and arbitral tribunals, that once a Complainant has made a *prima facie* case that a respondent lacks rights or legitimate interests, the burden shifts to the Respondent to prove rights or legitimate interests in the disputed domain name as a complainant is not required to prove a negative.

The onus of proving rights or legitimate interest in the disputed domain name therefore lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a *prima facie* case, then the Complainant prevails.

The INDRP Policy states that the Respondent can demonstrate rights or legitimate interests in the disputed domain name if there are circumstances that show (i) that before notice of the dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain.

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and is not authorized to use its mark. The Respondent is not commonly known by the disputed domain name and does not use it for a *bona fide* offering of goods or services, or for any legitimate fair-use purposes.

The Respondent has not taken part in these proceedings or presented evidence that any preparations have been made by the Respondent to use the disputed domain name in connection with a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes any legitimate non-commercial fair use of the disputed domain name.

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The Arbitrator further notes from the evidence on record that the Respondent is the owner of a large portfolio of domain names. While it is recognized that owning a large number of domain names or purchasing and selling domain names is a legitimate activity, however, registering domain names that use the trademark of a third party or infringing other's rights is not recognized as legitimate activity.

In the present case, it is found the Respondent has registered a number of domain names with others trademarks and the disputed domain name is among these. The disputed domain name contains the trademark owned by the Complainant who has proven rights in the mark. The Respondent has not shown any rights or legitimate interests in the disputed domain name and such registration and use of the disputed domain name is not considered *bona fide*. Accordingly, on the basis of the evidence and the circumstances discussed, it is found on balance, that the Respondent has not established rights or legitimate interests in the disputed domain name.

The Complainant is found to have successfully made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has not been rebutted by the Respondent. The second requirement under paragraph 4 of the Policy has been met.

Bad Faith

The third element of Policy requires the Complainant to establish the disputed domain name was registered in bad faith or is being used in bad faith.

The Arbitrator notes that the Respondent has registered the disputed domain name about a month after the Complainant registered the domain name <lalamove.com>. The Complainant registered <lalamove.com> on October 17, 2014 and the Respondent, registered the disputed domain name <lalamove.co.in> on November 27, 2014. The disputed domain name was registered around the time the Complainant had rebranded its services to the LALAMOVE trademark. Under these circumstances, the question arises whether it can be said that the Respondent could have registered the disputed domain name in bad faith to target a trademark that was at a nascent stage of use by the Complainant.

If a disputed domain was registered before the trademark application date, generally the domain name cannot be said to have been registered in bad faith, unless the trademark owner has demonstrated unregistered common law rights in the mark. The evidence submitted by the Complainant in the present case show that some of its trademark applications pre-date the registration of the disputed domain name, which establishes the Complainant's prior adoption and use of the mark. Furthermore if

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the facts of the case establish that the Respondent's intention in registration of the disputed domain name was to unfairly capitalize on the Complainant's nascent trademark rights, then it can be reasonably inferred that the disputed domain name was registered bad faith.

In the present case, given the timing of registration of the disputed domain name within a short span of the launch of the LALAMOVE mark, the evidence filed by the Complainant, showing media coverage pertaining to the launch of LALAMOVE trademark just prior to the registration of the disputed domain name and the Respondent's history of a pattern of habitually registration of domain names using well-known trademarks, the Arbitrator finds are sufficient circumstances to find bad faith registration. It can be inferred from these circumstances, that the disputed domain name was registered by the Respondent to exploit the nascent trademark rights for the purpose of exploiting the Complainant's rights, which is recognized as bad faith registration of the disputed domain name.


The Complainant has filed evidence to show extensive use of the LALAMOVE mark in South East Asia including China, the jurisdiction where the Respondent is located. The Respondent has registered the disputed domain name shortly after the launch of the Complainant's services under the LALAMOVE mark. It is further noted that the disputed domain name is not used for hosting a website but the landing page has PPC links. Even if the PPC links are automatically generated and the Respondent may not have gained from these links, it will not prevent finding bad faith and passive holding of the disputed domain name, and that all these circumstances cumulatively point to the bad faith use of the disputed domain name. See *Tata Motors Limited v. Shay Rahman*, INDRP Case No.929 where the disputed domain name was registered before the trademark application date and it was found that although bad faith registration was not established, bad faith use was found under the circumstances of the case where there was passive holding of the disputed domain name.

The Complainant is found to have successfully established the third element under paragraph 4 of the Policy.

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Decision

It is ordered that the disputed domain name <lalamove.co.in> be transferred to the Complainant.



Harini Narayanswamy

(NIXI Arbitrator)

Date: November 23, 2018

Bangalore

India