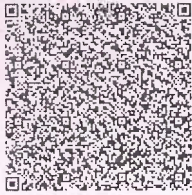




सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration e-Stamp

Certificate No. : IN-CH16363126623604R
Certificate Issued Date : 20-Feb-2019 03:42 PM
Certificate Issued By : chmukumau
Account Reference : IMPACC (GV)/ chimpssp07/ E-SMP HIGH COURT/ CH-CH
Unique Doc. Reference : SUBIN-CHCHIMPSP0732683892409352R
Purchased by : DR ASHWINIE KUMAR BANSAL
Description of Document : Article 12 Award
Property Description : KOTHI NO 6 SHIVALIK ENCLAVE NAC MANIMAJRA CHD
Consideration Price (Rs.) : 0
(Zero)
First Party : DR ASHWINIE KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : DR ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.) : 90
(Ninety only)



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ARBITRATION AWARD
(On Stamp Paper)

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1

TQ 0011428961

Statutory Alert:

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

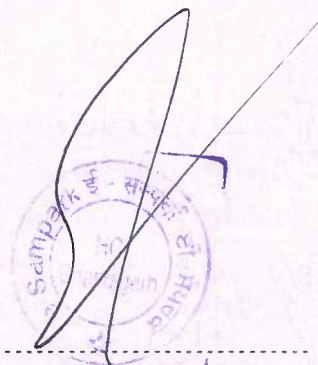
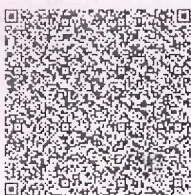


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No.	: IN-CH16362454361904R
Certificate Issued Date	: 20-Feb-2019 03:32 PM
Certificate Issued By	: chmukumau
Account Reference	: IMPACC (GV)/ chimpsp07/ E-SMP HIGH COURT/ CH-CH
Unique Doc. Reference	: SUBIN-CHCHIMPSP0732682766440055R
Purchased by	: DR ASHWINIE KUMAR BANSAL
Description of Document	: Article 12 Award
Property Description	: KOTHI NO 6 SHIVALIK ENCLAVE NAC MANIMAJRA CHD
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DR ASHWINIE KUMAR BANSAL
Second Party	: Not Applicable
Stamp Duty Paid By	: DR ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.)	: 10 (Ten only)



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ARBITRATION AWARD

(On Stamp Paper)

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1-A

TQ 0011428966

Statutory Alerts:

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 authenticity is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR:

DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.
Advocate, Punjab & Haryana High Court, Chandigarh

In the matter of:

Trent Limited having its Registered Office: Bombay House, 24 Homi Mody Street, Mumbai 400 001 (**Complainant**)
Vs.

Milen Radumilo, Strada C.A. Rosetti, Bucharest, Bucharesti 010281, Romania (**Respondent**)

COMPLAINT REGARDING: DISPUTED DOMAIN NAME:
WESTSIDE.IN

1. The Parties:

Complainant: Trent Limited, having its Registered Office: Bombay House, 24 Homi Mody Street, Mumbai-400 001

Respondent:

Milen Radumilo, Strada C.A. Rosetti, Bucharest, Bucharesti 010281, Romania

- 2. The Domain Name and the Registrar:** The disputed domain name <westside.in>, is registered with dynadot.com LLC (D7196498-AFIN), 2010 S Ellsworth Ave, # 345 San Mateo, California 94401, United States (the "Registrar").

3. Procedural History [Arbitration Proceedings]

NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole Arbitrator in this matter. The Arbitrator has submitted his Statement of

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Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

A Complaint has been filed with the National Internet Exchange of India (NIXI). Name, address and other particulars of the registrant of the domain name i.e. the Respondent have not been given in the Whois details. The Complainant had requested the Registrar of the disputed domain name vide letter dated 9.10.2018 to provide him such information but the Registrar refused to provide the same without express permission of the customer or when required by law. Thereafter, name, address and contact details of the Respondent provided in the Complaint have been provided by .In Registry / NIXI to the Complainant to incorporate the same in the Complaint.

NIXI had sent the Complaint along with annexures by e-mail on 31.12.2018 to the Respondent. NIXI had also sent the Complaint along with Annexures to the Respondent by courier. The Courier Company had informed as under:-

"Please be informed that your shipment is currently at the destination service station where we are unable to complete the delivery as the consignee's address, contact number (1 86669375139) are incorrect. We would request you to help us with an alternate delivery address along with the contact details and contact person name to help complete the delivery."

The Complainant had provided alternative address vide email dated 14.01.2019 which reads as follows:-

"Dear Sir,

We refer to your email dated 11 January 2019 and the below email.

Please be informed that as the name, address and contact details of the Respondent is not displayed in the Whois Lookup database.

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The name, address and contact details of the Respondent provided in the Complaint have been provided by .In Registry / NIXI only. The Complainant is not aware of any alternative address or contact details of the Respondent.

We have carried out a search on the internet and have come across the website www.website.informer.com wherein domains related to the email address milen.radumilo@gmail.com are listed. Apart from the name, address and telephone number of the Respondent as mentioned in the Complaint, the said web page also contains the name of the Respondent's company as below:

Name: Milen Radumilo

Company: White & Case

Phone number: +40.213253054

Address: Strada C. Rosetti Bucharest Bucharesti 010281
RO

You may access the said webpage by <https://website.informer.com/email/milen.radumilo@gmail.com>. We also attach herewith an affidavit of Ms Yamini Chandran dated 14 January 2019 along with Annexures thereto.

We request you to proceed further with the Complaint as per law."

The Arbitrator vide email dated 23.01.2019 directed the Complainant to send hard copy of the Complaint along with annexures and copy of all e-mails exchanged between the parties to the Respondent and file an Affidavit about status of service of the hard copy of the Documents.

The Complainant has filed an Affidavit dated 20.02.2019 of his efforts to deliver the hard copy to the Respondent but the same could not be served at the given address.

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All efforts were made to serve the hard copy on the Respondent at his last known address, hence there is deemed service of the hard copy as per the provisions of Section 3 of the Arbitration and Conciliation Act, 1996 which provides as under:

- "3. Receipt of written communications.- (1) Unless otherwise agreed by the parties,-
- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and
 - (b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.
- (2) The communication is deemed to have been received on the day it is so delivered.
- (3) This section does not apply to written communications in respect of proceedings of any judicial authority."

In view of provisions of section 3 of the Arbitration and Conciliation Act, 1996 regarding receipt of communications, he is deemed to have been duly served.

A copy of Complaint and Annexures as well as notices issued by the Arbitrator were communicated to the Respondent by E-mail. Hence, service of the Respondent is complete by this mode also.

The Respondent was directed to file the response to the Complaint within 10 days vide E-mail dated 31.12.2018. The Respondent has failed to file any response to the Complaint till date although period for filing of response has already been expired.

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As per section 25 of the Act the arbitrator is competent to make the award if Respondent fails to file the reply before him. Section 25 is reproduced below for ready reference:

25. Default of a party.- Unless otherwise agreed by the parties, where, without showing sufficient cause,-----

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant.

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

In view of above, arbitrator proceeds to make the award in accordance with provisions of the rules read with section 25 of the Arbitration and Conciliation Act, 1996.

4. Factual Background

Trent Limited is a company incorporated under the Indian Companies Act and it is part of TATA Group which comprises of over 100 operating

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companies. The Complainant is retail RO of TATA Group which started its operation in the year 1998 and runs the life style change "Westside" as well as the music chain "Landmark". The Complainant had adopted the Trademark WESTSIDE and filed applications for registration under various classes.

The Respondent has registered the disputed domain name <westside.in> on 4.4.2013 wholly incorporating Trademark of the Complainant. Hence, present Complaint has been filed by the Complainant against the Respondent.

5. Parties Contentions

A. Complainant

The Complainant belongs to one of the most reputed and oldest industrial houses in India, the Tata group. The Tata group has operations in more than 100 countries across six continents, and its companies export product and services to around 150 nations. The Complainant is the retail arm of the Tata group. The Complainant started its operations in the year, 1998 and run the lifestyle chain "Westside" as well as the books and music chain "Landmark". Westside is predominantly a private label fashion apparel format which offers inter alia, garments for men, women and children, cosmetics, perfumes, footwear, etc. Over the years, the format has been rolled out across India and operates about 126 stores covering over 64 cities in India. The Complainant's said goods are also exclusively sold through the online marketplace www.tatacliq.com.

The Trademark 'WESTSIDE' was conceived and adopted by the Complainant in the year, 1998 for using in relation to the said Goods and

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Services. Around the same time, the Complainant created and adopted a unique and distinctive artistic work for the mark 'WESTSIDE' namely W E S T S I D E. In order to obtain statutory protection, the Complainant has applied for registration/ registered the said Trademark in various classes in various countries including India.

The registrations of the Trademark WESTSIDE are valid and subsisting. The registrations are prima itself evidence that the said Trademark is distinctive.

The Complainant is the owner of the top level domain name "mywestisde.com" registered on 7 February, 2000. The domain name "mywestside.com" leads to an active website containing detailed information on the various products available at Westside, stores of the Complainant.

The Trademark has been openly, continuously, extensively and uninterruptedly used and advertised since about two decades. Over the years, the Complainant has generated substantial revenues in relation to the said Goods and Services provided under the said Trademark.

The Complainant has been spending substantial time, effort, skill and money in promoting the said Trademark and the said Goods and Services provided under the said Trademark. The said Goods and Services and the said Trademark have been promoted through various media such as newspapers, magazines and also through social and digital media.

The Complainant has been widely reported in various newspapers and magazines with wide circulation in India. As a result of continuous, extensive and uninterrupted use of the said Trademark in relation to the

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said Goods and Service of the Complainant, the mark "WESTSIDE" has acquired tremendous goodwill and reputation in India and is associated only with the Complainant and one else.

The Respondent in the present instance has registered the domain name <westside.in> which incorporated in entirety the well-known and registered Trademark WESTSIDE of the Complainant.

The Complainant has invoked following grounds in the Complaint against the respondent:-

"Unauthorized registration of the domain name "westside.in" being identical and/ or deceptively similar to domain name and Trademarks of the Complainant.

- a) The Respondent's domain name "westside.in" incorporates in its entirety the well-known and famous Trademark "WESTSIDE" of the Complainant in which the Complainant has statutory rights as well as rights under common law.
- b) The Respondent's domain name "westside.in" is identical with/ similar to the aforesaid domain name and said Trademark owned by the Complainant. It is submitted that the Respondent has incorporated the entire mark "WESTSIDE" of the Complainant in the disputed domain name. Such resemblance between the disputed domain name and the Complainant's registered and well known Trademark and domain name cannot be by any stretch of imagination considered as a mere co-incidence. The addition of the country code ".in" (INDIA) to the Complainant's said Trademark makes the resulting domain name westside.in identical/ confusingly similar to the Complainant's registered said Trademark and domain name "mywestside.com". Further, the addition of the country code ".in" is insufficient to distinguish the Respondent's domain name "westside.in" from the Complainant's famous work WESTSIDE. In the matter of The Hershey Company V. Rimi Sen (INDRP/289), it has been held that the addition of the country top level domain "co.in" in the disputed domain not avoid a determination that the domain name is identical or confusingly similar to the complainant's mark.
- c) By virtue of the Complainant's right in the said Trademark coupled with the extensive use and tremendous popularity

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of the said Trademark, it is quite obvious that an internet user would likely believe that the website accessible by the URL www.westside.in is managed or endorsed by the Complainant. In the matter of eAuto LLC V. Triple S. Auto Parts, D2000-0047, the WIPO Panel decided that when a domain name incorporates, in its entirety, a distinctive mark, that creates sufficient similarity between the mark and the domain name to render it confusingly similar.

- d) It is submitted that under paragraph 3 of the INDRP, it is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Therefore, it was the Respondent's burden to verify before applying for the disputed domain name. Applying for a domain name incorporating the Complainant's said Trademark in its entirety clearly establishes that the Respondent has failed to comply with this responsibility. It is submitted that such resemblance is without any reason and justifiable grounds.

The Respondent's lack of rights or legitimate interest in the domain name:

- e) Since the disputed domain name comprises of the Complainant's well-known and famous Trademark "WESTSIDE" in which the Complainant has sole and exclusive right and interest, it is evident that the Respondent cannot have any right or legitimate interest in the domain name.
- f) It is submitted that "WESTSIDE" is a coined mark and is highly distinctive of the said Goods and Services of the Complainant. Moreover, the mark "WESTSIDE" is also registered in several countries of the world including India. It is submitted that the Respondent does not appear to have any reason for adopting and registering the disputed domain name. The Respondent does not have any business or commerce under the name 'WESTSIDE' or any bonafide intentions to use the disputed domain name in relation to offering of goods or service. In the matter of Havells India Ltd. vs. Domain Administrator - INDRP/935, the Panel held that "it is quite evident from the unresolved webpage at the disputed domain name as on date and it's previously parked page 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 'LLOYD', in order to capitalize/profit from the goodwill associated with the famous mark.

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Such an act by the Respondent clearly indicates that the Respondent does not have legitimate rights or interests in the impugned domain name". A copy of said decision is annexed as **Annexure "I"**.

- g) The Respondent is not a licensee of the Complainant nor has the Respondent ever been authorized by the Complainant to use the said Trademark or to register the disputed domain name "westside.in". Indeed, the Complainant has no relationship whatsoever with the Respondent.
- h) Given the prior use and registrations of the distinctive said Trademark of the Complainant, the Respondent should be held to have actual or at a minimum constructive knowledge of such uses. Moreover, on conducting a simple search of the word WESTSIDE on Google it is evident that the mark is owned by the Complainant and the very first link opens to the Complainant's website "www.mywestside.com" along with numerous other links of the Complainant. Hereto annexed and marked as **Annexure "J"** is the print out of the first page of the search result of the word WESTSIDE as appearing on Google. The Respondent thus could not have established legitimate rights in the disputed domain name, which was undoubtedly registered in order to capitalize on the fame and reputation of the Complainant's said Trademark.
- i) The Respondent has not provided its name in the Whois contact information. There is no evidence that the Respondent is commonly known by the domain name or a corresponding name or uses a corresponding name in a business. This clearly indicates that the Respondent does not have any legitimate rights in the disputed domain name.
- j) The website associated with the disputed domain name "westside.in" is not being used for any bonafide or legitimate purpose, but it lead to a parking page displaying "pay per click" advertising links. In the WIPO matter of Paris Hilton V. Deepak Kumar (WIPO Case No. D-2010-1364) it was observed that ".... it seems likely in this case that the Domain Name is being used by the Respondent for use with a "domain name parking" or "pay-per-click" service or at least some other form of third party advertising. So far as "domain name parking is concerned", it is now well-known how these sorts of services operate. A domain name owner "parks" the domain name with a domain name parking service provider. The service provider then generates a page that incorporates sponsored links or links to sponsored links. When an internet user clicks on these sponsored links, the

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entity sponsoring that link will make a payment. This "click through revenue" is then ordinarily split between the domain name parking service provider and the owner of the domain name". It is also held in the said case that "if the owner of the domain name in question is using it with such a service in order to unfairly capitalize 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". A copy of said decision is annexed as **Annexure "K"**.

Why the domain name should be considered as having been registered and used in bad faith.

- k) To reiterate the pleadings of the earlier paragraphs, as the disputed domain name westside.in incorporates entirely the well-known, famous and registered marks of the Complainant, it is evident that the Respondent can have no legitimate rights or interest in the disputed domain name. Rather, the sole purpose of the adoption of the Complainant's Trademark in its entirety by the Respondent is to misappropriate the Complainant's well-known Trademark "WESTSIDE".
- l) The Respondent is presumed to have had knowledge of the Complainant's said Trademark at the time it registered the identical/ confusingly similar domain name, moreover due to the Complainant's said Trademark being well-known. This knowledge indicates Respondent's bad faith and malicious intention in registering the disputed domain.
- m) The bad faith and malicious intention in registering the disputed domain is also evident from the contents of the webpages hosted on the disputed domain name. There are several hyperlinks uploaded/ displayed on the homepage of the disputed domain name such as "Boutique Clothes"; "Buy Clothes Online"; "Cloth Online Shopping"; "Clothes Buy Online"; "Westside Online"; "Clothes Shops for Ladies"; "Designer Indian Clothes Online"; "Fashion Clothes for Ladies"; "Online Womens Clothes Shopping"; "Womens Dress", which direct the users to various third party websites. Hereto annexed and marked as **Annexure "L"** is the print out of the home page of the disputed domain name.
- n) It is evident from the webpage of the disputed domain name that it appears to be for sale. The Respondent has registered the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the disputed domain name to the any party for a valuable

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consideration, thus gaining illegitimate profit from the same.

- o) The disputed domain name has been listed for sale at Sedo's Domain Marketplace on the website www.sedo.com and the minimum offer price quoted therein is USD 688. Therefore, it is apparent that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the disputed domain name for a valuable consideration, thus gaining illegitimate profit from the same. Printouts of relevant pages of the website www.sedo.com is annexed as **Annexure "M"**.
- p) It is submitted that the Respondent has intentionally attempted to attract the internet users to other on-line location by creating a likelihood of confusion with the well-known said Trademark of the Complainant as to the source, sponsorship, affiliation or endorsement of the Respondent website.
- q) The Respondent has registered the disputed domain name with a malicious intention to trade upon the Complainant's reputation and/or to capitalize on the likelihood of confusion between its disputed domain name and Complainant's said Trademark/ domain name.
- r) The Whois search revealed that the disputed domain name is registered with Dynadot LLC. However, except the information such as "Registrant Organisation: samirnet-domain names for sale"; "Registrant State/ Province: Karnataka" and "Registrant Country: IN", no other relevant particulars of the Registrant namely the name, address and contact details are available in the Whois database. Therefore, as stated above, the Complainant through its Advocates issued a demand letter dated 9 October, 2018 to Dynadot LLC, the Registrar of the disputed domain name calling upon it to primarily, disclose the complete name, postal address, email address and other contact details of the Registrant and Registrant's organization; transfer the impugned domain name to the Complainant who is the rightful owner of the said Trademark "WESTSIDE". Hereto annexed and marked as **Annexure "N"** is a copy the said letter along with its annexures. Thereafter, Dynadot LLC, by its e-mail dated 9 October, 2018 responded inter alia stating that it will not release customer information or account information without the express permission of the customer or when required by law. Hereto annexed and marked as **Annexure "O"** is a copy the said e-mail reply dated 9 October, 2018 received from Dynadot LLC.
- s) Interesting, at the time of filing the present Complaint, when the Complainant rechecked the Registrant/

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Respondent's details at Whois Domain lookup at .IN registry, to comply the Rule 3 (b) (iii) and the Complainant found that there are few changes in the registration details of the disputed domain name viz:-

- the Registrar Organization is blank (thus, the name "samirnet-domain names for sale" is no longer appearing);
- the Registrant State/ Province: is stated as Bucharesti (which was earlier Karnataka); and
- the Registrar Country: is stated as RO (which was earlier IN).

Therefore, it is evident that the Respondent has with a malafide intention changed these details to hide himself which will cause undue delay in the legal action against the Respondent and to frustrate the Complainant. Hereto annexed and marked as **Annexure "P"** is a copy the domain name registration details of westside.in recently obtained from Whois Domain lookup at .IN registry.

It is therefore submitted that the disputed domain name has been registered and is being used in bad faith."

Respondent

The Respondent has not filed the Response to the Complaint inspite of opportunity given to him.

6. Discussion and Findings:-

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the Arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response.

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

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Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(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.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator has examined the Complaint and documents filed by the Complainant and he will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant owns the intellectual property rights in the Trademark WESTSIDE and he has secured trademark registrations from the Registrar of Trade Marks since 2005. The Complainant has produced copy of Certificate of Registration regarding Trademark WESTSIDE issued by Registrar of Trade Marks dated 25.11.2005 in Class 42 under No. 1240719 as of the date 01.04.2003 in respect of services relating to retail, etc. Few other certificates of Registration in different classes for registration of Trademark Westside have also been produced by the Complainant along with the Complaint. The Trademark of the Complainant has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration of domain name

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<mywestside.com> which leads to an active website containing detailed information on the various products available at Westside, stores of the Complainant.

The disputed domain name was registered by the Respondent on 4.4.2013, which wholly incorporates Trademark WESTSIDE of the Complainant.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy¹. Internet users who enter the disputed domain name <westside.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Respondent has registered the disputed domain name <westside.in> incorporating the Trademark WESTSIDE of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the disputed domain name <westside.in> is confusingly similar to the website and Trademark WESTSIDE of the Complainant.

B. Rights or Legitimate Interests

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the

¹ See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

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Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name². The Respondent has registered the disputed domain name consisting of the Trademark owned by the Complainant. The Complainant has been using the Trademark WESTSIDE since very long. The Complainant has not authorized or permitted the Respondent to use the Trademark WESTSIDE.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <westside.in> as per Paragraph 7 of the Policy.

The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark WESTSIDE of the Complainant with the intention to create an impression of an association with the Complainant. The Arbitrator finds that the Complainant has made out a *prima facie* case. Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <westside.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. 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

² See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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."

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

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The Respondent has registered domain name <westside.in> with the .IN Registry incorporated the Complainant's well-known, prior used and registered Trademark WESTSIDE. The domain name is also identical to the prior registered domain of the Complainant i.e. mywestside.com. The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known Trademark WESTSIDE in any manner. The disputed domain name clearly incorporates the Complainant's Trademark WESTSIDE in its entirety. Such unauthorized registration of the domain name by the Respondent incorporating the Trademark of the Complainant suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <westside.in> which incorporates the Trademark WESTSIDE of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

The Arbitrator therefore finds that the disputed domain name <westside.in> has been registered by the Respondent in bad faith.

The Trademark WESTSIDE has been a well-known name. The domain disputed name <westside.in> is confusingly similar to the Complainant's Trademark WESTSIDE, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <westside.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <westside.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <westside.in> be transferred in favour of the Complainant.

7. Decision

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <westside.in> is

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similar to the 'Trademark WESTSIDE in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <westside.in> be transferred to the Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 21.02.2019



Dr. Ashwinie Kumar Bansal
Sole Arbitrator

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