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

IN THE MATTER OF:

The Ritz- Carlton Hotel Company, L.L.C.

10400 Fernwood Road, Bethesda,

Maryland- 20817, U.S.A.

Phone: 91-11-2625-2244

Email: [ip\\_litigation@algindia.com](mailto:ip_litigation@algindia.com)

...Complainant

Vs.

Netlon! Brands Inc.

8F, No. 199 Shifu Road

Taizhou, Zhejian, CN

Zip-318000

Phone: 86013819669399

Email: [mjuc@qq.com](mailto:mjuc@qq.com)

Contact Person: Simon

..Respondent

*Handwritten signature*

## **THE PARTIES:**

The Complainant in the present administrative proceeding is The Ritz- Carlton Hotel Company, LLC. And having its registered address at 10400 Fernwood Road, Bethesda, Maryland- 20817, United States of America. The Complainant in these proceedings is represented through its authorised representative, ALG India Law Offices, 30 Siri Fort Road, New Delhi- 110049, India .

The Respondent in this proceeding is the current registrant of the disputed domain name i.e. Netlon! Brands Inc. having its registered address at 8F, No.199 Shifu Road, Taizhou, Zhejiang, CN, Zip- 318000.

## **THE DOMAIN NAME AND REGISTRAR**

The Domain Name in dispute is <ritzcarlton.in> and the said domain name is registered with Directi Internet Solutions Pvt. Ltd. d/b/a Public Domain Registry.com.

## **PROCEDURAL HISTORY**

I was appointed as the Arbitrator by .In Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <www. ritzcarlton.in >.

.In Registry has supplied the copy of the Complaint to me.

On 24.10.2011, I sent an email to the parties informing them about my appointment as an Arbitrator and requesting the Complainant to supply the copy of the complaint with annexure once again to the Respondent via email and provide me with the details of service record. In the same mail, I requested the respondent to file the reply of the complaint within 15 days from receipt of complaint by email.

On 02.11.2012, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Respondent, where the copy of the Complaint was sent to the Respondent on 26.10.2011.

The Respondent failed to file his reply to the Complaint by 14.11.2011.



Thereafter in the interest of justice and fairness, on 14.11.2011, a reminder was sent to the Respondent to submit his say, if any, on the Complaint by allowing extension till 16.11.2011.

The Respondent failed to file his say/ reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the complaint till the date of this award and as such the proceedings were conducted.

Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and Annexure/ documents.

#### **FACTUAL BACKGROUND:**

The Complainant has raised, *inter-alia*, important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

The Complainant commenced its business activities in 1927 and adopted "Ritz-carton" as its trade mark in the year 2003 in India.

The Complainant is a registered proprietor of various trademarks with the term Ritz-carlton in various countries such as India, China, USA, Canada, Turkey, Germany, Ireland, South Africa, Singapore, Australia, Japan, etc. A list of which is provided by the Complainant. And the mark is a well-known mark having international fame and recognition.

The Complainant has acquired worldwide public recognition and goodwill in connection with providing services like hotels, restaurant, catering, bar and lounge services, provision of general purpose facilities for meeting, conferences and exhibition and reservations services for hotel accommodations.

Adding to it, it is a well-known hotel, hospitality, and timesharing company that operates worldwide. Currently with approximately 38,000 employees, the Complainant manages 73 hotels, resorts and residential condominium buildings in 24 countries worldwide



Apart from this, through its dedication to excellence, the Complainant and its properties under the mark RITZ-CARLTON have received numerous prestigious awards over the year including, for example, the “World’s Excellence in Service Award” given by the ‘World Travel Awards’ in 2010. A list of additional awards received in 2010 and recent preceding years is provided by the Complainant.

The Complainant has claimed that the websites of ritzcarlton.com are very popular amongst the users. And the reservations for the Complainant’s luxury hotels and resorts can be made online through the website hosted at the <ritzcarlton.com> website on a monthly basis, and the website gets even more hits due to repeat visits.

The Complainant is the worldwide proprietor of the well-known trademark ‘RITZ-CARLTON’ which is registered in and is being used in India and in various countries throughout the world. In order to protect its proprietary rights in and to the trade mark “Ritz-Carlton”, the Complaint has registered the same.

#### **PARTIES CONTENTIONS:**

##### **Complainant**

The Complainant contends as follows:

- The Respondent’s domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
- The Respondent has no rights and legitimate interest in respect of the domain name.
- The Respondent has registered and is using his domain name in bad faith.

##### **Respondent**

The Respondent has not filed any response to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

#### **Discussions and Findings:**

As earlier pointed out; the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by him.



Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above fair opportunity has been given to the Respondent to file the reply but no response has been received from his side. Therefore, the Arbitration proceedings have been conducted ex-parte.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable"*

In the present circumstances, the decision of the Arbitrator is based upon the Complainant contentions and evidence and conclusion drawn from the Respondent's failure to reply.

Further, the Arbitrator is of the view that the Complainant has prima facie satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- i. the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- ii. the Registrant has no rights or legitimate interests in respect of the domain name; and
- iii. the Registrant's domain name has been registered or is being used in bad faith.

#### **BASIS OF FINDINGS:**

- 1. The domain name <ritzcarlton.in> is confusingly similar to the trademark 'RITZ-CARLTON' in which the Complainant has rights**

The Complainant contends in the Complaint that the disputed domain i.e. <ritzcarlton.in> is identical and confusingly similar to the Complainant's name and trademark "RITZ-CARLTON".



The Complainant also contended that the mark RITZ CARLTON is a well-known mark having international fame and recognition. The Complainant also has enforceable and exclusive trademark rights throughout the world in the well-known mark RITZ-CARLTON, arising out of its first adoption, registration, use, acquired reputation, secondary meaning and vast and successful record of enforcement.

The complainant has further submitted that through long years of standing marketing, advertisement and promotion, RITZ-CARLTON has become a well-known mark and is commonly perceived to be a trademark owned exclusively by the Complainant, and all the rights to the name and the trademark belongs to the Complainant. Use of the said mark or name in any form by anyone not authorized would amount to infringement of the Complainant's rights.

The complainant has further submitted that disputed domain name is confusingly similar to the Complainant's well-known mark RITZ-CARLTON, as it merely omits the hyphen between the two words and incorporates the Complainant's trademark in its entirety.

The Complainant has relied upon the following cases in support of his argument

In the case of Lego Juris A/S v. Robert Martine, INDRP/125 (NIXI February 14, 2010) the panel held that “ *it is well recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark*”

Ritz-carlton Hotel Company, LLC v Jtravel, FA 105960 (Nat. Arb. Forum April 30, 2002), in which the panel found that the domain name <ritzcarltonhotels.com> is confusingly similar to the mark RITZ-CARLTON held that-

*“the removal or addition of a hyphen does not significantly alter a mark so as to defeat a claim of confusing similarity or identically.”*

The Complainant has further submitted it can be safely conclude that the mark ritz-carlton is a well-known mark of which the Complainant is the owner and the domain name <ritzcarlton.in> is confusingly similar to the mark RITZ-CARLTON.





The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Arbitrator has come to the conclusion from the above facts that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

**2. The Registrant has no rights or legitimate interests in the respect of the domain name**

The complainant has submitted that the Respondent does not have any rights or legitimate interest in respect of the disputed domain name. The Complainant has never authorized or licensed the Respondent to use the RITZ-CARLTON mark. The Complainant does not have any past dealings with the Respondent.

The Complainant has further submitted that the webpage hosted by the Respondent at the disputed domain name does not have any genuine content, which also discloses absence of rights or legitimate interests. The Respondent does not intent to offer any legitimate product or services through the disputed domain.

The Complainant has further submitted that, Respondent has not been commonly known by the domain name and does not claim to have been in various publicly available documents. Moreover, the Complainant contends that the Respondent is not offering any goods or services under the domain name and has also not acquired any trade/service mark rights in the mark RITZ-CARLTON and the website is being used as an interface for links to websites that are competitors of the Complainant.

Another contention of the Complainant is that the Respondent has clearly seized on the unique name of the Complainant's prominent business to trade off its goodwill and reputation to make unjust commercial gains out of the sale of this domain name. Thus, the conduct of the Respondent clearly shows that the Respondent has no rights or legitimate interest in the disputed domain name and the same has been registered by the Respondent only to trade upon the goodwill of the Complainant's well-known mark i.e. 'RITZ-CARLTON'.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.



Moreover Respondent has not filed any reply and documents to show that they were involved in the bonafide offering of goods and services. Adding to it, in this case it was found out that Respondent has not offered any plausible reason or justification for registering or using the domain name.

Arbitrator has come to the conclusion from the above facts and annexure that no bonafide goods or services are being offered by the respondent under the domain name ritzcarlton.in. And thus the Respondent has no legitimate rights and interest in respect of the domain name <ritzcarlton.in>

**3. The Registrant domain name has been registered or is being used in bad faith**

The Complainant has alleged that the Respondent has registered the disputed domain name in bad faith and it can be seen by the fact that the Respondent registered the disputed domain name only in 2011, by which time the Complainant had been using the marl RITZ-CARLTON for over 85 years.

The Complainant further submits that in the view of

1. The Complainant registered and common law rights in the mark RITZ-CARLTON,
2. The use of the mark by the Complainant for decades prior to the Respondent's registration of the disputed domain name,
3. Complainant's prior use of the mark RITZ-CARLTON on the Internet, in other domain names and as a company name/ trade name/trade mark,
4. Apart from this have also owned tremendous fame, goodwill and reputation associated with the Complainant's trademark,
5. The contents of Respondent webpage ,

it is impossible to conceive of any circumstance in which the Respondent could have registered the disputed name in good faith or without knowledge of the Complainant's rights in the well- known mark RITZ-CARLTON.

The Complainant has further submitted that that, in the present case the Respondent has no affiliation with the Complainant and has registered the dispute domain name only because it





is almost identical with the Complainant's well-known trademark "RITZ-CARLTON", which itself is evidence of bad faith registration and bad faith use.

In support of its contentions the Complainant has relied upon the case of

Yola Inc. v Karan, INDRP/154 (NIXI October 4, 2010) the Panel held that

*"Registration of a domain name that is confusingly similar or identical to a famous trademark by an entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use".*

Further the Complainant allege that the Respondent is using the disputed domain name with full knowledge and intent that internet users seeking to find the Complainant's website would instead be tricked into encountering its webpage. And the Respondent's use of domain name causes a likelihood of confusion because it creates initial interest confusion.

The complainant has relied upon the decision of The Stanley Works v Mcneil & Associates, FA 094671 (Nat. Arb. Forum August 31, 2002) - the Panel found bad faith on the basis of initial interest confusion.

The Complainant has further contended that given the worldwide prominence and the well-known status of the Complainant's mark RITZ-CARLTON, thus it is inconceivable that the Respondent could make any active use of the disputed domain name without creating a false impression of association with the Complainant.

In Pavillon Agency, Inc v Greenhouse Agency Ltd, D2000-1221 (WIPO Dec. 4, 2000) the panel has held that *"bad faith when domain names were so obviously connected with the Complainant that the use or registration by another other than Complainants suggests opportunistic bad faith"*.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

Thus, in the light of the aforementioned the Arbitrator has come to the conclusion that it is apparent that the Respondent's registration and use of the domain name <ritzcarlton.in> is in bad faith.



## **DECISION**

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint. Moreover, Respondent has failed to show his legitimate interest in the domain name and did not file any reply despite of enough opportunities provided to him.

.IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. [www.ritzcarlton.in](http://www.ritzcarlton.in) to the Complainant. The Award is accordingly passed on this 30<sup>th</sup> day of December, 2011.



**Rajeev Singh Chauhan**

**Sole Arbitrator**

**Date: 30.12.2011**