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3. In case of any discrepancy please inform the Competent Authority.

ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram

UNITED STATES POLO ASSOCIATION
1400 CENTREPARK BLVD, SUITE 200,
WEST PALM BEACH, FLORIDA
UNITED STATES OF AMERICA

...Complainant

Versus

MR. MILAN SRIVASTAVA
PEKINI STREET TBILSI,
GEORGIA, ZIP: 0151

... Respondent

1. **The Parties**

- 1.1 The Complainant is United States Polo Association of the address 1400 Centrepark Blvd, Suite 200, West Palm Beach, Florida, United States of America, represented by its counsel, Kochhar & Co., 17th Floor, Nirmal Building, Nariman Point, Mumbai-400 021, Maharashtra, India.
- 1.2 The Respondent is Milan Srivastava of the address Pekini Street Tbilsi, Georgia, Zip - 0151.

2. **The Domain Names and Registrar**

- 2.1 The disputed domain name is <uspoloassn.in> registered with GoDaddy.com, LLC.

3. **Procedural History**

- 3.1 Arbitrator received an email on September 11, 2015 inquiring if NIXI can avail its services as an arbitrator for the dispute pertaining to the domain name <uspoloassn.in>. Arbitrator confirmed availability by email of the same date and also sent the signed Statement of Acceptance and Declaration of Impartiality and Independence as required by the Rules.

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- 3.2 The .IN Registry appointed Divya Balasundaram as the Sole Arbitrator on September 21, 2015 and Arbitrator received soft copy of the Complaint along with Annexures on September 22, 2015. Hard copy was also received by courier.
- 3.3 Arbitral proceedings were commenced by Arbitrator on September 22, 2015 by issuance of a notice by email to the Respondent directing him to file his reply to the Complaint within 15 days. Copy of complaint and annexures were also sent to the Respondent vide email.
- 3.4 The Arbitrator has sent notice of the complaint and documents through email which is the preferred method of communication in these proceedings. The emails sent to the provided email address of the Respondent have not been returned as undelivered.
- 3.5 Steps have been taken by the Complainant to serve the papers by courier to the Respondent. It is pertinent to mention here that the packet containing the complaint and annexures were not delivered to the Respondent's physical address despite repeated attempts by the courier company due to "insufficient address". It appears that the Respondent has not provided a complete or correct postal address, despite being duty bound to do so. All reasonable measures have been taken to serve the notice to the Respondent as prescribed in the INDRP Rules of Procedure.
- 3.6 The Respondent has not entered appearance nor filed any reply.
- 3.7 Arbitrator sent email on October 14, 2015 to Respondent notifying it of its default.
- 3.8 The language of these proceedings in English.

1. Background of the Complainant and its rights in the trademark US POLO ASSOCIATION as stated in the Complaint:

- 4.1 The Complainant is a company incorporated under the Laws of the United States of America having its head office at 1400 Centrepark Blvd, Suite 200, West Palm Beach, Florida, USA. It is the governing body of the sport of polo in the United States of America, and was founded in the year 1890.
- 4.2 The Complainant's trademarks and logos are registered worldwide and managed by USPA Properties Inc., a wholly owned subsidiary of the Complainant.

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- 4.3 The Complainant coined, conceived and adopted the trademark "U.S. POLO ASSN." in and around the year 1890 and since then has been openly, continuously and extensively using the said mark as part of its trade name, corporate name, business name, trading style, trade mark worldwide. The Complainant has applied for registration of its trademark "U.S. POLO ASSN." and other trademarks in both word and logo forms like "U.S. POLO ASSOCIATION", "USPA", in over 70 countries including India.

Extract of the online status of the Complainant's trademarks available on <http://www.ipindia.nic.in> is provided at annexure A. List of the Complainant's international registrations along with copies of the extract of the online registers are at Annexure B and B1.

- 4.4 The Complainant is also the owner of several domain names and websites which are accessible world over and are available for use by users globally including those in India. The said websites contain extensive information about the Complainant and its products marketed and sold under the trademark US POLO ASSOCIATION worldwide. Print outs of the Complainant's websites and Whois Record are provided at Annexure C.
- 4.5 The Complainant partners with licensees in North and South America, Asia, Europe, Scandinavia, Russia and the Middle East to provide consumers with apparel, sportswear, accessories, luggage, watches, shoes, small leather goods, eyewear, home furnishings and more. The Complainant has over 70 licensees across the world.
- 4.6 The Complainant began to commercially license its trademarks in the early 1980s. The Complainant entered the Indian market in early 2007 through a licensing agreement with Arvind Mills for manufacturing and selling products under the US POLO ASSOCIATION trademarks from the year 2009. In the United States alone, the Complainant has over 250 stores/outlets; and in India, over 50 stores/outlets located in major cities like Delhi, Mumbai, Bangalore, Hyderabad, Bhopal, Ambala, Bikaner, Ahmedabad, Chandigarh, Chennai, Indore, etc. selling products bearing the US POLO ASSOCIATION trademarks.
- 4.7 Complainant's products sold under the trademark US POLO ASSOCIATION can also be purchased online through the Complainant's websites and various other shopping websites such as www.us-polo.org, www.usaproperties.com, www.uspa.com.cn, www.thearvindstore.com, www.shopperstop.com,

www.sanspareiloptical.com; www.amazon.com.
available throughout the world, including India.

This facility is

- 4.8 The Complainant's products bearing the mark US POLO ASSOCIATION are well known and are sold in more than 135 countries such as India, France, Germany, Australia, USA, Switzerland, Bosnia & Herzegovina, China, Serbia, Mexico, Russia, Moldova, UK, Greece, Italy, Japan, Chile, Kazakhstan, Estonia, Iran, Bahrain, Oman, New Zealand, Portugal, Spain, Norway, Ecuador, Jordan, Israel, Czech Republic, UAE, South Africa, Singapore, Taiwan, Qatar, Hungary, South Korea, Poland, Peru, Kuwait, Saudi Arabia, Finland, etc. Since its incorporation in 1890, the Complainant has realized total global retail sales in excess of \$1 billion.
- 4.9 The Complainant's products under its trademark have been widely promoted through print and audio-visual media including T.V., newspapers, magazines, journals, shopping festivals, social media etc. all of which enjoy a wide viewership, circulation and readership all over the world, including India. Some of the media wherein the Complainant's products under the trademark US POLO ASSOCIATION have featured include Vogue, Esquire, Madame, Marie Claire, WWD, ELLE, GQ, Monsieur, Cosmopolitan, Bombay Times, Brand Equity, etc. which are widely circulated in India.
- 4.10 In India, the Complainant offers a wide range of goods such as sportswear for men, women, and children, accessories, luggage, watches, apparel, shoes, eyewear, ophthalmic eyewear frames, reading glasses, eyeglass cases and covers, sun clips, home furnishings, and more, through its independent retail stores, department stores, U.S. Polo Assn brand stores and its Licensee "Arvind Brands". A chart of the Complainant's licensing structure worldwide for its goods is provided at Annexure D. The Complainant spends over INR 30-40 Crores and 10 per cent of annual turnover on marketing and advertising the U.S. POLO ASSN. brand in India.
- 4.11 The business and products offered under the Complainant's trademark are characterized in a unique and innovative style of advertising that catapults its brand into the minds of the people at large. The U.S. POLO ASSN. brand has been recognized by DNR Magazine as a Top 40 megabrand in the United States.
- 4.12 By virtue of extensive promotion, long-continued worldwide use and marketing the U.S. POLO ASSN. trademarks enjoy considerable goodwill and fame.

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5. Respondent and its registration and use of the disputed domain name

5.1 As per the Complainant, in and around August 2015, it became aware of the Respondent's impugned website <www.uspoloassn.in>. Upon a search of the WHOIS domain name database, the Complainant noticed that the disputed domain name was registered in the name of the Respondent on September 18, 2014 with GODADDY.COM. Extract of WHOIS record is provided at Annexure E.

6. Contentions of the Complainant in establishing the 3 elements required under the INDRP

Element 1 - In support of this element, i.e., the disputed domain name is identical or confusingly similar to Complainant's trademark, the Complainant has submitted that:

- 6.1 The disputed domain name <www.uspoloassn.in> is identical and/or confusingly similar to the Complainant's prior registered, used and well-know trademark "U.S. POLO ASSN." as it incorporates and reproduces the Complainant's trademark "U.S. POLO ASSN." in its entirety and differs only in respect of .in ccTLD which is insignificant.
- 6.2 A mere glance at the disputed domain name gives rise to confusion as to the origin of the domain name and shows the malafide intention of the Respondent in registering the same. The Respondent has blatantly copied the Complainant's entire trademark without changing even a single letter which constitutes violation of the Complainant's rights in the trademark U.S. POLO ASSN.
- 6.3 The members of trade and public all over the world are acquainted with the Complainant's well known trademark "U.S. POLO ASSN." and hence any use of an identical/confusingly similar mark/domain name by the Respondent will cause confusion amongst the Internet users as to the origin or source of the domain name. The Internet users may believe that the Respondent's impugned website is associated/affiliated/connected to the Complainant or licensed/authorized by the Complainant.
- 6.4 The disputed domain name <www.uspoloassn.in> was created on September 18, 2014 which is subsequent to the Complainant's domain name www.uspoloassn.com which was created on March 14, 2003. Such subsequent registration of the identical/confusingly similar domain name amounts violation of the Complainant's rights in the trademark "U.S. POLO ASSN." and also amounts to violation of the INDRP rules.

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- 6.5 An unwary web browser while searching for details of the Complainant's business in the .IN domain is likely to be directed to the webpage's linked to the domain name in issue. Such browsers may presume a connection between the business and products of the Complainant and Respondent. The public may believe that the Respondent is in some way associated or affiliated or connected with the Complainant or has been licensed or authorized to use the Complainant's trademarks.

Element 2 - In support of this element, i.e., the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name, the Complainant has submitted that:

- 6.6 The Complainant has never assigned, licensed or in any way authorized the Respondent to register or use its trademarks in any manner whatsoever.
- 6.7 The Respondent has registered the disputed domain name on September 18, 2014 by which time, the Complainant had already garnered considerable goodwill and reputation amongst the consumers across the world for its trademarks. Further, the said trademark is also a part of the Complainant's corporate name. It is obvious that the Respondent was aware of the Complainant's prior registered and used trademark and domain name U.S. POLO ASSN. and its adoption of an identical or confusingly similar domain name is in bad faith.
- 6.8 The Respondent has not uploaded any website on the said domain name. Upon clicking on the domain name a user is taken to a webpage where a message features "This Web page is parked for FREE, courtesy of GoDaddy.com." This shows the Respondent's malafide intention in registering the disputed domain name. The Respondent has registered the disputed domain name with the intention to divert traffic or to block all attempts of the Complainant from registering the domain name in question for furthering its business interests, thereby creating a dent in the Complainant's business.
- 6.9 The Respondent is neither commonly / popularly known in the public nor has applied for any registration of the mark "U.S. POLO ASSN." or any similar mark or has registered his business under the said name with the Ministry of Corporate Affairs, India. Further, the Respondent is not offering any goods/services under the impugned domain name. The Respondent is not operating any active website under the impugned domain name <www.uspoloassn.in>.



Element 3 - in support of this element, that the disputed domain name was registered and is being used in bad faith, the Complainant contends that:

- 6.10 The Respondent was aware of the Complainant's registrations as the same are a matter of the public record and due to the extensive and wide publicity across the world including India. The Respondent has deliberately acquired the domain name www.uspoloassn.in primarily for the purpose of misleading the users or diverting the users to his website or for selling, renting, or otherwise transferring the domain to the Complainant or its competitor, for a valuable consideration and to encash upon the goodwill and reputation of the Complainant and its "U.S. POLO ASSN." brand.
- 6.11 The Respondent has not uploaded any website on the disputed domain name. Annexure F shows the blank webpage of the Respondent's website.
- 6.12 The Respondent has not used the disputed domain name in respect of any goods or services, which shows the Respondent's dishonesty in registering the disputed domain name.
- 6.13 The Respondent has registered the disputed domain name primarily for the purpose of selling or otherwise transferring the same to the Complainant or to a competitor of the Complainant for valuable consideration.
- 6.14 The Respondent could transfer or sell the domain name to a competitor of the Complainant who could damage the goodwill or reputation of the Complainant by inserting material prejudicial to the Complainant. This could lead to tarnishment of the Complainant's image if the domain name falls into the hands of the competitors of the Complainant.
- 6.15 The Respondent's registration of the disputed domain name is in violation of the .IN Registry policy. The Policy requires the parties registering domain name to satisfy the following aspects:
 - a. The statements made by the Registrant in the application form are complete and accurate.
 - b. To the Registrant's knowledge, the registration of the domain name will not infringe upon or violate the rights of any third party.
 - c. The Registrant is not registering the domain name for an unlawful purpose, and
 - d. The Registrant will not knowingly use the domain name in violation of applicable laws or regulations.

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The registration by the Respondent of the impugned domain name does not satisfy the above mentioned criteria.

- 6.16 The Respondent was under an obligation to conduct a trademark search, which would have clearly revealed the trademark registrations in favor of the Complainant. Breach of this provision of the Policy infringes the legal rights of the Complainant.
- 6.17 Bad faith on the part of the Respondent is apparent from the facts and circumstances of the case and therefore the Respondent is disentitled to maintain and/or renew the impugned domain name. The Respondent has no justification in adopting the name as its domain name, other than for wrongful and illegal gains.
- 6.18 The Complainant has referred to case law in support of its various contentions.

7. Discussions

- 7.1 At the outset, it is to be mentioned that the Arbitral Tribunal has been properly constituted. Under paragraph 4 of the INDRP, the Complainant must prove each of the following three elements of its case - the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith. From a detailed reading of the Complaint and supporting annexures, the Arbitrator finds that the Complainant has established all the three elements. The finding is made keeping in mind these specific aspects:
- 7.2 The Complainant was founded in the year 1890 and it is the governing body of the sport of polo in the United States of America; the trademark "U.S. POLO ASSN." and variants thereof were coined by it in and around the year 1890 and since then it has been openly, continuously and extensively using the said mark as part of its trade name, corporate name, business name, trading style, trade mark worldwide;
- 7.3 The Complainant owns trademark and domain name registrations for 'US POLO ASSOCIATION' and variants; a basic search by the Respondent would have revealed the Complainant's trademark rights;
- 7.4 The Complainant has been selling a wide range of products bearing the US POLO ASSOCIATION in over 135 countries through hundreds of outlets and through online platforms and has realized total global retail sales in excess of \$1 billion;

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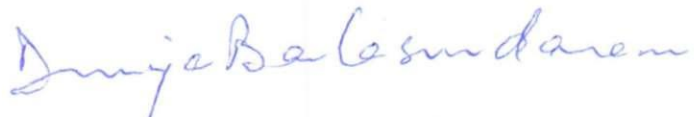
- 7.5 The Complainant has spent huge amount of money on the promotion and advertisement of its products under the trademark 'US POLO ASSN';
- 7.6 On account of long standing adoption and extensive use and publicity, the Complainant's trademark is identified by the purchasing public solely with the Complainant, who has acquired enormous goodwill in its trademarks in India and internationally;
- 7.7 The disputed domain name is confusingly similar to the Complainant's trademark "U.S. POLO ASSN." as it incorporates and reproduces the Complainant's trademark "U.S. POLO ASSN." in its entirety without changing even a single letter;
- 7.8 Use of the impugned domain name by the Respondent will cause confusion amongst the Internet users as to the origin or source of the domain name as they may believe that the Respondent's impugned website/domain name is connected to the Complainant or authorized by it, which is not the case;
- 7.9 The disputed domain name was created on September 18, 2014 which is much subsequent to the Complainant's domain name www.uspoloassn.com created on March 14, 2003. Such subsequent registration of the confusingly similar domain name amounts violation of the Complainant's rights in the trademark "U.S. POLO ASSN." and also amounts to violation of the INDRP rules. Given the fame and repute of the Complainant's trademark, the Respondent is deemed to have been aware of the same and its adoption of the impugned domain name without any justification is in bad faith;
- 7.10 The Respondent is not operating any active website under the impugned domain name nor offering any goods/services under the same. The webpage of the Respondent's site simply states "This Web page is parked for FREE, courtesy of GoDaddy.com" which shows that the Respondent has only registered the same to divert traffic or block attempts of the Complainant from registering the domain name in its favour;
- 7.11 The Respondent is not named US POLO ASSN nor is he commonly known by this name. He has also not applied for registration of the mark "U.S. POLO ASSN." or any similar mark nor registered his business under the said name with the Ministry of Corporate Affairs, India. There seems to be no reason for adopting the impugned domain name except for its association with the Complainant;

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- 7.12 The Respondent seems to have acquired the impugned domain name for diverting users to his website or for selling it to the Complainant or its competitor, for a valuable consideration. The Respondent could transfer the domain name to a competitor of the Complainant who could damage the goodwill or reputation of the Complainant by inserting material prejudicial to the Complainant which could lead to tarnishment of the Complainant's image;
- 7.13 The Respondent's registration of the disputed domain name does not satisfy the various criteria of the .IN Registry policy and this further adds to the element of bad faith adoption on the part of the Respondent.
- 7.14 The Respondent was given sufficient time to reply to the Complaint, however, Respondent has chosen not to submit any response.

8. Decision

- 8.1 For all the foregoing reasons, the Complaint is allowed.
- 8.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <uspoloassn.in> be transferred to the Complainant.
- 8.3 The Parties shall bear their own costs.



DIVYA BALASUNDARAM

ARBITRATOR

Date: November 13, 2015

Place: New Delhi, India