



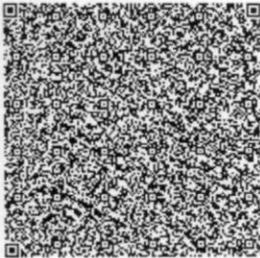
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate Issued Date : 05-Feb-2013 02:45 PM
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ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure

IN THE MATTER OF:

Western Digital Technologies, Inc.

...Complainant

Versus

Liheng (of Just Traffic Supervision Consulting)

...Respondent

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3355 Michelson Drive,
Suite 100,
Irvine,
California 92612

...Complainant

VERSUS

Liheng (of Just Traffic Supervision Consulting)Respondent
Room 1326, Kexin Building,
Hongkong - 999077

Disputed Domain Name:

<westerndigital.in>

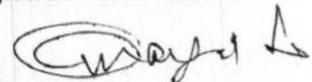
1. **THE PARTIES:**

The Complainant in this arbitration proceeding is Western Digital Technologies, Inc 3355 Michelson Drive, Suite 100, Irvine, California 92612 represented through its attorneys, Kochhar & Co., 11th Floor, Tower - A, DLF Towers, Jasola, Jasola District Centre, New Delhi-110 025, India.

The Respondent in this arbitration proceedings is Mr. Liheng of Just Traffic Supervision Consulting Room 1326, Kexin Building, Hongkong - 999077.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <westerndigital.in> has been registered by the Respondent. The Registrar with whom



the disputed domain is registered is IN Registrar d.b.a. inregistrar.com (R123-AFIN).

3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Mr. Liheng of Just Traffic Supervision Consulting, Room 1326, Kexin Building, Hongkong-999077. The NIXI verified that the Complaint and the annexures to the Complaint and was satisfied that the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules") were complied with.

3.1 The Panel submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).

3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **1st July, 2013**. By e-mail dated 04th July, 2013, The Centre intimated the panel that the document (s) pertaining to the disputed domain name have not been delivered to the Respondent and submitted the non-delivery report for the same.

The Complainant was notified about the non delivery of documents by my email dated August 01, 2013 with the direction to the complainant to forward the complaint along with all the Annexures to the



Respondent in Electronic Form on the registered email ID as mentioned in WHOIS's record of the disputed domain name.

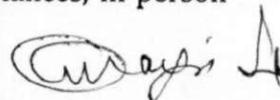
The complainant forwarded the complaint along with Annexures to the respondent electronically on 02nd August, 2013.

The panel notified the parties about the appointment of the panel and delivery of complaint along with all the annexures. It was intimated to the Respondent to file its response, if any, within 10 days of the communication dated 06th August, 2013.

- 3.3 In accordance with the rules, paragraph 5(c), the Respondent was notified by me about the commencement of arbitration proceedings on 06th August, 2013 and the due date for filing his response. The Respondent did not file any response to the Complaint filed by the Complainant
- 3.4 The Respondent failed and/or neglected and/or omitted to file formal response to the Complaint within time as was granted to him by notices dated **01st August, 2013 & 06th August, 2013.**

Therefore, the Panel has no other option but to proceed with the matter on the basis of the pleadings, documents and material on record.

- 3.5 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person



hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

4. **FACTUAL BACKGROUND**

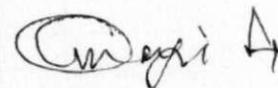
4.1 The Complainant in these administrative proceedings is Western Digital Technologies, Inc 3355 Michelson Drive, Suite 100, Irvine, California 92612.

4.2 The Complainant is a corporation organized and existing under the laws of the State of Delaware having its corporate office and principal place of business at, of the address 3355 Michelson Drive, Suite 100, Irvine, California 92612.

4.3 The Complainant is the owner of the trademark/trade name and brand WESTERN DIGITAL and other WESTERN DIGITAL formative trademarks.

4.4 The present dispute fall within the scope of INDRP and the Constituted Panel appointed by INDRP has the jurisdiction to decide the same. The Registrar of the disputed Domain Name has adopted the INDRP Rules, as per its Registrar Accreditation Agreement.

4.5 The complainant objects to the registration of disputed domain name <westerndigital.in> in the name of the respondent and seek the relief of transfer thereof.

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5. **PARTIES CONTENTIONS**

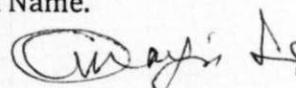
5A **COMPLAINANT**

5A(1) The Complainant is the registered proprietor of the trademark WESTERN DIGITAL and WESTERN DIGITAL formative marks in the US.

5A(2) The Complainant further submits that in India, the trademark WESTERN DIGITAL has been registered under No. 1345682 dated March 18, 2005 for "computer products, namely, disk drives".

5A(3) The Complainant further submits that in addition to the aforesaid registrations, the Complainant has the trademark WESTERN DIGITAL registered in many other countries such as Argentina, Australia, Canada, Chile, China, Croatia, E.U., Egypt, Guatemala, Honduras, Hong Kong, Israel, Japan, Malaysia, Mexico, New Zealand, Nicaragua, Paraguay, Philippines, Russia, Saudi Arabia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Turkey, the United Arab Emirates and Ukraine.

5A(4) The Complainant further submits that as a result of the Complainant's marketing and promotion of its good and/or services under its trademarks/trade name WESTERN DIGITAL, the trademark has gained worldwide recognition and goodwill and has become well-known. Moreover, the Complainant's trademark/ trade name has firmly been associated with the Complainant prior to the Respondent's registration of the Disputed Domain Name.

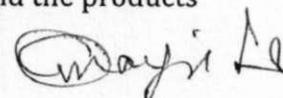


5A(5) The Complainant submits that the Complainant maintains websites and own several domains which contain "westerndigital" a few of which are westerndigital.com, westerndigital.info, westerndigital.biz, westerndigital.mobi, westerndigital.us, westerndigital.asia, westerndigital.cc, westerndigital.co, westerndigital.me, westerndigital.tv, which were created on January 21, 1998, September 12, 2001, March 28, 2002, October 15, 2006, April 24, 2002, March 17, 2008, August 22, 2008, June 14, 2010, December 02, 2009, August 23, 2000 respectively.

5A(6) The Complainant further submits that around July 1971, the Complainant adopted the trademark/corporate name WESTERN DIGITAL for the goods/services of its manufacture and sale. The trademark WESTERN DIGITAL has also been used as a part of the Corporate trade name/ domain name of the Complainant for decades.

5A(7) The Complainant further submits that the complainant's trademark WESTERN DIGITAL has been featured in a number of online publications in India.

5A(8) The Complainant submits that the trademark WESTERN DIGITAL has been extensively advertised and promoted on the internet *inter alia* through the Complainant's websites www.wdc.com; <http://store.westerndigital.com/store/wdus/DisplayHomePage> etc. The said websites contain extensive information about the Complainant and the products



marketed and also under the trademark and corporate name WESTERN DIGITAL.

5A(9) The Complainant further submits that the Complainant has several sister concerns which also contain "WESTERN DIGITAL" in their corporate names.

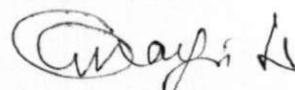
B. RESPONDENT

5B(1) The Respondent was given an opportunity to file his/her response to the Complaint by the panel by its notices dated 01st August, 2013 & 06th August, 2013. However, the respondent has failed to file any response within the prescribed time or to seek any extension of time. The case of the complainant, therefore, remained un rebutted.

6. DISCUSSIONS AND FINDINGS

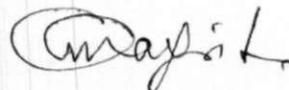
6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed there under in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the Policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for

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deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 In accordance with the principles laid down under Order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.
- 6.5 The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.



- 6.6 The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain un rebutted and unchallenged. There is no dispute raised to the authenticity of the documents filed by the Complainant.
- 6.7 The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <westerndigital.in> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.
- 6.8 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.9 The decision of Hon'ble Supreme Court of India in the matter of **JahuriSah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).
- 6.10 The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.



6.11 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

6.12 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

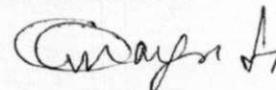
A. **IDENTICAL OR CONFUSINGLY SIMILAR**

6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

6A.2 The Respondent registered the Disputed Domain Name on April 20, 2013.

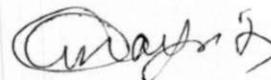
6A.3 The Complainant submits that the Disputed Domain Name is identical to the Complainant's trademarks, trade name and domain name. The dominated and distinctive feature of the Disputed Domain Name is the incorporation of the Complainant's trademark, trade name and domain name as it is.

6A.4 On the date the Respondent registered the Disputed Domain Name <westerndigital.in>, the Complainant had already been using WESTERN DIGITAL as a trademark and part of the trade name and domain name and had firmly established rights in such a mark. This fact is established by the documents filed as Annexure E, F and G. Furthermore, at the time the

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Respondent registered the Disputed Domain Name, the Complainant's WESTERN DIGITAL trademark and other formative trademarks and the trade name had become a famous mark as is established from Annexure H, I and J. The Respondent has failed to show any right to the Disputed Domain Name which are superior to the Complainant's rights in its WESTERN DIGITAL marks, as evidenced by the Complainant's prior and well-known use of the mark and registration thereof. Nor the Respondent could demonstrate that it was unaware of the Complainant's trademark/ trade name at the time the Disputed Domain Name was registered on account of his failure to respond to the averments made in the complaint. Since the Complainant's trademark/ trade name has been proved to be well-known and the Respondent has failed to show any prior rights in this mark, the only reason the Respondent could have registered a domain name which incorporates the Complainant's WESTERN DIGITAL marks was with the intention to trade upon the fame of the Complainant's trademark/ trade name be selling the Disputed Domain Name for substantial commercial gain, in violation of Section 4(b) of the INDRP.

6A.5 Because of confusing similarity of the marks that Internet users are likely to believe that the Disputed Domain Name is related to, associated with, or authorized by the Complainant. Considering the Complainant already uses sites such as <westerndigital.com>; <store.westerndigital.com>. as is apparent from Annexure H.

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The internet users would be confused into thinking that the Respondent enjoys authorization of the Complainant to do business in India or is in fact their Indian website considering that the country code top-level domain name in the disputed domain name is ".IN". It is precisely because of this association with the Complainant's trademark/trade name that the Respondent saw the value in the Disputed Domain Name and registered it.

6A.6 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name <westerndigital.in> is identical and/or deceptively similar to the earlier registered trademarks and Domain names of the Complainant. The whole of Complainant's trade mark /domain name has been incorporated in the disputed domain name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name <westerndigital.in> is identical and/or confusingly similar to the Trademark of the Complainant.

6A.7 For all the above cited reasons, it is established that the Complainant has trademark rights in the WESTERN DIGITAL trademark and that the disputed domain name is identical or confusingly similar to this trademark. Therefore, the condition of Paragraph 4(a) (i) of the IN Policy is fulfilled.

B. RESPONDENT HAS NO RIGHT OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME

6B.1 The Respondents could not demonstrate any legitimate interest in the Disputed Domain Name. The Respondent registered the Disputed Domain Name after the Complainant's rights in the WESTERN DIGITAL marks were already established through use and registrations.

In a case where the Complainant's trademarks are in existence prior in time and are well known and recognized, there can be no legitimate interest of the Respondent in identical or deceptively similar mark.

6B.2. In *Veuve Clicquot Ponsardin v. The Polygenix Group Co.*, WIPO Case No. D2000-0163 it was held that bad faith is found where a domain name *"is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith"*.

In *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. D2000-0403 it was held that *"...given the relative notoriety of the Complainant's mark as well as the ease for any user of the Internet to assess on its own whether or not the registration and use of a domain is likely to encroach on another's rights, the Panel is of the opinion that the Respondent acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of*

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his out-of-pocket costs directly related to the Domain Name, an act which constitutes bad faith pursuant to paragraph 6(i) of the Policy.*

6B.3 There exists no relationship between the Complainant and the Respondent that would give rise to any license, permission, or authorization by which the Respondent could own or use the Disputed Domain Name, which is identical or confusingly similar to the Complainant's trademark/trade name. the Respondent is not commonly known by the Disputed Domain Name and is not making legitimate non-commercial or fair use of the Disputed Domain Name.

6B.4 The respondent has not rebutted claims of the complainant.

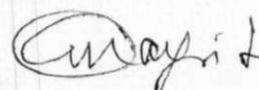
6B.5 Therefore, this panel is satisfied that the respondent has no rights or legitimate interest in respect of the disputed domain name.

C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

6C.3 The bad faith in registering the impugned domain name by the respondent is apparent from the fact

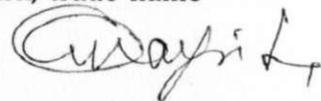
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that the same has been registered for the sole purpose of sale as stated in the preceding complaint on his website the respondent has openly called for bids for sale of impugned domain name. Numerous decisions support these propositions are in favour of the complainant.

6C.4 It is apparent that both at the time of registration and continuing to the present, the Respondent has sought to profit from an unauthorized association with the Complainant's trademark/trade name. It is clear upon viewing the content of the web site at the Disputed Domain Name that the Respondent registered the Disputed Domain Name for purposes of selling it; this offer for sale is indisputable evidence that the Respondent registered and is using the Disputed Domain Name in bad faith.

6C.5 In *Playboy Enterprises International, Inc. v. Hector Rodriguez*, WIPO Case No. D2000-1016 (playboychannel.com and playboynetwork.com, *"People, who manifest an intent to traffic in domain names that incorporate well-known or famous trademarks, as the Respondent does here, simply do not expend their efforts with the sole intention of relinquishing those domain names for just their out-of-pocket registration costs. The goal of their efforts, simply put, is an expectation of receiving an adequate reward, i.e. sufficient profit, from this trafficking."* Transfer awarded.

6C.6 Given the fame of the Complainant's trademark/trade name as a trademark, trade name

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and domain name, it is not possible to conceive of a use by the Respondent of the Disputed Domain Name that would not constitute an infringement of the Complainant's rights in its Trademark. Mere registration by the Respondent of the Disputed Domain Name is thus further evidence of the Respondent's bad faith.

6C.7 The activities of the Respondent clearly show bad faith and usurpation of the recognition and fame of the Complainant's trademark/trade name to improperly benefit the Respondent financially, in violation of the applicable trademark and unfair competition laws. Moreover, these activities demonstrate bad faith registration and use of the Disputed Domain Name in violation of the INDRP under paragraph 6 which promulgates that bad faith can be found where there is evidence of:

- a. Circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of [Respondent's] documented out-of-pocket costs directly related to the domain name; or
- b. [Respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the

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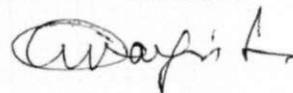
mark in a corresponding domain name, provided that [Respondent] has engaged in a pattern of such conduct; or

- c. By using the domain name, the [Respondent has] intentionally attempted to attract Internet users to the [Respondent'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 [Respondent's] website or location or of a product or service on the Registrant's website or location.

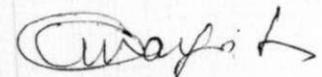
The facts provided above make it clear that the Respondent was and is taking advantage of the goodwill and fame of the Complainant's well-known trademark/trade name for its own substantial commercial profit and gain.

6C.8 The Respondent registered and has used the domain name in bad faith as defined under paragraph 6(iii) of the INDRP. When internet users log onto the disputed domain name <westerndigital.in>, clicking on top on the page allows visitors to bid for the website. This clearly evidences the fact that the Respondent has merely blocked this website with the sole intention of further selling it for gain.

6C.9 In Bennett Coleman & Co. Ltd. v. Steven S. Lalwani (Case No. D2000-0014) and Bennett Coleman & Co Ltd v. Long Distance Telephone Company (Case No. D 2000-0015) decided by WIPO, the complainant, publisher of the daily newspaper 'The Economic



"Time" and "The Times of India" held domain names, <economictimes.com> and <timesofindia.com> for publication of their respective newspaper. The two respondents had registered the sites <theeconomictimes.com> and <thetimesofindia.com> and the Complainant contended that this was use of identical marks in which it had prior rights. Moreover, the sites <thetimesofindia.com> redirected traffic to the site <indiaheadlines.com> while the site <theeconomictimes.com> redirected traffic to <ifindyourperfectmate.com> without having any legitimate interests in respect of the domain names. Hence, the Complainant alleged that the respective respondents' registrations and use of the domain name was in "bad faith" in the sense that their use amounted to an attempt to intentionally attract, for commercial gain, internet users to their websites by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of those websites and the services offered thereon. The Administrative Panel held that it is not a sufficient answer to suggest that defendant will dispel any misleading first impression by use of a different design of the web site. The Panel further held that the necessary implication is that the domains were specifically selected in order to take advantage of the Complainant's very considerable reputation in the two titles of its publications by misleading internet users into believing that the respondent's sites came from or were associated with the Complainant. The Panel



ordered that the two domain names be transferred to the Complainant.

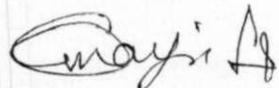
6C.10 The Respondents do not dispute any of the contentions raised by the Complainant. The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name <westerndigital.in> was registered by the respondents in bad faith and to attract the internet users, through disputed domain, to the website of the competitor.

6C.11 The Panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. **DECISION**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the Transfer of the domain name <westerndigital.in> to the Complainant.

The Respondent is also directed to pay cost of Indian Rupees 50,000/- (Rupees Fifty thousand only) to compensate the Complainant towards the cost of proceedings.



AMARJIT SINGH
Sole Arbitrator

Dated: December 14, 2013