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2019

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अनु.क्र. ६६०७ दि. ०१/११/१९ मु.शु.रकम. ५०००/-  
 उस्तावा प्रकार काबिलेशन कांड  
 एका नोंदणी करणार आहेक का ? होय/नाही  
 पिकाकतीचे वर्णन  
 मुद्रांक वि.सं. क्रमांक व संव. शिबीर विभाग इलाहाबाद  
 एका काबिलेशन, मुद्रांक  
 मुद्रांक वि.सं. क्रमांक व संव. काबिलेशन  
 एका काबिलेशन व संव. काबिलेशन



मुद्रांक विकत घेणाऱ्याची सही  
 सर्व माहिती मिनि ३ वेळातच  
 परवाना क्र. २२०१०११  
 ४२५ ब, शनिवार पेठ पुणे-३

ज्या कारणासाठी ज्यांनी मुद्रांक सत्तेची वेला त्यांनी तक्रार करणाऱ्याची  
 मुद्रांक खरेदी करणाऱ्यासुद्धा ६ महिन्यात वापरणे बंधनकारक आहे.

**AWARD**

**IN ARBITRATION IN INDRP CASE NO.1140**

**WWW.TRENDMICRO.IN**

Trend Micro Kabushiki Kaisha  
 Shinjuku MAYNDS Tower  
 2-1-1, Yoyogi, Shibuya-Ku  
 Tokyo, 151-0053. Japan.

THE COMPLAINANT

1

V/S

Lina  
Doublefist Limited  
Room 501, Building 4, Taoli Garden  
Huaiyin District, Huai'an City  
Jiangsu Province  
China.

**THE REGISTRANT /  
THE RESPONDENT**

**IN THE MATTER OF DISPUTED DOMAIN NAME: - 'TRENDMICRO.IN'**

**ARBITRATION PANEL: - MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.  
SOLE ARBITRATOR**

**DELIVERED ON THIS 4<sup>th</sup> DAY OF NOVEMBER TWO THOUSAND  
NINETEEN AT PUNE, INDIA.**

**I] SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

| <b>SR. NO.</b> | <b>PARTY TO THE DISPUTE</b>                  | <b>NAME</b>  | <b>ADDRESS</b>   |
|----------------|--|--|--|
| 01             | COMPLAINANT                                  | Trend Micro Kabushiki Kaisha (trading as Trend Micro Incorporated) | Shinjuku MAYNDS Tower 2-1-1, Yoyogi, Shibuya-Ku Tokyo, Japan.                                    |
| 02             | AUTHORISED REPRESENTATIVE OF THE COMPLAINANT | Punita Bhargava Inventure IP Advocates & Consultants               | C 1/8, Sector 36, NOIDA, 201301 UP, India  |
| 03             | RESPONDENT / REGISTRANT                      | Lina   | Doublefist Limited, Room 501, Building 4, Taoli Garden, Huaiyin District, Jiangsu Province China |
| 04             | DOMAIN NAME REGISTRAR                        | Dynadot LLC  | ---  |

**II] CALENDER OF MAJOR EVENTS:-**

| <b>Sr. No.</b> | <b>Particulars</b>  | <b>Date<br/>(All communications in electronic mode)</b> |
|----------------|---|---|
| 01             | Arbitration case referred to me by NIXI   | 04.10.2019  |
| 02             | Acceptance given by me  | 04.10.2019  |
| 03             | Hard copy of complaint received   | 10.10.2019  |
| 05             | Notice of Arbitration issued, with the period to file reply, if any, latest by 21.10.2019               | 11.10.2019  |
| 06             | Period to file say by Respondent extended with instruction to file his say if any, latest by 27.10.2019 | 24.10.2019  |

|    |  |            |
|----|--|------------|
| 07 | Request by Complainant to proceed further legally since the Respondent has not replied to Notice of Arbitration within prescribed period | 28.10.2019 |
| 08 | Notice of closure of arbitration issued  | 30.10.2019 |
| 09 | Award passed   | 04.11.2019 |

**III] PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:**

1. Disputed domain name is 'TRENDMICRO.IN'.
2. Date of registration of disputed domain name by Respondent is 02.05.2014
3. Registrar is Dynadot LLC

**IV] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -**

- 1) Arbitration proceedings were carried out as per .In Domain Name Dispute Resolution Policy (INDRP) read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 (including amendments thereto) and Code of Civil Procedure, wherever necessary.
- 2) The parties were requested to expedite their submissions so as to enable this panel to pass award within the prescribed time frame of 60 days.
- 3) Copies of all communications were marked to both the parties and NIXI.
- 4) No personal hearing was requested / granted / held.

**V] BRIEF INFORMATION OF THE COMPLAINANT: -**

The Complainant in these arbitration proceedings is Trend Micro Kabushiki Kaisha (Trading as Trend Micro Incorporated). According to the Complainant it owns Trend Micro brand. The Complainant was founded in the year 1988 in United States of America by Steve Chang, Jenny Chang and Evan Chen to develop antivirus software. Today it is headquartered in Tokyo, Japan. Its shares are traded publicly on Tokyo Stock Exchange and on NASDAQ. It operates in 50 countries with more than 6500 employees that focus solely in information security. The Complainant has used the TREND MICRO trade name and trademark since 1988 exclusively and continuously. Over the last three decades it has become a global market leader in hybrid cloud security, network defense and endpoint security. In the year 2018 its turnover was 160410 M Yen. The products of the Complainant are used by Amazon, Microsoft, Azure, VMware, Google Cloud, Microsoft Office 365, Dropbox and more such renowned companies / organizations.

The Complainant claims that it is the owner of trademark 'Trend Micro' in various in numerous countries including India, the exhaustive list of which has been provided by the Complainant. In India it has registered trade mark 'TREND' under registration No.1810312 and 'TREND MICRO' under registration NO.2606554. The Complainant and its subsidiaries own hundreds of domain names which include the words TREND MICRO.

**VII] SUMMARY OF GROUNDS OF THE COMPLAINT: -**

*The Complaint, inter-alia, is based on the following points, issues, representations or claims in brief:-*

**(A) CONTRAVENTION OF THE REGISTERED TRADEMARKS AND DOMAIN NAMES OF THE COMPLAINANT (CONTRAVENTION OF POLICY PARA 4(i) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY) (INDRP) : -**

- i. The Complainant has furnished copies of registered marks in India which were registered on 22.04.2009 and 03.10.2013 respectively. This was much prior to the registration of disputed domain name which was registered on 02.05.2014. Due to trademark and logo registration, huge marketing expenses incurred by the Complainant the words TREND MICRO have been exclusively associated with the Complainant.
- ii. The disputed domain name 'trendmicro.in' is identical in its entirety to its trademark and trade name.
- iii. Mere addition of ccTLDs can be disregarded when comparing a domain name and trademark.

**(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME (PARA 4(ii) OF INDRP): -**

- i. The Respondent does not appear to have any business conducted in the Complainant's trade name or trademark. The Complainant has not authorized or licensed the Respondent to apply for, register, use or offer for sale of the disputed domain name or any trademarks forming part thereof.
- ii. The Respondent appears to have put the disputed domain name for sale. Moreover the Respondent has made an offer to the Complainant itself to sell the disputed domain name.
- iii. The Respondent is not making any legitimate business under the disputed domain name.
- iv. The Respondent does not have any trademark rights in the name and mark TREND MICRO.
- v. The Respondent has not made any demonstrable preparations to use the disputed domain name for offering of goods or services in a bona fide manner.
- vi. The Respondent is not making any non-commercial or fair use of the domain name.

- vii. The Respondent's registration of the disputed domain name is much subsequent to the Complainant's use and registration of the TREND MICRO trademark and trade name in various countries including in India.

**(C) REGISTRATION AND USE IN BAD FAITH (PARA 4(iii)) OF INDRP: -**

- i.** There can be no justification for an individual of Chinese origin and residence to register the disputed domain name, other than to block and offer to sell the same to the Complainant or any third party for valuable consideration.
- ii.** The Respondent has constructive notice of the trade mark and trade name TRENE MICRO. Adopting well known trade mark and trade name in itself establishes bad faith. (*Reliance placed on Veuve Clicquot Ponsardin Maison Fondée en 1772 v/s The Polygenix Group Co. – WIPO case No.D2000-0163*).
- iii.** The Respondent had actual notice, in addition to the constructive notice, of the Complainant's rights in the well known trademark and trade name TREND MICRO because of the legal notice sent by the Complainant on 10.09.2019.
- iv.** The Respondent is not making any legitimate non-commercial or fair use of the domain name.
- v.** The Respondent offered domain name for sale to the Complainant or to third parties thereby preventing the Complainant from registering the domain name.
- vi.** The Respondent has been held to be a cyber squatter in INDRP decision Goldman Sachs & Co. LLC v/s Lina, Doublefist Limited. Moreover in the Deloitte Touche Tohmatsu V/s Lina, Doublefist Ltd. it was held that the Respondent had registered over 400 domain names which incorporated well known trademarks with .in ccTLD.

**(D) REMEDIES SOUGHT BY THE COMPLAINANT: -**

On the above background of the Complaint and reasons described therein the Complainant has requested for TRANSFER OF DISPUTED DOMAIN to the Complainant.

**VII] RESPONDENT'S DEFENSE: -**

The Respondent did not respond to the Notice of Arbitration even within the extended time.

**VIII] REJOINDERS OF THE PARTIES: -**

In view of non-filing of any say / reply by the Respondent, no rejoinder was called for.

### **IX] EVIDENCE RELIED UPON: -**

This panel has, *inter-alia*, placed reliance upon the following evidences / details thereof, submitted by the Complainant: -

1. Copies of trademarks registered in India and in other countries in the name of the Complainant
2. Copy of printout of the *whois* details
3. Copies of other documents submitted with the Complaint

### **X] FINDINGS: -**

Based on the complaint, contentions of it and annexures attached to it, this panel makes following observations: -

1. The Complainant is an owner of registered trade / service marks incorporating the word TREND MICRO in which it has legitimate interests and rights.
2. The registration of these marks is prior to the registration of the disputed domain name by the Respondent.
3. The Complainant has not authorised / licensed to the Respondent to use the word 'TREND MICRO' in any manner, nor the Respondent has claimed such authority having issued by the Complainant in his say.
4. The Respondent is not known by the word TREND MICRO or any resembling word to it.
7. The Respondent is not making use of disputed domain name for non-commercial or charitable purposes.
8. The Registrant has offered the disputed domain name to the Complainant itself as well it is also offered to third parties for unlawful commercial gain.
9. The Registrant has been habitual cyber squatter having involvement in over 400 disputed domain name.

### **XII] CONCLUSION: -**

On the basis of the averments in the Complaint, citations, documentary evidence and other substantiating points, this Arbitration Panel has come to the following conclusions: -

- a. *the disputed domain name contains registered trade / service mark of the Complainant in its entirety and is totally identical or confusingly similar to a name, trademark in which the Complainant has legitimate rights and interests.*

b. the Respondent has no rights or legitimate interests in respect of the domain name. He has not been authorised, licensed / permitted to use the said domain name, nor has he been known individually or by his business by the name of disputed domain name or any closely resembling term to it.

c. the disputed domain name is registered in bad faith by the Respondent and allowing him to continue to own the same would make injustice and loss to the Complainant as also it may pose serious threats to innocent people anywhere in the world.

**XIII] AWARD: -**

On the basis of above findings on issues, foregoing discussion, conclusion and as per the remedies requested by the Complainant, this panel passes the following award: -

a. The disputed domain name 'TRENDMICRO.IN' be transferred to the Complainant.

Date: - 04.11.2019

Place: - Pune, India



(S.C.INAMDAR)  
SOLE ARBITRATOR  
NATIONAL INTERNET  
EXCHANGE OF INDIA