

Indian-Non Judicial Stamp
Haryana Government

Date: 04/07/2019

Certificate No. G0D2019G2387

GRN No. 49828968

Stamp Duty Paid : ₹ 101
(Rs. Only)

Penalty : ₹ 0
(Rs. Zero Only)


Deponent

Name: C A Brijesh
H.No/Floor : Na
City/Village : Gurugram
Phone : 0

Sector/Ward : 27
District : Gurugram

Landmark : Millenium plaza
State : Haryana

Purpose : AWARD to be submitted at Others



BEFORE THE SOLE ARBITRATOR C.A. BRIJESH
.IN REGISTRY
C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)
NEW DELHI, INDIA

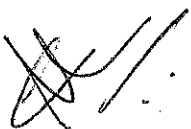
Akelius Residential Property Ab/Roger Akelius
Svärdvägen 3A
Box 104
182 12 Danderyd
Sweden

.... Complainant

Versus

Shashi Shekar
Restalundsvagen 42, Orebro,
Brebro Lan - 70216
Sweden

.... Respondent



1. The Parties

The Complainant is **Akelius Residential Property Ab/Roger Akelius** with its principal place of business at Svärdvägen 3A, Box 104, 182 12 Danderyd, Sweden (hereinafter referred to as the **Complainant**).

The Respondent is **Shashi Shekar**, of Restalundsvagen 42, Orebro, Brebro Lan – 70216, Sweden (hereinafter the **Respondent**).

2. The Domain Name and Registrar

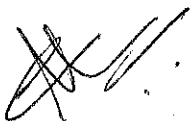
The disputed domain name is <akelius.co.in>. The Registrar with which the Domain Name is registered is **Godaddy.com LLC**.

3. Procedural Timeline

July 05, 2019: Parties to the dispute were informed of the constitution of the Arbitration panel, as per paragraph 5(b) of INDRP Rules of Procedure. Further, NIXI forwarded a soft copy of the Complaint along with the annexures to the Respondent with a copy marked to the Complainant's Authorised Representative and Arbitral Tribunal.

July 06, 2019: Arbitral Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorised Representative and NIXI, directing the Respondent to file its response, if any, within 10 days.

July 10, 2019: The Tribunal received the Respondent's email seeking extension of time of 15 days to file a Reply and requesting for a hard copy of the Complaint.



July 11, 2019

The Tribunal intimated the Respondent that a hard copy of the Complaint was already forwarded by NIXI on July 05, 2019. Insofar as Respondent's request for extension of time for filing/forwarding a Reply is concerned, an extension of 10 days was granted to the Respondent to file a Reply.

July 27, 2019

Absence receipt of a response, the Tribunal addressed an e-mail to all parties, closing Respondent's rights to file a Reply and intimating the parties that an award shall be passed on the basis of the material available on record.

July 27, 2019 and July 29, 2019

The Tribunal received multiple e-mails from the Respondent stating that a Reply was already forwarded. Upon review of the trail correspondence, it was evident that a Reply was forwarded by the Respondent to NIXI and the Complainant on July 25, 2019. Since the Reply was forwarded to NIXI and Complainant on time, the same was taken on record and the Complainant was directed to file a Rejoinder to the Reply within 7 days.

August 02, 2019:

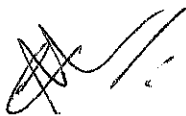
The Tribunal received Complainant's Rejoinder to the response filed by the Respondent.

August 03, 2019:

The Tribunal received Respondent's Sur-Rejoinder to the Rejoinder filed by Complainant.

August 05, 2019

The Tribunal received an e-mail from the Complainant contesting the Sur-Rejoinder on account of absence of any



express provision allowing the same and lack of instructions from the Tribunal to file the same.

August 08, 2019: The Tribunal addressed an email to all parties, with a copy marked to NIXI, taking cognizance of the Respondent's Sur-Rejoinder *vide* e-mail dated August 03, 2019 in the interest of justice and equity, and intimated the parties that an award shall be passed on the basis of the material available on record.

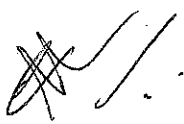
The language of the proceedings shall be English.

4. Factual Background

4.1. Complainant's Activities

The Complainant, states, *inter alia*, that it is a real estate company that buys, upgrades and manages residential properties and currently owns fifty thousand rental apartments in metropolitan cities such as New York, Boston, Toronto, Paris, London, Berlin, Copenhagen and Stockholm. The Complainant states that it was incorporated in the year 1971 with the Swedish Companies Registration Office but officially changed its name to 'Akelius Fastigheter Aktiebolag' in the year 1994.

The Complainant states that it has a workforce of nearly 900 employees and invests heavily in the digitization of its operations. The Complainant further claims that it is the largest listed real estate company in Sweden. The Complainant has filed extracts of various links (as Exhibit – 4) from its official website indicating the chronological history of the Complainant company. The Complainant further states that its comprehensive income for the financial year 2018 was EUR 454 million.



The total assets of the Complainant company for the year 2018 is stated to be EUR 12,516 million.

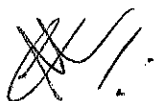
4.2. Complainant's use of 'AKELIUS'

As stated by Complainant, the history of its trade mark AKELIUS dates back to the year 1994 when the Complainant adopted the said mark in respect of its business activities. The Complainant's founder is Roger Akelius and it explains the origin of the Complainant's trade mark/domain name 'AKELIUS'. The Complainant claims that it is reputed worldwide in the real estate business, which includes buying, upgrading and managing residential properties. The Complainant further states that due to the massive popularity since its adoption in the year 1994 and continuous and extensive use thereof, the mark AKELIUS is associated solely with the Complainant. The Complainant claims to have its holdings in thirteen metropolitan cities in Europe and North America.

It is further claimed that Akelius Foundation is the world's largest donor to SOS Children's villages with 500 million SEK (Swedish Kronos). The founder Roger Akelius has donated 90 per cent of Akelius Residential Property AB to Akelius Foundation.

Complainant states that it is the registered proprietor of the mark AKELIUS and the same is distinctive of Complainant's services. It further claims that the mark AKELIUS is well-known in the trade on account of worldwide goodwill established by the Complainant.

Complainant also states that it owns the domain name akelius.com since January 03, 1997 and the same is accessible throughout the world. Extracts from the



WHOIS records of the said domain name have been exhibited by the Complainant under Exhibit 9.

4.3 Complainant's Trade Mark AKELIUS

Complainant claims to be the owner of the trade mark AKELIUS in relation to insurance, financial affairs and monetary affairs real estate affairs. The mark AKELIUS stands registered in the name of Complainant in various countries such as Norway, Sweden, European Union and USA, with the earliest registration dating back to the year 1995 obtained in Norway. In Norway, the mark was applied for registration on February 25, 1994. The aforesaid claim has been substantiated by the Complainant through Exhibit 5. Insofar as the India is concerned, as per the available records, it appears that no application has been filed or registration has been secured for the mark AKELIUS in the name of Complainant in India.

4.4 Respondent's activities

Respondent in his response states that his company, i.e., Akelius Tech Private Limited is an incorporated company having its registered office at 2nd Cross, Nandhini Layout, near KMF Dairy, Mallasandra, Tumkur, Karnataka – 572107. The Registrar of Companies (ROC) records reflect that the Respondent's company was incorporated on January 17, 2019. Respondent claims to be in the technology sector and claims to have no interest in the Complainant's business, i.e., real estate. Respondent has further stated that it has no business interest in Sweden and operates only in the Tumkur District in Karnataka, India. Interestingly, Respondent did his masters in Sweden.

4.5 Respondent's use of AKELIUS

The Respondent claims that prior to adoption of the mark AKELIUS, he had reviewed the online records of the Trade Marks Registry wherein it did not come across any use of the said mark.

The Respondent further claims that it had adopted the mark AKELIUS based on Greek mythology, which means “fine qualities”. The Respondent then submits that it has procured appropriate approval from Equifax India (an organization that allegedly combines data to calculate credit score of a company). Respondent further states that it has created a logo for the mark AKELIUS and has also created a Facebook page and a LinkedIn page in support of its business activities.

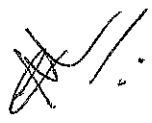
Insofar as the domain <akelius.co.in> is concerned, admittedly, the same registered by the Respondent on January 01, 2019 and is valid till January 01, 2021. The Respondent further states that the said domain is being used for technology related business. The Respondent claims to be a start up and is currently building the website. It is stated that although the domain is live, it is currently in testing phase. The Respondent has pleaded that it has genuine interest in the business associated with the mark AKELIUS and the domain name akelius.co.in. The Respondent vehemently claims to be the ‘first to file’ (trade mark application for registration) in India.

5. Contentions of Parties as summarised in the pleadings

5.1 Complaint

a) The Domain Name is identical or confusingly similar to the Complainant’s trade mark (Paragraph 4(i) of the .IN Policy)

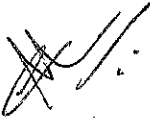
- i. Complainant submits that it has secured registration for the trade mark AKELIUS internationally, with the earliest registration dating back to



1995 in Norway. As mentioned earlier, the mark 'AKELIUS' is also registered in numerous other jurisdictions in the world. Complainant has argued that as a result of continuous and long standing use of the mark AKELIUS, the same has come to be closely associated with the Complainant and none else. Complainant contends that the disputed domain name 'akelius.co.in' is identical to its trade mark AKELIUS, save for the .in generic top level domain which is required for technical reasons and does not serve to distinguish the disputed domain name from the Complainant's trade mark. Complainant further submits that it has not licensed or otherwise permitted the Respondent to adopt or use the mark AKELIUS in any manner.

- ii. The Complainant has contended that it has established its lawful rights in the mark AKELIUS by virtue of prior adoption and registrations around the world. The Complainant has relied on *Uniroyal Engineered Products v. Nauga Network Services* [D 2000-0503], *Robbie Williams v. Howard Taylor* [D 2002-0588] and *Expedia Inc. and Hotels.com L.P. v. Arabia Horizons Tours LLC* [DAE 2014-0005] to support its claims.

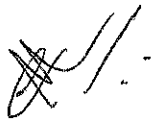
The company Akelius Residential Property was founded by one Roger Akelius. Thus, the mark 'AKELIUS' and domain name traces their origin to the founder's surname.



b) **The Respondent has no rights or legitimate interests in respect of the Domain Name (Paragraph 4 (ii) and Paragraph 7 of the .IN Policy)**

- i. It is the contention of the Complainant that the Respondent has no rights or legitimate interests in the disputed domain name.

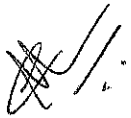
- ii. The Complainant contends that the Respondent has registered the impugned domain name recently in the year 2019, decades after the Complainant invested millions of dollars in popularizing the mark AKELIUS and seeking registrations thereof.
- iii. The Complainant asserts that by the time Respondent registered the disputed domain name, it had generated hundreds of millions of revenue under the mark AKELIUS and the same had secured the status of a well-known/famous mark. The Complainant contends that the Respondent was well aware of the Complainant's prior rights in the mark AKELIUS and the domain name akelius.com. To support the said contention Complainant has relied on various judgments like *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX* [D 2005-0179] and *Accord Young Genius Software AB v. MWD, James Vargas* [D 2000-0591].
- iv. Complainant states that there is no credible legitimate reason by the Respondent supporting the reasons behind adoption and use of the mark AKELIUS. It is argued on behalf of the Complainant that the purpose behind Respondent's act of selecting the domain name akelius.co.in was to ride upon the Complainant's goodwill and to generate web-traffic and confuse internet users visiting Respondent's domain name akelis.co.in when looking for Complainant and its services. It is contended that the incorporation of company and filing of the trade mark application are subsequent events and cannot accord any legitimacy.



v. It is submitted on behalf of Complainant that Respondent is engaged in the activity of 'cybersquatting' inasmuch as the Respondent's website reflects nothing and is merely parked with no contents reflected therein. It is argued that such use is not *bona fide* and does not carry a legitimate non-commercial or fair use of the domain name akelius.co.in. It is submitted that the Respondent has no right or legitimate interest in the disputed domain name and that pursuant to the Policy, the burden shifts to the Respondent to show it does have a right or legitimate interests.

c) **The domain name was registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the .IN Policy)**

i. The Complainant contends that the Respondent has registered the domain akelius.co.in with an intention to make money by selling the same at a higher price and defrauding the customers. It is argued that the Respondent is approaching the Complainant's customers to expand business venture in the same area, i.e., property and real estate and to garner sales by exploiting the reputation and goodwill of the Complainant. A copy of the said email addressed by the Respondent is enclosed by the Complainant under Exhibit 11. Complainant further states that the Respondent has registered the domain name akelius.co.in in bad faith primarily for the purpose of deriving unfair advantage from the Complainant and its trade mark AKELIUS. Complainant has relied on *Cofra Holding AG v. Mr. Obada Alzatari* [D 2014-1709] in support of its claims.



- ii. It is further contended on behalf of Complainant that Respondent, despite prior knowledge, has registered the disputed domain name akelius.co.in which is identical to Complainant's trade mark AKELIUS with no intention of using the same for legitimate business. Such conduct amounts to clear evidence of bad-faith registration and use.
- iii. It is submitted that Respondent's choice of choosing an identical domain name is not a co-incidence and is definitely directed to illegally encash upon goodwill and reputation of the Complainant.

5.2 Reply to the Complaint

Respondent in his reply states that it is not aware of the Complainant and/or its business activities and has registered the domain name and corporate name containing the mark AKELIUS on the basis of its meaning in the Greek mythology. Respondent has then stated that the Complainant and Respondent are engaged in completely different business activities and the issue of confusion cannot arise. The Respondent further states that the domain 'akelius.co.in' is only visible in India as Respondent's business activities are restricted to the Indian jurisdiction. Respondent argues that since the Complainant is not present in the Indian market, the issue of confusion would not arise.

In response to Complainant's claim of cybersquatting, the Respondent has stated that it is in the process of building its website www.akelius.co.in. Respondent has claimed to be a start-up due to which it is taking time to develop and build the website. Respondent has relied on its Facebook page and LinkedIn page to contend that it has a genuine interest to use the domain name 'akelius.co.in'.

The Respondent stressed on the fact that it's business activities are restricted to the Tumkur District in Karnataka in respect of technology business, which is different from the geographical location and business model of the Complainant. Respondent has further stressed that the alleged email filed by the Complainant was not forwarded by the Respondent and that the Respondent has not approached customers of Complainant to acquire their property.

In addition, the Respondent has submitted that it has no intention of selling the impugned domain name and intends to use it along-with his company Akelius Tech Private Limited. Respondent has further claimed that it has filed a trade mark application with the Indian Trade Marks Registry to enforce its rights on the trade mark AKELIUS.

5.3 Rejoinder


The Complainant in its Rejoinder states that the trade mark application (under No. 4245909) filed by the Respondent for registration of the mark AKELIUS was filed on July 25, 2019, which is subsequent to commencement of the extant proceedings. The Complainant thereafter, submits that filing of the said application is clearly an after-thought and is done with a motive to create rights and covering their bad faith in adoption of the domain akelius.co.in.

The Complainant thereafter, submits that the Respondent's company Akelius Tech Private Limited was incorporated on January 17, 2019, which is subsequent to the registration of the impugned domain name (on January 01, 2019) and thus, registration of one cannot form justification for the other. Complainant states that it is not the case of the Respondent that it has been trading under the name 'Akelius Tech Private Limited' for several years and has now registered it as a domain name.

The Complainant has argued that the Invoices filed by Respondent pertain to setting up of the impugned domain name 'akelius.co.in' and do not reflect any commercial use of the mark AKELIUS or the impugned domain name. Complainant has further claimed that the Respondent's website was earlier parked and has recently been activated by the Respondent. The Complainant has argued that Respondent operates from Sweden, which is reflected from the records of the .INRegistry.

The Complainant submits that the name/mark AKELIUS does not have any meaning in India and is of foreign origin. It is reiterated that the mark AKELIUS was adopted by the Complainant back in 1994 to carry on the real estate business in various countries. The Complainant has argued that the Respondent's claim that the mark AKELIUS finds its origin from the Greek Mythology, is frivolous and an after-thought. The Complainant then submits that on a cursory search for the mark 'AKELIUS' on search engines like Google, Yahoo and Bing reflects Complainant's business amongst the top 10 search results and it is therefore, incomprehensible that the Respondent was not aware of the Complainant and its trade mark AKELIUS while adopting the same.

5.4 Sur-Rejoinder

The Respondent in its Sur-Rejoinder has submitted that the delay in filing of the application for registration of the trade mark  was caused on account of the Respondent being pre-occupied with development of the impugned domain. Respondent further argued that as per the 'first to file' rule, the rights thereof vest

with the Respondent since Complainant's trade mark AKELIUS is not registered in India.

Respondent has then argued that since Complainant is not carrying out business in India, the claim raised by it in the extant Complaint fails. Insofar as Complainant's claim on Respondent's address in Sweden is concerned, the Respondent submits that the domain name was registered while the Respondent was residing in Sweden wherein he was completing his studies.

Respondent thereafter submits that a trade mark right is a territorial right and since the Complainant's trade mark AKELIUS is not registered in India, it cannot claim any right associated therewith in India. Respondent states that it is complying with the requirements set down by the MCA and is therefore, entitled to use impugned domain name 'akelius.co.in'. Lastly, Respondent argues that the Complainant has failed to prove all the ingredients as provided in the INDRP guidelines in a domain name complaint and therefore, the extant Complaint is bound to be dismissed.

6. Discussion and Findings

As per paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint with the .INRegistry 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 rights in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.


Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

6.1 Identical or confusingly similar trade/service mark

As is evident from the perusal of WHOIS records, the Complainant has registered the domain name <akelius.com> on January 04, 1997. The Respondent, however, registered the domain name <akelius.co.in> recently on January 01, 2019.

The Complainant has further registered 'AKELIUS' as a trade mark in various countries of the world such as Norway, Sweden, European Union and USA with the earliest registration dating back to Norway in the year 1995. In Norway, the mark was applied for registration on February 25, 1994.

Further, the Complainant claims to be the proprietor of the trade name AKELIUS since October 11, 1994. The extract from the Swedish Companies Registration Office (page 3 of Exhibit 2) indicates the same. On the other hand, the Respondent has placed on record its Certification of Incorporation evidencing its formation in 2019, which is almost 25 years subsequent to Complainant's adoption of the name. The Respondent has further filed a trade mark application with the Trade Marks

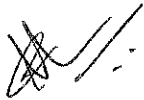
Registry under No. 4245909 for the mark  in Class 42 for "*Scientific and technological services and research and design relating thereto; Industrial analysis and industrial research services; Design and development of computer hardware and software*" on 'Proposed to be used' basis. Since the said application was filed recently on July 25, 2019, i.e., subsequent to the filing of the extant Complaint, it clearly appears to be an after-thought on the part of the Respondent.

The disputed domain name incorporates the mark AKELIUS in its entirety. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed* (INDRP/278) as well as in *Indian Hotels Company Limited vs. Mr. Sanjay Jha* (INDRP/148) that when a disputed domain name incorporates a mark in entirety, it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark.

In the view of the foregoing discussions, Complainant has satisfied this Tribunal that, the Respondent's domain name is identical or confusingly similar to the name and trade mark in which the Complainant has prior rights.

6.2 Rights and legitimate interests

The Complainant has asserted that Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 7 of the INDRP enumerates three circumstances (in particular but without limitation) and if the Arbitrator finds that the Registrant has proved **any** of the said circumstances, the same shall demonstrate its rights to or legitimate interest in the disputed domain name. The said paragraph is reproduced herein under:

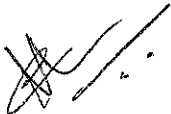


“Registrant's Rights to and Legitimate Interest in the Domain Name - Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interest in the domain name for the purposes of Paragraph 4 (ii):

- i. Before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a **name corresponding to the domain name** with a *bona fide* offering of goods or services;
- ii. The Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- iii. The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Respondent claims to be a start up which has till date, not started using the domain name akelius.co.in in respect of the technological services wherein it claims its rights. Furthermore, the Respondent was incorporated on January 17, 2019 as per the ROC records. It is only after issuance of notice to the Complainant that the Respondent started developing the website www.akelius.co.in and filed a trade mark application to attempt to secure rights in the impugned domain name.

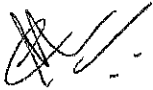
Since Respondent's interest in the mark AKELIUS and the domain name akelius.co.in has only emerged recently, it has no legitimate history as compared to the Complainant. There is no evidence on record to suggest that the domain name akelius.co.in or the mark AKELIUS is being used by the Respondent in the course of trade or that the Respondent has a genuine business relating to technology. Respondent has merely claimed that it



intends to use the impugned domain name in respect of “technology business”.

The next ingredient to be proved by the Respondent is that it has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights. It is a settled position that if the Respondent does not have trade mark right in the word corresponding to the disputed domain name and in the absence of evidence that the Respondent was commonly known by the disputed domain name, the Respondent can have no right of legitimate interest. [See *Shulton Inc. v. Mr. Bhaskar*, (INDRP/483)]. In the extant case, since the Respondent has not been started using the impugned domain name or the mark/name AKELIUS in the course of trade, the possibility of Respondent having acquired reputation/association with the mark/domain name does not arise.

The final ingredient to be proved by the Respondent is that the impugned domain name ‘akelius.co.in’ is used in a non-commercial manner or there is a fair use of the domain name, without intent for commercial gain to misleading divert consumers or to tarnish the trademark or service mark at issue. As stated above, since the Respondent has not started using the impugned domain name or the mark AKELIUS in the course of trade, the said ingredient cannot be fulfilled. At any rate, prior to the Complaint, admittedly, the domain name was simply parked and not in use.



The Respondent first registered the domain name ‘akelius.co.in’ on January 01, 2019. Thereafter, it incorporated a company named Akelius Tech Private

Limited on January 17, 2019. Subsequent to the commencement of arbitration proceeding before this Arbitral Tribunal, the Respondent filed an application with the Trade Marks Registry on July 25, 2019 for registration of the mark AKELIUS. All these events are much subsequent to Complainant's rights already vested in the mark AKELIUS and cannot accord legitimacy.

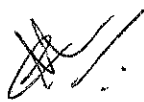
In view of the above, this Tribunal finds that the Respondent has been unable to prove that it has been using AKELIUS or the domain name akelius.co.in in connection with a *bona fide* offering of goods or services before receiving notice of the present dispute.

The Complainant has thus proved that the Respondent has no rights or legitimate interests in the disputed domain name.

6.3 Bad faith

Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith. The said paragraph is reproduced herein under:

"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 present, shall be evidence of the registration and use of a domain name in bad faith:

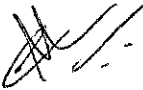
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- i. Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears

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."

The following are the findings *re* bad faith:

- (i) From the evidence on record, it is clear that the Respondent registered the domain <akelius.co.in> from Sweden wherein the trade mark AKELIUS is extensively used by the Complainant. It is incomprehensible that the Respondent, while studying in Sweden, was unaware of Complainant's trade mark AKELIUS and came up with the virtually identical domain name akelius.co.in. Thus, it cannot be accepted that the Respondent adopted the 'AKELIUS' since it means "fine qualities" in Greek. The claims made by the Respondent in its Reply appear to be an after-thought inasmuch as the



Respondent only started using the impugned domain name and applied for

registration of the mark  pursuant to service of the Complaint.

- (ii) It appears from the documents on record is that by registering the impugned domain name, the Respondent has attempted to attract internet users by creating likelihood of confusion with the Complainant's mark/source of origin. [See *Colgate – Palmolive Company and Colgate Palmolive (India) Ltd. v. Zhaxia*, (INDRP/887)]. Thus, the Respondent has registered the disputed domain name in bad faith to tarnish the Complainant's trade mark and cause confusion in the minds of the public.

It is also evident that the objective of registering the domain name was aimed at preventing the legitimate owner of the trade mark from reflecting the same in a corresponding domain name.

- (iii) Substantial number of precedents establish that registration of a domain name that is identical/confusingly similar to a famous trademark by any entity that has no relationship to that mark is itself sufficient evidence of bad faith registration and use. [See *Pepperdine University v. BDC Partners, Inc.*, WIPO Case No. D2006-1003; *Veuve Clicquot Ponsardin, Maison Fonde en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163, *Mastercard International Incorporated v. Total Card Inc.*, WIPO Case No. 2000 – 1411].
- (iv) Considering that the status of the webpage corresponding to the domain name akelius.co.in was non-operational at the time of institution of the extant proceedings, it would be just and equitable to hold that Respondent's



activity of registering the impugned domain name constitutes passive/parked holding of the website, which also contributes to bad faith. [See: *HSBC Holdings plc v. Hooman Esmail Zadeh* (INDRP/032), *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003].

- (v) Whilst the matter was *subjudice*, the Respondent applied for trade mark registration and relied on the same in its Reply and Sur Rejoinder. This tribunal holds that such conduct too tantamount to bad faith. The rights of the parties have to be determined on the date of initiation of proceedings.

In view of the foregoing, the panel is of the view that Respondent has registered the domain name akelius.co.in in bad faith.

7. Award

From the foregoing findings, it is established beyond doubt that (1) the domain name 'akelius.co.in' is confusingly similar to the mark AKELIUS which is proprietary to the Complainant, (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name, and (3) the domain name is registered in bad faith.

Thus, in accordance with the Policy and Rules, this Arbitral Tribunal directs the Respondent to immediately transfer the disputed domain name 'akelius.co.in' to the Complainant.

The parties shall bear their own cost.

Dated: September 6, 2019



C.A. Brijesh
Sole Arbitrator