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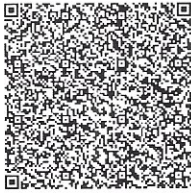
INDIA NON JUDICIAL

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Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL17570555667554R
Certificate Issued Date	: 09-Jul-2019 12:25 PM
Account Reference	: IMPACC (IV)/ dl889403/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL88940341739320272927R
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA
6C, 6D, 6E, Hansalaya Building,
15, Barakhamba Road,
New Delhi – 110 001

Adobe Inc v. Lina

V K Agarwal

Statutory Alert:

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AWARD

1. The Parties

The Complainant is M/s Adobe Inc., 345, Park Avenue, San Jose, California 95110 – 2704, United States of America

The Respondent is Ms. Lina, Doublefist Limited, Building 4, Taoli Garden, Huaiyin District, Huai'an City, Jiangsu Province, China.

2. The Domain Name and Registrar

The disputed domain name is <www.photoshop.cō.in>. The said domain name is registered with the Registrar, Dynadot LLC, California – 94401, United States of America. The details of registration of the disputed domain name are as follows:

- | | |
|-----------------------|--------------------------|
| (a) Domain ID: | D414400000005095910 – IN |
| (b) Registrar: | Dynadot LLC |
| (c) Date of creation: | September 20, 2017 |
| (d) Expiry date: | September 20, 2020 |

3. Procedural History

- (a) A Complaint dated June 15, 2019 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 1. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has

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submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

- (b) In accordance with the Policy and the Rules, an attempt was made to send a copy of the Complaint to the Respondent on the given address. However, no response has been received from the Registrant/Respondent. Hence, the present proceedings have to be ex parte.

4. Factual Background

From the Complaint and the various annexures to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant is a company existing and incorporated in the United States of America. According to the Complaint, the Complainant is engaged in the business of software companies and is renowned for its software applications. The said software applications are used by creative professionals, marketers, knowledge workers, students, application developers, enterprises, and consumers across personal computers, devices and media, globally and in India.

The Complainant had commenced its business in the year 1982. The Complainant has offices in various countries. Only to illustrate, such countries include Africa, Europe, Middle East, Asia-Pacific Regions, etc. The Complainant has seven (7) offices in India. It employs over 21,000 employees all over the world, including India.

According to the Complaint, the Complainant is ranked 13 in the Forbes Magazine's 2018 list of the World's most innovative companies and has been recognized as one of the largest corporations in the United States of America in the Fortune 500 list. Further, the Complainant has been continuously honoured with many prestigious awards and rankings. A list of such awards and rankings is given in the Complaint.

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Respondent's Identity and Activities

The Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that the Complainant is also the registrant and proprietor of more than 91 domain name registrations at international and domestic levels incorporating the designation PHOTOSHOP and its variations. It is not possible to mention all these domain names in this award. However, some such illustrations, as contained in Annexure V to the Complaint are as follows:

<www.photoshop.org>; <www.adobephotoshop.net>;
<www.adobephotoshop.com>; <www.photoshopinfo>; <www.photoshop.biz>; <www.photoshop.us>; <www.photoshop.co.uk>;
<www.photoshop.eu>; <www.photoshop.asia>;
<www.photoshopexpress.in>; etc.

The Complainant is, inter alia, the owner of several trademark registrations for the designation PHOTOSHOP since 1990, all of which are for the nature of services rendered by the Complainant. These trademarks are registered in different countries of the world including India, United States of America, Canada, European Union, Australia, Singapore, etc. They are generally registered in Classes 9, 39 and 42. Annexure VI to the Complaint gives details of trademark registrations worldwide.

According to the Complaint, the Complainant has been extensively, continuously and uninterruptedly using the trademark "PHOTOSHOP" globally since 1990. The Complainant's trademark "PHOTOSHOP" is an invented trademark and inherently distinctive. As a result of the widespread use and publicity, both the public and the traders identify the "PHOTOSHOP" trademark exclusively with the Complainant and the Complainant's goods and services.

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The Complainant contends that the disputed domain name contains the trademark of the Complainant, that is, PHOTOSHOP. The addition of the generic words "co" or "in" in a domain name is insignificant. They do not lead to any distinctiveness or reduce the similarity to the trademark "PHOTOSHOP" of the Complainant. They will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the services offered under the disputed domain name from the Complainant. Further that, they do not help in distinguishing the disputed domain name from the Complainant's trademark. On the contrary, the disputed domain name leads the public to believe that it relates to the services rendered by the Complainant.

Therefore, the disputed domain name is identical and/or confusingly similar to the registered trademark 'photoshop' of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "PHOTOSHOP". The Respondent does not own any trademark registration as PHOTOSHOP or a mark that incorporates the expression PHOTOSHOP. The Respondent has no license or authorization or permission from the Complainant to either use the designation PHOTOSHOP or to register the disputed domain name.

Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has registered the disputed domain name in bad faith and for its actual use in bad faith. The main object of registering the domain name <www.photoshop.co.in> by the Respondent is to mislead the customers of the Complainant and internet users and the general public and to derive undue advantage from the Complainant. The Respondent has not demonstrated any preparations to use the domain name or a name corresponding to the domain name in connection with any bona fide offering of goods or services. The Respondent is not commonly known by the domain name or is engaged in any business activity associated with the mark PHOTOSHOP.

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The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

The Complainant has further stated that the Respondent had approached and offered to sell the disputed domain name www.photoshop.co.in to the Complainant on 15th March 2019. A printout of the Respondent’s e mail dated 15th March 2019 is annexed to the Complaint as Annexure – XI.

In support of his contentions, the Complainant has relied on certain past decisions. They have been duly considered in the present award. However, it has not been considered necessary to reproduce or repeat the same.

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.photoshop.co.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (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’s has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant’s domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

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The disputed domain name <photoshop.co.in> was registered by the Respondent on September 20, 2017. The registration of the said disputed domain name is due to expire on September 20, 2020.

The Complainant is an owner of the registered trademark "PHOTOSHOP". The Complainant is also the owner of a large number of domains with the trademark PHOTOSHOP as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created and/or registered by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is <photoshop.co.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recent held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for PHOTOSHOP products in India or elsewhere would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <www.photoshop.co.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (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 in connection with a

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bona fide offering of goods or services; or

- (ii) the Registrant (as an individual, business or other organization) 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's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant/Respondent is Ms. Lina. The disputed domain name is not associated with the Respondent's trade name, corporate name or any of its legitimate business activities.

Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, authorized, licensed or otherwise permitted the Respondent to use its name or trademark "PHOTOSHOP" or to apply for or use the domain name incorporating said mark. The domain name bears no relationship with the Registrant. The Registrant/Respondent has nothing to do remotely with the business of the Complainant. Further that, the Respondent is not making any legitimate or fair use of the domain name and the website with the conflicting domain name is not functioning at all.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name under INDRP Policy, Paragraph 4(ii).

C. *Registered and Used in Bad Faith*

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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's 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
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the 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 contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

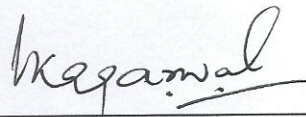
The Respondent's registration of the domain name <www.photoshop.co.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant. Further that, the Respondent had in the e mail dated 15th March 2019 (Annexure XI) stated that if the Complainant is interested, the e mail sender may be contacted.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

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7. Decision

In light of the foregoing findings, namely, that the disputed domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered by the Respondent in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.photoshop.co.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator
Date: 15th July 2019