



தமிழ்நாடு தமில்நாடு TAMILNADU

- 5 NOV 2019

**D. SARAVANAN**  
Advocate & Arbitrator  
Unit No.208, 2nd Floor, Beta Wing  
Reheja Towers, Near LIC  
No.113-134, Anna Salai, Chennai 600 002

BW 578405

**BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN  
.IN REGISTRY**

**(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

Disputed Domain Name: <www.belmond.in>

Belmond Interfin Ltd.,  
Canon's Court-22,  
Victoria Street - P.O. Box Hm1179  
Hamilton Hm Ex,  
Bermuda

**..Complainant**

**Vs.**

Kenneth Palo  
4203 Maple Court  
Risco, Missouri - 63874  
United States of America

**..Respondent**

**..2**





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AW 979599

P.S. SHANMUGA SUNDARAM  
STAMP VENDOR

C.No. 84 / 109 / 88

HIGH COURT CAMPUS  
CHENNAI - 600 104. (TAMIL NADU)

-2-

**1. The Parties:**

The Complainant is M/s.Belmond Interfin Limited, having address at Canon's Court-22 Victoria Street P.O. Box Hm1179 Hamilton Hm Ex Bermuda. The Complainant is represented by their authorized representative, Shwetasree Mujumder, having office at Fidus Law Chambers, F-12, Ground Floor, Sector 8, Noida - 201301.

The Respondent Kennath Palo is the current Registrant of the disputed domain name <belmond.in>. The Respondent is having address at 4203, Maple Court Risco, Missouri - 63874, United States of America, Telephone: (1) 5733965018, [e-mail-kenpalo@outlook.com](mailto:e-mail-kenpalo@outlook.com). Neither the Respondent represented himself nor represented by any one.

..3.



## 2. The Domain Name and Registrar:

The disputed domain name is www.belmond.in. The domain name has been registered with .IN REGISTRY through its Registrar IAPI GmbH, having address at Talstraße 27, 66424 Homburg, e-mail: egal@1api.net.

## 3. Procedural History:

<b>1<sup>st</sup> November, 2019</b>	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
<b>4<sup>th</sup> November, 2019</b>	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
<b>8<sup>th</sup> November, 2019</b>	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to the Respondent by email while sending the hard copy of the same to the address of the Respondent by NIXI through post.
<b>11<sup>th</sup> November, 2019</b>	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
<b>21<sup>st</sup> November, 2019</b>	:	Due date for filing response.
<b>22<sup>nd</sup> November, 2019</b>	:	Notice of default was sent to the Respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.




#### **4. Factual Background:**

##### **4.1 The Complainant:**

The Complainant is M/s.Belmond Interfin Ltd, having address at Canon's Court-22, Victoria Street P.O.Box Hm1179 Hamilton HmEx, Bermuda. The Complainant is by their authorized representative, Shwetasree Mujumder, having office at Fidus Law Chambers, F-12, Ground Floor, Sector 8, Noida - 201301. The stamped copy of the Authorization was filed by the Complainant.

##### **4.2 Complainant's Activities:**

- (i) The Complainant submits that it is a company incorporated under the laws of Bermuda and is the owner of the trademark BELMOND worldwide. The Complainant is a group company of the BELMOND group which also comprises, inter alia, its sole parent, Belmond Ltd. The Complainant has continuously used the trademark BELMOND for its business (of hotels, train services, restaurants, cruises etc) since at least 2014 and is the exclusive proprietor of the trademark BELMOND as a standalone mark as also the  logo by virtue of being the first user/adopter of the same. BELMOND is not only the Complainant's house mark, but is also used in the Complainant Group's domain name <http://www.belmond.com> (hereinafter 'Complainant's website').
- (ii) The Complainant states that the Belmond Group (of which the Complainant is a member) was acquired in April 2019 for a reported USD \$3.2 billion by the LVMH (Moët Hennessy Louis Vuitton) group, the world leader in luxury goods and parent company of fashion houses including Christian Dior, Marc Jacobs and Givenchy, as well as the hospitality brands Bulgari and Cheval Blanc.
- (iii) The Complainant's Group has an impeccable and globally iconic existence and is recognised as the provider of premium luxury holidays and experiences for



discerning global travellers. As on today's date, the Complainant owns (wholly or in part) or manages 33 hotels, 7 tourist trains, 2 river cruises, 3 safari lodges, a restaurant and partly owns and manages PeruRail in Peru.

(iv) The Complainant states that it owns and operates the following hotels:

- a. **Belmond La Samanna**, St.Martin, French West Indies.
- b. **Belmond Cap Juluca**, Anguilla, British West Indies.
- c. **Belmond Maroma Resort & Spa**, Quintana Roo, Mexico.
- d. **Belmond Casa de Sierra Nevada**, Guanajuato, Mexico.
- e. **Belmond Charleston Place**, South Carolina, USA.
- f. **Belmond El Encanto**, Santa Barbara, California, USA
- g. **Belmond Hotel das Cataratas**, Foz do Iguassu, Brazil.
- h. **Belmond Copacabana Palace**, Rio de Janeiro, Brazil.
- i. **Belmond Hotel Monasterio**, Cusco, Peru.
- j. **Belmond Palacio Nazarenas**, Cusco, Peru
- k. **Belmond Miraflores Park**, Lima, Peru.
- l. **Belmond Sanctuary Lodge**, Machu Picchu, Cusco, Peru.
- m. **Belmond Hotel Rio Sagrado**, Cusco, Peru.
- n. **Belmond Las Casitas**, Arequipa, Peru.
- o. **Belmond Villa San Michele**, Florence, Italy
- p. **Belmond Hotel Splendido and Belmond Splendido Mare**, Genoa, Italy.
- q. **Belmond Hotel Caruso**, Amalfi Coast, Ravello, Italy.
- r. **Belmond Villa Margherita**, Amalfi Coast, Italy.
- s. **Belmond Grand Hotel Timeo**, Sicily, Italy.
- t. **Belmond Villa Sant' Andrea**, Sicily, Italy.
- u. **Belmond Hotel Cipriani**, Venice, Italy.
- v. **Belmond Castello di Casole**, Tuscany, Italy.
- w. **Belmond Reid's Palace**, Madeira, Portugal.
- x. **Belmond Grand Hotel Europe**, St.Petersburg, Russia.
- y. **Belmond La Residencia**, Mallorca, Spain.
- z. **Belmond Le Manoir aux Quat'Saisons**, Oxfordshire, UK.
- aa. **Belmond Cadogan Hotel**, Sloane Street, London, UK.
- bb. **Belmond Mount Nelson Hotel**, Cape Town, South Africa.
- cc. **Belmond La Residence d'Angkor**, Siem Reap, Kingdom of Cambodia.
- dd. **Belmond Jimbaran Puri**, South Kuta, Bali.
- ee. **Belmond La Residence Phou Vao**, Luang Prabang, Laos.
- ff. **Belmond Governor's Residence**, Yangon, Myanmar.
- gg. **Belmond Napasai**, Surat Thani, Thailand.



(v) The Complainant owns (in whole or part) and operates the following train services:

- a. **Venice Simplon-Orient-Express**, Europe.
- b. **Belmond British Pullman**, UK.
- c. **Belmond Royal Scotsman**, Scotland.
- d. **Belmond Grand Hibernian**, Ireland.
- e. **Belmond Hiram Bingham**, Machu Picchu, Peru.
- f. **Belmond Andean Explorer**, Peru.
- g. **Eastern & Oriental Express**, Southeast Asia.

(vi) The Complainant submits that it owns and operates the following river cruises:

- a. **Belmond Afloat in France**, Burgundy, France.
- b. **Belmond Road to Mandalay** Ayeyarwady River, Myanmar.

(vii) The Complainant owns and operates the following safari lodges:

- a. **Belmond Eagle Island Lodge**: Okavango Delta: Botswana, Africa.
- b. **Belmond Khwai River Lodge**: Moregame Game Reserve, Botswana, Africa.
- c. **Belmond Savute Elephant Lodge**: Chobe National Park, Botswana Africa.

Extracts from the Complainant's website reflecting the names of its properties, cruises and trains have been marked by the Complainant as **Annexure A**.



(viii) The global revenues for the Complainant Group for the last few years are as listed below:

<b>Year</b> (Fiscal Year ended at December 31 <sup>st</sup> )	<b>Revenue</b> (in million USD)
2014	585, 715, 000
2015	551, 385, 000
2016	549, 824, 000
2017	560, 999, 000



Extracts from the Annual reports of the Complainant Group reflecting the same have been marked by the Complainant as **Annexure B**.

#### 4.3 Complainant's Trading Name:

- (i) The Complainant submits that the Complainant is the registered proprietor of the trademark BELMOND and  in a number of jurisdictions such as the United States of America, the United Kingdom, the European Union, Australia, Switzerland, Costa-Rica, Thailand, Russia, Mozambique, Iceland, Israel, Philippines, New Zealand, Mexico, Singapore, Malaysia, Canada, Cambodia, Laos, Indonesia etc. The Copies of trademark registration certificates and extracts from the Global Brand Database from the said jurisdictions is marked by the Complainant as **Annexure C**.
- (ii) That the Complainant is also proprietor of the trademark **BELMOND** in India under registration no.3649514 in classes 35, 36, 39, 43. The registration certificate for the Complainant's trademark in India is marked by the Complainant as **Annexure D**.
- (iii) That apart from the above, the Complainant also filed an application for the trademark  under application no.3649515 on 17<sup>th</sup> October 2017 in classes 35, 36 and 43 in India (current pending). Extracts from the Trade Mark Registry website as regards the trademark application of the Complainant is marked by the Complainant as **Annexure E**.
- (iv) The trademark and brand **BELMOND** has widespread global reputation which has travelled transborder/ spilled into India. There is voluminous third party material in the form of articles in magazines and newspapers or online publications on the Complainant's properties and experiences under the trademark BELMOND. Some sample evidence of such publications has been marked by the Complainant as **Annexure F**.



- (v) Between 1<sup>st</sup> March, 2014 and 1<sup>st</sup> September 2019, a total of 228,352 new users from India have visited the Complainant's website [www.belmond.com](http://www.belmond.com). A printout of the Google Analytics data showing these figures has been marked by the Complainant as **Annexure G**.
- (vi) The word **BELMOND** is an invented word, the etymological origins of which appear to be a combination of two Latin (bellus+mundus) and/or two French words (bel+monde). The word as a whole has no existence in English. The mark **BELMOND** therefore is a portmanteau of the Latin / French prefixes and suffixes as mentioned above and is inherently distinctive. Further, the mark **BELMOND** does not belong to any language in common parlance in India.
- (vii) The business which is now operated by the Belmond Group commenced in 1976 with the purchase of the entity which owns Hotel Cipriani in Venice. That on 27<sup>th</sup> September 2013, the Complainant (under the name Orient-Express Hotels Interfin Ltd.) came to be incorporated.
- (viii) That thereafter, the Complainant adopted the trademark **BELMOND** at least on 8<sup>th</sup> November 2013, when the Complainant filed trademark applications for the mark **BELMOND** in various jurisdictions such as Australia, Switzerland, the European Union and Canada. Evidence of the same has been marked by the Complainant as **Annexure H**.
- (ix) That on 24<sup>th</sup> February 2014, the Complainant officially announced that it was rebranding itself from Orient-Express Hotels to BELMOND. This announcement was extensively covered in various travel magazines and publications on 24<sup>th</sup> February 2014 itself, as well as via a presentation made by the Complainant which is marked as **Annexure-I**.



- (x) That on 17<sup>th</sup> March, 2014, the Complainant officially underwent a name change to Belmond Interfin Ltd. The 2013 Annual Report of the then Orient-Express Hotels Ltd is filed along with this Complaint which refers to the rebranding in early 2014, with a few exceptions, all of the Complainant Group's erstwhile properties from Orient-Express to BELMOND. Extracts of the report, available for download is in **Annexure – B.**
- (xi) The exercise of renaming the company was undertaken by the Complainant Group to bring all its hotels, 5 out of its 7 train services and both its cruises under the trademark BELMOND. This marked the commencement of the Complainant's uniform branding where names of almost all the Complainant's hotels, trains and cruises. March 2014 marked the formal launch of the **BELMOND** brand with a new logo and website.
- (xii) On 4<sup>th</sup> July 2014, the Complainant Group appointed Heavens Portfolio India as their dedicated Sales and Marketing representative office in India to cater to its growing Indian consumer base. An extract from [www.heavensportfolio.com](http://www.heavensportfolio.com) and online news reports on the appointment of Heavens Portfolio as the Complainant Group's dedicated sales and marketing office in India have been marked by the Complainant as **Annexure J.**
- (xiii) The Complainant has extensively marketed its services under the trademark **BELMOND** in India since its adoption. Apart from the prominent showcasing in reputed international publications widely circulated in India, the trademark **BELMOND** has also been extensively showcased and advertised in various reputed India publications such as the Economic Times, the Financial Express, the Forbes Magazine, the Hindu, the Times of India, Outlook, Vogue India, Harper's Bazaar etc. The extracts of the publications showcasing the trademark **BELMOND** have been marked by the Complainant as **Annexure K.** The Complainant Group has also conducted various promotional events in



India as a part of the advertisement and promotion of the **BELMOND** brand amongst Indian Customers and members of the travel trade, dating back to 2015. Some photographs of these events, and a report of the same prepared by the Complainant's dedicated Sales and Marketing representative office in India are marked by the Complainant as **Annexure L**.

(xiv) The Complainant Group's properties are listed on some popular travel booking websites in India namely [www.makemytrip.com](http://www.makemytrip.com), [www.goibibo.com](http://www.goibibo.com), [www.cleartrip.com](http://www.cleartrip.com) and [www.booking.com](http://www.booking.com). The Extracts from the said websites showing listings of some of the Complainant Group's properties have been marked by the Complainant as **Annexure M**.

(xv) The Complainant's trademark rights over its trademark **BELMOND** have been upheld by Indian Courts on multiple occasions against third party users of the word mark. In *Belmond Interfin Ltd. V. Ritesh Rana & Ors.* CS(COMM) No.863 of 2017 and *Belmond Interfin Ltd. V. Rajeev Sood & Ors.* CS(COMM) No.685 of 2017 wherein the Defendant were restrained from using the trademark **BELMOND** and/or any mark deceptively similar thereto. The copies of the court orders in these suits have been marked by the Complainant as **Annexure N**.

(xvi) The Complainant's rights over and priority in adoption and use of the **BELMOND** trademarks have been upheld in a number of decisions by various WIPO Panelists in proceedings against a variety of third parties who have incorporated domains containing the trademark **BELMOND** as listed below:

- a. In case No. D2019-1907, concerning the domain name [www.belmondspa.com](http://www.belmondspa.com) the Sole Panelist found that the disputed domain name was confusingly similar to the Complainant's trademark **BELMOND**, and use thereof constituted bad faith.



- b. In case No.D2019-0120 concerning the domain name www.lvmhbelmond.com, the Sole Panelist found that the disputed domain name was confusingly similar to the Complainant's trademark **BELMOND** and use thereof constituted bad faith.

The Copies of the decisions have been marked by the Complainant as **Annexure O**.

#### 4.4 Respondent's Identity and activities:

- (i) The Respondent is the current Registrant of the disputed domain name **<belmond.in>**. In the month of September 2019, the Complainant has become aware of a domain name <belmond.in> registered in the name of the Respondent. The WHOIS particulars of the Respondent as provided to the Complainant by the National Internet Exchange of India is marked by the Complainant as **Annexure P**.
- (ii) The disputed domain name was registered on 24<sup>th</sup> February 2014 i.e. subsequent to the Complainant's adoption of the trademark BELMOND on the very same day that the Complainant announced that it was changing its name from Orient-Express Hotels and adopting the trademark BELMOND.
- (iii) The disputed domain has merely been parked and no website is hosted on it. A screenshot from the Web Archives dated 9<sup>th</sup> August 2018 reveals that the disputed domain was parked even on the said date. This clearly indicates that the website has been parked since its registration and no actual website has been hosted on it. The said screenshot from web archives has been marked by the Complainant as **Annexure Q**.

#### 5. Dispute

The dispute arose when the Complainant came to know about the disputed domain name in the name of the Respondent. The Complainant had also never



authorized the Respondent to use the disputed domain name. The Respondent is also not affiliated with the Complainant. In these circumstances, the Complainant prayed before this Tribunal to transfer the disputed domain name in favour of the Complainant.

**6. Parties contentions:**

**A. Complainant:**

- (i) The domain name **www.belmond.in** is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :
- (i) The Complainant submits that the disputed domain name /URL <**belmond.in**> registered by the Respondent is identical to the Complainant's trademark BELMOND. Further, the disputed domain is deceptively similar to the official website administered by the Complainant,i.e. **belmond.com**.
- (ii) The Complainant asserts that the domain name <**belmond.in**> is identical to the Complainant's trademark and trade name **BELMOND** since it incorporates the word BELMOND in full and merely adds the country code top level domain (ccTLD) ".in."
- (iii) The Complainant submitted without prejudice that regardless of the reason for the inclusion of the ccTLD in the disputed domain name, due to the fame of the distinctive and reputation of the trademark BELMOND, the first impression in the minds of the consumers shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.

The Complainant in its submission relies upon *Lockheed Martin Corporation Vs. Aslam Nadia* (INDRP Case No.947) which held that when the disputed



domain name contains the entirety of the Complainant's trademark followed by a generic term, the addition of the top-level domain .in will not distinguish the Respondent's disputed domain name.

(iv) In several UDRP decisions as well, various Panels have found that the fact that domain name wholly incorporates a complainant's registered trademark is sufficient to establish identical or confusing similarity for the purpose of the Policy. *Oki Data Americas, Inc v. the ASD, Inc* (WIPO Case No.D2001-0903), *Go Daddy.com, Inc v. Shoneye's Enterprise* (WIPO Case No.D2007-1090), *Qalo, LLC v.Chen Jinjun and Magnum Piering Inc v. The Mudjackers* (WIPO Case No.D2000-1525).

(ii) **The Respondent has no rights or legitimate interest in the domain name www.belmond.in [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of .INDRP] :**

- (i) The Complainant submits that Paragraph 7 of the IN Domain Dispute Resolution Policy (INDRP) any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a disputed domain name:
- Before any notice to it of the dispute, the Respondent's use of or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
  - 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
  - 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."



- (ii) The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use or register domain names comprising its trademark BELMOND.
  - (iii) The Complainant asserts that the Respondent is not commonly known by the disputed domain name or any name containing the Respondent's trade mark BELMOND. As held by previous Panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name.
  - (iv) It is a matter of record that the domain has been merely parked since at least 9<sup>th</sup> August 2018 and no actual website has been hosted on this domain name since this date. Accordingly, there is no evidence to suggest that the Respondent has either used or made any demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods and services.
  - (v) Hence, the Respondent is not using the disputed domain for a bona fide offering of services and not making legitimate non-commercial or fair use of the Complainant's trade mark under the Policy.
- (iii) **The domain name was registered and is being used by the Respondent in bad faith [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of .INDRP:**
- (i) The Complainant submits that the Respondent's bad faith is established by the fact that the Respondent has registered the domain in 2014 and has been passively holding the disputed domain name. The Respondent has simply warehoused the disputed domain name and has not made any bonafide use of the disputed domain name in over five years. Given the distinctiveness and reputation of Complainant's **BELMOND** trade mark, the only conclusion that can be drawn is that the Respondent registered the



domain name in bad faith to hold such for profit. Reliance is placed on *HSBC Holdings PLC Vs. Hooman Esmail Zadeh [INDRPCase No.032]* where it was held that non-use and passive holding of a domain are evidence of bad faith registration.

- (ii) The Complainant further submits that the Respondent's bad faith is further established by the fact that the home page of the disputed domain prominently states "*The domain Belmond.in may be for sale. Click here to inquire about this domain.*" Upon clicking on this link, it redirects to a page where users can submit a bid in US Dollars for purchase of the domain name. This page further states, "*The owner of Belmond.in has chosen to receive offer inquiries regarding this domain name. Note that the owner may disregard your inquiry if your offer does not meet his or her expectations.*" This clearly shows that the Respondent is actively soliciting offers for purchase of this inactive domain, which has been parked since its purchase so that the Respondent may sell it at a profit. Therefore, the Respondent clearly has an intent for commercial gain, and their use is not bonafide. Extracts from the home page evidencing the bid for purchase is marked by the Complainant as **Annexure R.**
- (iii) The Complainant further relies on *Rolls-Royce Motor Cars Ltd., Vs. Amy Hill (rendered by Sonal Kumar Singh, Sole Arbitrator, dated 17<sup>th</sup> October 2017)* where the Panel held that the Respondent's bad faith was evidenced by the fact that the Respondent offered to sell the domain name and because there was no active use of disputed domain.
- (iv) It is further submitted that the parked page on the disputed domain name provides "Related Links" such as "Belmond Orient Express", "Belmond Train", "Machu Pichu" etc., which directly reference the Complainant and its hotel properties. Upon clicking on these links, several related search results appear which are marked as "Ad". Extracts of these advertising links from the disputed domain are marked by the Complainant as **Annexure S.**



(v) It is further submitted that as per the "Privacy Policy" of the disputed domain:

*"We use third-party advertising companies to serve ads and collect information when users visit our site. These companies may collect and use information about your visits to this and other websites in order to provide advertisements on our site, other websites and other forms of media, such as mobile apps, about goods and services that may be of interest to you, and to understand how users respond to advertising on our website and other websites. These companies may collect this information using technologies such as cookies and pixels. We may also share personal information such as your e-mail address in hashed non-human readable form with these advertising companies. If you would like more information about this practice and to know your choices about not having this information used by these companies, check out [http://www.networkadvertising.org/managing/opt\\_out.asp](http://www.networkadvertising.org/managing/opt_out.asp). This Website may contain electronic images known as Web beacons, that allow us to count users who have visited those pages and to deliver co-branded services. We may include Web beacons in promotional e-mail messages or newsletters in order to determine whether messages have been opened and acted upon. Some of these Web beacons may be placed by third party service providers to help determine the effectiveness of our advertising campaigns or e-mail communications. These Web beacons may be used by these service providers to place a persistent cookie on your computer. This allows the service provider to recognize your computer each time you visit certain pages or e-mails and compile anonymous information in relation to those page views, which in turn enables us and our service providers to learn which advertisements and e-mails bring you to our website and how you use the site. This information in addition to the web searches you make while visiting this website and your web surfing behaviour on this site and other websites you may visit is used to show you*



*advertisements tailored to your interests on other websites and other forms of media. If you would like to know more about these practices and your choices about not having this information used to target ads to you, please click here. We prohibit Web beacons from being used to collect or access your personal information".*

The Extracts from the disputed domain's "Privacy Policy" are marked by the Complainant as **Annexure T**.

- (vi) The Complainant submits that this clearly shows that the Respondent is running advertisements which clearly reference the Complainant and its trade mark **BELMOND** on its domain and receives pay-per-click (PPC) revenue for these advertisements. Additionally, the pay-per-click (PPC) advertisements appearing on the Respondent's website demonstrate the *mala fide* intentions of the Respondent to monetize the impugned domain name and derive profits from passing off as the Complainant by taking unfair advantage of the Complainant's colossal fame and reputation.
- (vii) Therefore, the use of the parked webpage advertising links to the Complainant and its trade mark **BELMOND** squarely proves that the Respondent is using the impugned domain to earn profits by free-riding on the fame and reputation of the Complainant's trade mark **BELMOND**, and such use cannot be considered as *bona fide*.
- (viii) The Complainant further relies on *Wal-Mart Stores, Inc. v. Whois privacy, Inc. Case No.D2005-0850*; *Tata Sons Limited v. Randy Ulring Case No. D2015-1066*; *Facebook Inc.v. Puneet Agarwal Case No.D2017-1491* where it was observed that pay-per-click advertisements constitute bad faith use because the Respondent is attracting Internet users to its website by creating a likelihood of confusion with the Complainant, and misrepresenting its association with the Complainant.



(ix) It is pertinent to note that the Respondent registered the impugned domain www.belmond.in on 24<sup>th</sup> February 2014, the very day that the official announcement of the Complainant's name change was publicized in the media. Given that the trademark **BELMOND** is an invented word and a portmanteau of the Latin / French terms, there is no other reasonable conclusion for the Respondent's registration of the impugned domain, other than the *mala fide* intentions of the Respondent to unlawfully monopolize the said domain for profit.

(x) Reliance is placed on the following precedents:

*In Fomento De Construcciones Y Contratas S.A. v. eden environmental trading by Jonathan Carr / Eden Environmental Limited Case No.D2011-1245, the UDRP Panel held as follows:*

*"The single most important piece of evidence in this matter is the press release dated June 29, 2011 which was issued by Complainant to let the public know about its corporate reorganization and renaming. In particular, as of this date, Complainant announced that it was now going to be operating in the United Kingdom under the name "FCC Environment", combining its existing business divisions, which included WRG. On the same day of the announcement, Respondent registered the disputed domain name, which incorporates exactly the same two elements of Complainant's new business style. Given that Respondent also operates in the environmental field in the United Kingdom, it is inconceivable to this Panel that Respondent was unaware of the new name chosen by Complainant. It cannot be mere coincidence that Respondent chose to adopt and file the identical "FCC Environment" name so soon after Complainant's announcement.*



- (xi) *In Equinor ASA v. Syed Hussain, Domain Management MIC Case No.D2018-2410*, the Complainant announced its change of name to Equinor ASA and the impugned domain was registered merely one day after the said announcement. The UDRP Panel held that the domain was registered and used in bad faith as follows:

*"Further, the Disputed Domain Names were registered immediately after the Announcement Date. The Panel therefore believes that the Respondent's main motive for registering the Disputed Domain Names was opportunistic, namely to take advantage of the Complainant's reputation in the EQUINOR trade mark, in order to se3ll the Disputed Domain Names for commercial gain".*

- (xii) *In Curtis Jackson v. Meadow Point productions Case No.D2006-0394*, the UDRP Panel held as follows:

*"The fact that the Domain Names were registered on the same day as the Public announcement of the new name of Complainant's foundation is strongly indicative of bad faith. As mentioned above, "G-Unit" and "g-unity" are unusual phrases without common meaning. The Panel finds that it was not an accident that the registration occurred on the same day. Hearing of the new name of Complainant's foundation, the Panel reasonably concludes that Respondent sought to acquire domain names corresponding to the new name and confusingly similar to G-Unit in order to profit from its registrations".*

- (xiii) It is further submitted that the Respondent is a habitual infringer and cyber-squatter, who routinely registers ".in" and ".co.in" extensions of domains containing trademarks and trade names of well known foreign companies and start-ups. It is submitted that the Respondent is the registrant of over 200 domains, several of which are merely ".in" and ".co.in" extensions of



substantially well-reputed foreign companies, start-ups, names of popular mobile applications etc. A Reverse Whois search showing the list of the Respondent's registered domains and screenshots of the official websites of these foreign companies whose trademarks / trade names are being infringed by the Respondent are attached herewith as **Annexure U**.

Further, the Sole Arbitrator in *APPTIO, Inc. Vs. Mr. Kenneth Palo* INDRP/111- issued against the present Respondent has recognized his bad faith and mala fide activities such as demanding exorbitant sums of money to transfer the domain to its rightful owner. A copy of the said award is annexed as **Annexure V**.

- (xiv) The evidence overwhelmingly supports the conclusion that the Respondent registered the disputed domain name in bad faith. The fame and unique qualities of the trade mark **BELMOND**, which was internationally adopted by and applied for the Complainant prior to the registration of the disputed domain name, make it extremely unlikely that the Respondent created the disputed domain name independently without any knowledge of the Complainant's trade mark. Even constructive knowledge of a trade mark is sufficient to establish registration in bad faith. The Respondent registered the disputed domain name which is identical to the Complainant's trade mark with the sole intention of squatting on the domain or using it in future for attracting commercial gain by creating a likelihood of confusion with the Complainant's services under the same mark.

**B. Respondent:**

The Respondent, in spite of notice dated 11<sup>th</sup> November, 2019 and default notice dated 22<sup>nd</sup> November, 2019, did not submit any response.



## 7. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the response by the Respondent had also been notified to the Respondent on 22<sup>nd</sup> November, 2019

Under paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements to establish their case, that:


- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and ;
- (iii) The Respondent's domain name has been registered or are being used in bad faith.

### (a) Identical or confusing similarity:

- (i) The Complainant was initially carrying on business in the name of "**ORIENT EXPRESS**". From the perusal of **Annexure B** marked by the Complainant this Tribunal finds that the Complainant intended to change their business name from **ORIENT EXPRESS** to **BELMOND**. The Complainant's public announcement for name change is found in **Annexure I**. The first of such announcement is found in the magazine, The Caterer under the caption, "Le



*Manoir aux Quat'Saisons to be renamed in re-branding push'* on 24<sup>th</sup> February, 2014, followed by another news article in Travel Weekly under the headline, "*Orient Express Hotels to rebrand as Belmond*" on 24<sup>th</sup> November, 2014.

- (ii) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark "**BELMOND**" around the world, including in India. The same is evident from **Annexure A, B and C** marked by the Complainant. From **Annexure A**, this Tribunal perceives that the earliest filing of registration of the Complainant's  **BELMOND** dates back to 12<sup>th</sup> November, 2013 in Russian Agency for Patents and Trademarks which has been recorded in the State Register of Tademarks and Service Marks of the Russian Federation on May 14, 2015. Whereas, from **Annexure P**, the Whois Record of Respondent, this Tribunal perceives that the disputed domain name is registered on 24<sup>th</sup> February, 2014 which is the same day on which there was an article in the magazine, titled The Caterer under the caption, "*Le Manoir aux Quat'Saisons to be renamed in re-branding push'*" wherein the article depicts the rebranding of ORIENT EXPRESS to BELMOND. The name change was later made effective vide Certificate of Incorporation of name change on 17<sup>th</sup> March 2014. Although the Certificate of Incorporation is dated 17<sup>th</sup> March 2014, from the public announcements the Complainant has made clear that they would use the mark BELMOND for their businesses in due course. This Tribunal is therefore convinced from the documents marked by the Complainant that it possess the mark "BELMOND" since 2013 and prior to registration of the impugned mark by the Respondent.

- (iii) Further, this Tribunal inclines to the decision placed by the Complainant in *Lockheed Martin Corporation Vs. Aslam Nadia* (INDRP Case No.947) wherein it was held that when the disputed domain name contains the entirety of the Complainant's trademark followed by a generic term, the addition of the top-level domain .in will not distinguish the Respondent's



disputed domain name. The decision squarely applies to the present case. The Respondent has reproduced the mark of the Complainant Belmond followed by a top-level domain .in and the same will not distinguish the disputed domain name.

- (iii) Further, the Complainant relies on the decisions of various Panels in *Oki Data Americas, Inc v. the ASD, Inc* (WIPO Case No.D2001-0903), *Go Daddy.com, Inc v. Shoney's Enterprise* (WIPO Case No.D2007-1090), *Qalo, LLC v.Chen Jinjun and Magnum Piering Inc v. The Mudjackers* (WIPO Case No.D2000-1525), wherein the settled principle that the fact that domain name wholly incorporates a complainant's registered trademark is sufficient to establish identical or confusing similarity for the purpose of the Policy is laid down. This Tribunal finds substances in the Complainant's said submission.
- (iv) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

**(b) Respondent's Rights or Legitimate Interests:**

- (i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of Paragraph 4 (ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief



simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the mark "BELMOND". The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

- (ii) It is further seen from the WHOIS lookup in **Annexure P**, it relates the Respondent to the Disputed Domain name. However, it identifies the registrar as '1API GmbH, which is not in the slightest manner, related to the Disputed Domain name. The Respondent is found to have acted in a way that tarnishes the Complainant's well known mark "Belmond", by using the mark without any proper authorization.
- (iii) Further from **Annexure R**, this tribunal perceives that the Respondent website hosted at the disputed domain name displays "*Belmond.in may be for sale,*" which implies that the Respondent is not offering any goods/services in the domain name and the intention of the Respondent to make unjust commercial profits consequently creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.
- (iv) The above establishes that the Respondent does not have any rights or legitimate interest in the domain name and it intends to make unjust commercial profits.
- (v) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.



(vi) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) **Registration and Use in Bad faith:**

- (i) As observed above from **Annexure-P**, the Respondent had registered the disputed domain name on 24<sup>th</sup> February 2014, which is very much after the date of registration of the Complainant's trademark.
- (ii) This Tribunal finds substance in the decisions placed by the Complainant in *De Construcciones Y Contratas S.A. v. eden environmental trading by Jonathan Carr / Eden Environmental Limited*, Case No.D2011-1245, *Equinor ASA v. Syed Hussain, Domain Management MIC* Case No.D2018-2014 and *Curtis Jackson v. Meadow Point productions* , Case No.D2006-0394 wherein the UDRP Panel has repeatedly held that the registration of Domain name on the same day as the Public announcement of the new name of Complainant is strongly indicative of bad faith.
- (iii) Further from **Annexure R**, this Tribunal perceives that the Respondent website hosted at the disputed domain name displays "*Belmond.in may be for sale*". Interestingly, the screenshot of the impugned website portrays the impugned website along with the Complainant's previous business name, namely, **ORIENT EXPRESS** and also the present mark **BELMOND**.
- (iv) The above implies that the Respondent is involved in cyber squatting by registering domain names containing well known trademarks and thereby making illegal benefits by sale which would also amount to registration and use in bad faith. This Tribunal places reliance on the decision placed by the Complainant in *Wal-Mart Stores, Inc. v. Whois privacy, Inc.* Case No.D2005-0850; *Tata Sons Limited v. Randy Ulring* Case No. D2015-1066; *Facebook Inc.v. Puneet Agarwal* Case No.D2017-1491 where it was observed that pay-per-click advertisements constitute bad faith use because the Respondent is attracting Internet users to its website by creating a likelihood of confusion



with the Complainant, and misrepresenting its association with the Complainant.

- (v) The Respondent therefore has no legitimate rights or interests in the disputed domain name and there was a *mala fide* intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.
- (vi) Further, the impugned domain name is kept passive with no goods or services sold. The decision placed by the Complainant in *HSBC Holdings PLC Vs. Hooman Esmail Zadeh [INDRPCase No.032]* is squarely applicable to the case on hand where it was held that non-use and passive holding of a domain are evidence of bad faith registration.
- (vii) The Arbitral Tribunal is satisfied that the Respondent used the Complainant's domain name in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied.
- (viii) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

#### 8. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "BELMOND" and also the disputed domain name [www.belmond.in](http://www.belmond.in) be transferred to the Complainant.

  
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**D.SARAVANAN, Sole Arbitrator**

25<sup>th</sup> November, 2019  
Chennai, INDIA