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ARBITRATION AWARD
 .IN REGISTRY
 (C/o National Internet Exchange of India)
 Before the Sole Arbitrator, Binny Kalra
 Disputed domain name: < MOODLE.IN >

In the matter of:

INDRP Case No: 1630

Moodle Pty. Ltd.

... Complainant

v.

Ray Winston

... Respondent

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**ARBITRATION AWARD
.IN REGISTRY**

(C/O NATIONAL INTERNET EXCHANGE OF India)

Before the Sole Arbitrator, Binny Kalra

Disputed domain name <**MOODLE.IN**>

In the matter of:

Moodle Pty Ltd.
PO Box 303, West Perth
WA 6872, Australia

Complainant

V

Ray Winston
1500 SW8 Street,
Miami FL 33199
United States of America

Respondent

INDRP Case No: 1630

1. The Parties:

The Complainant is Moodle Pty Ltd., a company incorporated under the laws of Australia, who is represented in these proceedings by Mr. Christopher Peter Brown, First Floor, 20 Kings Park Road, West Perth, Western Australia, 6005. The Respondent is one Ray Winston, 1500 SW8 Street, Miami, FL, 33199 US, as per the records under the WHOIS database, maintained by the National Internet Exchange of India [NIXI].

2. The domain name, Registrar, and Policy:

The disputed domain name is www.moodle.in (hereinafter referred to as the "**disputed domain name**"). The Registrar for the disputed domain name is Dynadot, LLC having its address at 210, S Ellsworth Ave, #345 San Mateo, CA, 94401 United States. The present arbitration is being conducted in accordance with the Arbitration and Conciliation Act,
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1996, the .IN Domain Name Dispute Resolution Policy ("**Policy**") and the INDRP Rules of Procedure ("**Rules**").

3. Procedural history:

- 10 November 2022: The .IN Registry transmitted information of appointment of the arbitrator and circulated the complaint and its annexures to the parties, while also asking the Complainant to update the complaint with the missing details of the Registrant/Respondent.
- 11 November 2022: Notice of commencement of arbitration proceedings was sent by the Panel to the parties and a period of 15 days upon receipt of the amended complaint, was given to the Respondent to submit a statement of defense.
- 13 November 2022: An amended complaint was shared by the Complainant.
- 14 November 2022: In furtherance of the receipt of the amended complaint, a period of 15 days, until 29 November 2022, was given to the Respondent to submit a statement of defence with supporting annexures, if any.
- 01 December 2022: The panel informed the parties that since the Respondent did not file a statement of defence, its right to do so was deemed to be forfeited. The award was accordingly reserved.

4. Complainant's case:

The brief submissions of the Complainant in its complaint are encapsulated below:

- i. Complainant Moodle Pty Ltd. is the owner and operator of Moodle, a very well-known open-source course management system licensed and provided under the GNU general public license version 3, as available at moodle.org.



- ii. The Complainant identifies itself as the owner and operator of Moodle, and has been actively using the domains <moodle.com>, <moodle.org>, <moodle.net>, <moodle.academy> and <moodlecloud.com>.
- iii. Moodle enables educators across the world to create Internet-based educational communities, courses, and websites.
- iv. As a result of its flexibility, being open source and also, free in nature, the Complainant's platform Moodle has become widely known across the world as the software platform of choice for educators, and over forty-one million individuals and seventy thousand corporations, universities and schools currently use Moodle across the world.
- v. The Complainant has been providing computer learning and course management software, along with training services in the field of educational software products since 2001. The Complainant relies on **Annex 3** in this regard, which describes the history of Moodle.
- vi. The Complainant bases its complaint on the statutory rights it holds for the mark "MOODLE" in several countries, including:
 - MOODLE under registration No. 992232 in classes 9 and 42 dated 8 March 2004; and registration No. 1165568 in class 41 dated 12 March 2007, in Australia, as per **Annex 1**;
 - MOODLE under International Registration No. 1262397 (IRDI No. 3160658) in class 9 and class 42 dated 17 October 2014; and registration No. 1236845 (IRDI No. 2957395) in class 41 dated 17 October 2014, in India, as per **Annex 2**;
 - MOODLE under International Registration No. 838478 in class 9 and class 42 dated 6 September 2004; and
 - MOODLE under International Registration No. 1010183 in class 41 dated 13 May 2009.



- vii. The Respondent, Ray Winston, is the registrant of the disputed domain name which was registered on 6 February 2021. The disputed domain name currently, does not resolve to an active web site. A screenshot of the disputed domain name, not resolving has been referenced at **Annex 4**.
- viii. The Complainant alleges that the disputed domain name is identical or confusingly similar to the trademark or service mark of the Complainant, despite the Respondent not holding any rights or legitimate interests in the same. In fact, the disputed domain name, contains the word "MOODLE" in its entirety, despite the Complainant holding statutory rights in the "MOODLE" mark through various registrations, as has been highlighted above.
- ix. Due to the longstanding use of the "MOODLE" mark since 2001, the mark has acquired a significant amount of goodwill and reputation around the world. Owing to such goodwill and reputation accrued by the Complainant's trademark, the Respondent placed the disputed domain name on the Sedo platform (a website which is involved in buying, parking, and selling of domain names), for sale for US\$5500 until April 2022 with an intent of commercially gaining, or misleadingly diverting customers, or as a means to tarnish the trademark(s) of the Complainant. A screenshot from the Sedo website, evidencing the status as of 22 October 2022 has been referenced at **Annex 5**. This is evidence of registration and use of the disputed domain name in bad faith.

5. Respondent's case:

Though a notice of commencement of arbitration proceedings in respect of the disputed domain name by the Panel was sent to the Respondent and it was granted an adequate time period to respond, the Respondent has failed to submit a statement of defence in these proceedings.

6. Legal grounds:

Under Paragraph 4 of the Policy, the Complainant must establish the following three elements to succeed:



- a) the disputed domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered or is being used in bad faith.

7. Discussion and findings:

The Panel has gone through the complaint and annexures submitted by the Complainant. Since the Respondent has not submitted a statement of defence in these proceedings, the Panel must proceed on the basis of the Complainant's uncontroverted submissions in the complaint and an unbiased appreciation of the documents placed on record by the Complainant. The following discussion analyzes whether the Complainant has established the presence of the three elements that one must satisfy to succeed in the domain name dispute.

A. Whether the disputed domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights

The disputed domain name is <MOODLE.IN>. The Complainant has shown that it has rights in the MOODLE trademark by virtue of:

- i. prior adoption and continuous use of the trademark MOODLE;
- ii. statutory rights in the mark MOODLE in different countries including in India which the Panel has perused at **Annex 1** and **Annex 2**. No supporting document was found for International Registration nos. 838478 and 1010183;
- iii. operation and active use of the domains <moodle.com>, <moodle.org>, <moodle.net>, <moodle.academy> and <moodlecloud.com>.

A perusal of the contentions and the material placed on record by the Complainant makes it evident that the mark MOODLE qualifies as an inherently distinctive trademark and also enjoys statutory protection with various registrations granted to the said mark across different jurisdictions, including in India, thereby establishing the



Complainant's enforceable rights in the said mark. Section 28 of the Trademark Act 1999 confers on the registered proprietor the exclusive right to the use of the mark for the goods and services for which it is registered.

It is evident that the disputed domain name wholly contains the trademark MOODLE and is indistinguishable from the said trademark, irrespective of the .in ccTLD. The disputed domain name is thus identical to the MOODLE trademark and would undeniably cause a high degree of confusion in the mind of any internet user familiar with the Complainant's trademark and its services.

In this regard, the decision in Yahoo!, Inc. vs Akash Arora & Anr. (78 (1999) DLT 285) provides clear guidance where the Hon'ble Delhi High Court held:

"15. Counsel for the defendants also submitted that there is sufficient added matter, namely, addition of the word 'India' to distinguish its domain name from that of the plaintiff and in support of his submission, the learned counsel relied upon the decision in Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories; In Ruston and Hornby Ltd. Vs. Zamindara Engineering Co.; reported in 1970 S.C.1649, it was held that if there be close resemblance between the two marks and they are deceptively similar to each other, the word 'India' added to one mark is of no consequence. In that case the two marks were 'Ruston' and 'Ruston India'. Besides the plaintiff itself is using regional names after Yahoo! like Yahoo.CA (for Canada) and Yahoo.FR (for France). Thus, there is every possibility of the Internet users to believe that Yahoo india is another one in the series of Yahoo marks/names and thereby there is every possibility of confusion being created and thereby preventing these users from reaching the Internet site of the plaintiff..."

In this instance the disputed domain name does not even contain the word 'India' but the .in ccTLD extension to signify the region of use.

For the above reasons, the Panel finds that the disputed domain name is identical to the MOODLE trademark in which the Complainant has rights.



B. Whether the Respondent has any rights or legitimate interests in respect of the disputed domain name

The Panel has earlier noted that the Respondent has not submitted a statement of defence. The Panel therefore takes into consideration the following facts:

- i. the Registrant does not appear to have any demonstrable intent to use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.
- ii. There is nothing to suggest that the Respondent is commonly known by the disputed domain name or a name corresponding to the disputed domain name or that it has authorization, license, or any rights to use the trademark MOODLE of the Complainant.
- iii. **Annex 5** relied on by the Complainant shows that the disputed domain name had been placed for sale on the Sedo Platform from which it appears that the Respondent intended to cash in on the sale thereof to anyone wanting to exploit the goodwill and reputation of the Complainant in the MOODLE trademark. Though the screenshot at Annex 5 does not have a time stamp or a date to capture the period during which the domain name was down or not resolving, the Panel notes that the website still does not resolve when the disputed domain name is entered on a web-browser.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Whether the disputed domain name has been registered or is being used in bad faith

Paragraph 3 of the INDRP clearly stipulates that by applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant thereby represents and warrants that:



- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.”

The Registrant/Respondent therefore, has an express duty of care when it applies to register a domain name, and must do so after exercising proper due diligence. It is clear that the Respondent’s choice of the disputed domain name is not accidental or coincidental given the inherently distinctive nature of the trademark MOODLE and the Complainant’s registrations in India that are a matter of public record. The presumption, therefore, is that the Respondent failed to comply with the requirements under paragraph 3 of the INDRP and also sought to take undue advantage of the Complainant’s trademark.

Hence, considering the distinctive nature of the mark, and the fact that the Respondent had acquired the domain name primarily for the purpose of selling the same, bad faith can be presumed in line with clause 7(a) of the INDRP. The Respondent thus appears to have no defensible rights or any claim in respect of the disputed domain name and the material on record points to the registration and use of the disputed domain name in bad faith per paragraph 7(a) of the INDRP.

It is instructive to also refer to paragraph 3.2.1. of the WIPO Overview of which relevant excerpts are given below:

“Particular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or



geographic term, or one that corresponds to the complainant's area of activity or natural zone of expansion), (ii) the chosen top-level domain (e.g., particularly where corresponding to the complainant's area of business activity or natural zone of expansion), (iii) the content of any website to which the domain name directs ... (iv) the timing and circumstances of the registration... (v) ... (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant."

In view of the factors discussed above, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

Decision:

For the reasons discussed above, the Panel finds that the Complainant has satisfied all three elements required under Paragraph 4 of the Policy to obtain the remedy of transfer of the disputed domain name. Therefore, the Arbitrator directs that the disputed domain name <MOODLE.IN> be transferred to the Complainant.

The Panel also directs the Respondent to pay INR 30000 towards costs to the Complainant.

Signed:



(Binny Kalra)

Arbitrator

Date: 20 December 2022