



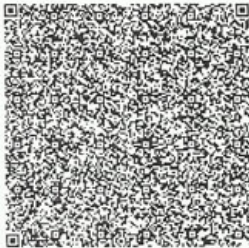
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL22917396534753N
Certificate Issued Date	: 02-Jul-2015 01:18 PM
Account Reference	: IMPACC (IV)/ dl835403/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL83540343075923041526N
Purchased by	: ANKUR RAHEJA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ANKUR RAHEJA
Second Party	: Not Applicable
Stamp Duty Paid By	: ANKUR RAHEJA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB

GIRNAR SOFTWARE PVT LTD V ZHU XINHUI (Domain Name: cardekho.co.in)

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shicilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

In the matter of:

GIRNAR SOFTWARE PVT LTD

... Complainant

versus

ZHU XINHUI

... Respondent

ARBITRATION AWARD

Dispute Domain Name: www.cardekho.co.in

1. The Parties:

a. **Complainant:** The Complainant in this arbitration proceedings is: Girnar Software Pvt Ltd, an Incorporated Company having its registered office at 'Girnar', 21, Govind Marg, Moti Doongri Road, Dharam Singh Circle, Jaipur 302004, India represented by Bharucha & Partners, Cecil Court, 4th Floor, M.K. Bhushan Marg, Colaba, Mumbai - 400039, India.

- b. Respondent:** The Respondent in this arbitration proceeding is Zhu Xinhui,
Ganjiangdonglu 333, Suzhou 215000, China.

2. The Domain Name and the Registrar:

- a. The Disputed Domain Name is www.cardekho.co.in.
- b. Disputed Domain Name is registered with Webiq Domains Solutions Pvt. Ltd, Mumbai, India.

Further, details of the Disputed Domain Name are as follows, as per the publicly available WHOIS details.

Domain Name: CARDEKHO.CO.IN

Created On: 27-May-2010 03:49:43 UTC

Expiration Date: 27-May-2016 03:49:43 UTC

Sponsoring Registrar: Webiq Domains Solutions Pvt. Ltd. (R131-AFIN)

Registrant Name: Zhu xinhui

Registrant Organization: Zhu xinhui

Registrant Street1: ganjiangdonglu333

Registrant City: suzhou

Registrant State/Province:

Registrant Postal Code: 215000

Registrant Country: CN

Registrant Phone: +86.13913122353

Registrant Email: newcrew@foxmail.com

Name Server: NS1.BODIS.COM

Name Server: NS2.BODIS.COM

3. Procedural History [Arbitration Proceedings]

This is mandatory Arbitration proceedings in accordance with the .IN Domain Name Dispute Resolution Policy (“INDRP”), adopted by the National Internet Exchange of India (“NIXI”). The INDRP Rules of procedure (“the Rules”) were approved by NIXI on 28th June 2005 in accordance with Arbitration and Conciliation Act, 1996. By Registering the Disputed Domain Name with the NIXI Accredited Registrar, the Respondent has agreed to the resolution of the domain disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India [“NIXI”], the history of this proceeding is as follows:



In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Advocate Ankur Raheja as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

In this matter, the arbitration proceeding commenced on 15 June 2015 in terms of INDRP Rules; Relevant Dates are as follows:

Sr No	Particulars	Date
1	Arbitration Case referred to Arbitrator & Acceptance given	15 June 2015
2	Date of Handover of Complaint by NIXI	15 June 2015
3	Hard Copy of Complaint received by Arbitrator and Notice of Arbitration issued to the parties, also referred as date of commencement of Proceedings	16 June 2015
4	Soft Copy of Complaint served upon Respondent by the Complainant	17 June 2015
5	Communication to the Respondent asking	18 June 2015

	for correct Contact Details and reminders thereafter	20 June 2015 24 June 2015
6	Second Notice to the Respondent	29 June 2015
7	Award Passed	20 July 2015

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 16th June 2015, with the instructions to file his reply / response by 29th June 2015.
- That the Complainant was requested to provide a soft copy of the Complaint to the Respondent, which was duly complied with on 17 June 2015, to expedite the proceedings.
- NIXI informed on 18 June 2015 that the Hard Copy sent to the Respondent through courier could not be delivered due to incorrect address/phone number and the consignment was put on hold by the courier agency. The Respondent was issued notice by the Arbitrator asking for the correct contact details on the same day but no response was received.

- That further reminders were issued on 20 June and 24 June 2015 respectively asking for correct contact details, but still no response was received. As a result the hard copy of the complaint could not be delivered to the Respondent and the status has been marked as 'Not Delivered' upon the courier agency website.
- That Respondent failed to file any response to the complaint, final opportunity was provided to the Respondent on 29 June 2015, to file the response by 04 July 2015.
- The communication at various stages of proceedings through email at the Respondent's Email ID as it appeared in the WHOIS information of the Disputed Domain was successfully delivered and on many occasions read receipt was received back.
- No response was filed by the Respondent to the second notice as well, therefore, an order for ex-parte proceedings was issued on 05 July 2015. The various notices were successfully delivered upon the Respondent at various stages including soft copy of the complaint, therefore, service of notice was

deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.

- No personal hearing was requested / granted / held.

4. Factual Background

According to the documentary evidence and contentions submitted:

A. The Complainant had registered its main Domain Name CarDekho.com in March 2008 and since then the Complainant's website CarDekho.com has provided various services under its brand such that the same is identified with the Complainant's brand. The brand and domain name "**CarDekho**" has come to be solely associated with the Complainant and none else. The Complainant has established its reputation through its "**CarDekho**" brand and has extensive coverage of its products and services.

B. "**CarDekho**" provides services such as database of cars in categories (ranging from new launches to upcoming models), provides its visitors with car reviews and e-commerce services, an e-store for automobile accessories,

automobile finance, car insurance on both new and used cars, a platform for used cars, etc.

C. The Complainant's brand and services have been widely and consistently recognized as is evident by the various prestigious awards won by “**CarDekho**” over the years including “**CarDekho**” was awarded Website of the Year, along with awards for the 'Best Car Website' and 'Most Popular Website' in the automotive sector in 2012, again Website of the Year in the automotive sector in 2014. Previously, also won an award for the 'Most Popular Automotive Website' and 'Best Automotive Website'.

D. Further, the analytical data has been submitted showing as many as crores of visitors within the single year of 2012, nearly matching its traffic of the preceding 4 years. Till date, “**CarDekho**” has served as many as 316 million visitors over its lifetime. Moreover, “**CarDekho**” has millions of registered users, till date. Complainant had also launched Android and iOS applications for the ever growing mobile phone users.

E. In September 2014, the Complainant acquired Ibibo owned Gaadi.com. The acquisition established “**CarDekho**” as an undisputed leader of the Indian automotive portals, with the combined volumes of CarDekho.com and Gaadi.com exceeding 15 million monthly visitors.

F. The Complainant has filed diverse applications for registration of its trade/service marks (falling within the “**CarDekho**” brand) across various classes of the Fourth Schedule to the Trade Marks Rules, 2002, with the Trade Marks Registry, Mumbai. The applications are presently pending registration.

5. The Dispute

- a. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- b. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- c. The disputed Domain Name has been registered or is being used in Bad Faith.

6. Parties Contentions

I. Complainant further contends as follows:

- The “**CarDekho**” brand has been in continuous use and the public across the country as such associates the “**CarDekho**” brand exclusively with the Complainant.
- The Complainant, in addition to being the registered proprietor of the “**CarDekho**” trade/service marks, is also the absolute owner of domains in respect of its “**CarDekho**” brand with the .com extension including the 'www.cardekho.com' domain. The 'www.cardekho.com' domain is accessible across the globe to any person with an internet connection. Clearly, the Complainant's trade/service mark “**CarDekho**” is now acknowledged as a 'well-known' mark, and is as such exclusively associated with Complainant's services.
- The “**CarDekho**” brand has created substantial brand value and generated immense goodwill for the Complainant, and the Complainant has taken adequate steps to protect its right title and interest thereto by applying for

Trademark Registration. In the circumstances, it is evident that the said domain name is identical and / or confusingly similar to the Complainant's trade / service mark since it uses the same name / mark as the Complainant's well-known brand and mark.

- It is clear that the Respondent's use of the said domain name is not in connection with a bona fide offering of goods or services. This is evident by the fact that the said domain name is completely unused by the Respondent up until the filing of the present complaint. In fact, on the right hand corner of the website, the Respondent has admittedly indicated that it has no intention to use the said domain name at all and that it is offering the same for sale at a price of USD 8888, which is evident from the Annexure annexed with the Complaint. Clearly, the Respondent's misuse of the said domain name reveals a clear case of domain squatting. The Respondent has no intention to use the said domain name and there exists a definite possibility that the domain name may be used in a manner that will tarnish the reputation and good name of the Complainant and therefore adversely impact its trade / service marks.

- The Respondent has clearly attempted to use the popularity of the Complainant's well-known “**CarDekho**” brand for his own personal benefits. This action of the Respondent clearly constitutes an attempt to free-ride on the Complainant's goodwill and reputation. The Respondent has sought to squat / hoard the said with mala fide intent and to the Complainant's detriment and prejudice.

- By an email of April 18,2015, the Complainant got a Cease and Desist Notice served calling upon the Respondent to cease and desist from, in any manner, using the said domain name; apply for cancellation of the said domain name; and remove the contents of the website of the said domain name. However, despite serving the Respondent with the Cease and Desist Notice, no response has been forthcoming. Complainant has annexed a copy of the delivery notification dated April 18, 2015 indicating that the same were delivered to the Respondent.

- The Respondent, as mentioned hereinbefore, has no legitimate right to use the www.cardekho.co.in domain since the Complainant is the proprietor of the trade / service marks.

➤ Admittedly, the Respondent,

- a. has nothing to do with the Complainant and / or its business including the “**CarDekho**” brand;
- b. has registered the said domain name to unjustly enrich himself and / or squat and / or hoard the same;
- c. has blatantly violated the Policy adopted by ICANN and the Rules framed thereunder, in that he has violated and breached the representations to be made by an applicant (at the time of registration of a domain name) under paragraph 2 and 4 of the Policy;
- d. has registered the said domain name which is identical and / or confusingly similar to the Complainant's “**CarDekho**” mark;
- e. has no legitimate interests / rights in respect of the Policy;
- f. is likely to use the said domain name in bad faith; and
- g. has intentionally attempted to attract, for commercial gain or otherwise, Internet users to his web site, by creating a likelihood of confusion with the Complainant's “**CarDekho**” brand as to the source, sponsorship, affiliation, or endorsement of the said domain name.

II. Respondent



A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 16 June 2015 and 29 June 2015 respectively in addition to the three additional notices issued asking for the correct address.

B. However, Respondent has failed and/or neglected to file any response to the Complaint filed by the Complainant despite being given an adequate notification and various opportunities by the Arbitrator including that for the correct address.

C. The Arbitrator, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

7. Discussion and Findings:

I. Procedural Aspects

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

(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 interests in respect of the domain name; and

(iii) the Registrant's domain name has been registered or is being used in bad faith.

II. Respondent's Default

Several domain dispute decisions have established that once a complainant has made a prima facie case that a Respondent lacks legitimate interest or right, the

burden shifts to the Respondent to prove its right or legitimate interest in the domain name (**F. Hoffman-La Roche AG v. Steven Pratt, WIPO Case No. D2009-0589** and **Canadian Tire Corporation Limited v. Swallowlane Holdings Ltd., WIPO Case No. D2009-0828**). That is, the Respondent must come forward with the proof that it has some legitimate interest in the Domain Name to rebut this presumption. But the Respondent has failed to come forward with a Response and therefore, in light of Complainant's unrebutted assertion that Respondent has no rights or legitimate interests in the disputed domain name, the Arbitrator may presume that no such rights or interests exist. [**Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221**].

The INDRP Rules of Procedure requires under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the documents relied upon by the Complainant.

In the matter of **Taco Bell Corporation V. Webmasters Casinos Ltd [INDRP/067]**, it was held that the Respondent registered the disputed domain name maliciously and he shows his depraved intention, in the arbitration proceedings by his act because various notices were sent by the arbitrator but he has submitted no reply of anyone. [INDRP/067 - tacobell.co.in - May 29, 2008]. Also in the matter of **Talk City, Inc. v. Robertson, WIPO Case No D2000-0009**, it has been held that because Respondent failed to submit a Response, the Panel may accept all of Complainant's reasonable assertions as true.

The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the

Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:

The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 4(i) of INDRP Policy]

The Complainant has provided enough evidence that it has rights in the Mark "**CarDekho**" being continuously used since year 2008. The said mark is a combination of two words adopted from different languages 'Car' and 'Dekho', while the first one is an English word and the latter has meaning in Hindi Language and this unique combination was first put to use by the Complainant only. It has received wide recognition and has approx 7 million registered users till date and even initially had a good traffic on it's main www.CarDekho.com ("**CarDekho**") website by 2010.

Complainant contends, that the domain name registered by the Respondent is both similar and identical to www.CarDekho.com ("**CarDekho**") which is one of India's most leading search and comparison website and one of several similar ventures of the Complainant, including BikeDekho, PriceDekho, MobileDekho, amongst others.

It is noteworthy that the Complainant has filed diverse applications for registration of its trade / service marks (falling within the "**CarDekho**" brand) across various classes of the Fourth Schedule to the Trade Marks Rules, 2002. The Trade Marks Registry, recognizing and accepting the distinctiveness of the get-up,

colour schemes and style of the Complainant's trade / service marks as well as its continued and pan-Indian popularity, has permitted the registration and / or advertisement of about 5 marks in the Complainant's favour. It is also therefore clear that the said domain name is being used by the Respondent without authority and in bad faith. Though the trademark is pending registration for the mark “**CarDekho**” with the Trademark Registry in India, under numerous classes, with the status as ‘Send to Vienna Codification’.

In order to acquire common law rights, a complainant must show that its mark(s) has acquired secondary meaning. Relevant evidence of secondary meaning includes “length and amount of sales under the mark, the nature and extent of advertising, consumer surveys and media recognition.” [**Gourmet Depot v. DI S.A., FA 1378760 (Nat. Arb. Forum June 21, 2011)**].

Clearly the Complainant's trade / service mark “**CarDekho**” is now acknowledged as a 'well-known' mark, and is as such exclusively associated with Complainant's services. The “**CarDekho**” brand has created substantial brand value and generated immense goodwill for the Complainant, and therefore, the Complainant has taken adequate steps to protect its right title and interest thereto.

No doubt, the Complainant's brand and services have been widely and consistently recognized as is evident above and also from the various prestigious awards won by **“CarDekho”** over the years including 'Website of the Year', 'Best Car Website', 'Most Popular Website', 'Most Popular Automotive Website' and 'Best Automotive Website'.

Further, the analytical data has been submitted showing as many as crores of visitors within the single year of 2012, nearly matching its traffic of the preceding 4 years. Till date, **“CarDekho”** has served over 300 million visitors over its lifetime. Moreover, **“CarDekho”** has millions of registered users, till date. Complainant had also launched mobile apps for the ever growing mobile phone users. In September 2014, the Complainant acquired Ibibo owned Gaadi.com. The acquisition established **“CarDekho”** as an undisputed leader of the Indian automotive portals, with the combined volumes of CarDekho.com and Gaadi.com exceeding 15 million monthly visitors.

Indeed, numerous courts and UDRP panels have recognized that “if a well-known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant’s registered mark.” **[ITC Limited V Travel India (INDRP Case No. 065);**

Boehringer Ingelheim Pharma GmbH & Co. KG v Philana Dhimkana (WIPO Case No. D2006-1594); Allied DOMEQ Spirits and Wine Limited v Roberto Ferrari, (INDRP Case No. 071); Philip Morris USA Inc. v Doug Nedwin/SRSPlus Private Registration (WIPO Case No. D2014-0339)].

Honorable Supreme Court of India in the matter of Satyam Infoway Ltd vs Sifynet Solutions Pvt. Ltd held that "A domain name, is accessible by all internet users and the need to maintain an exclusive symbol for such access is crucial as we have earlier noted. Therefore a deceptively similar domain name may not only lead to a confusion of the source but the receipt of unsought for services... The doubtful explanation given by the respondent for the choice of the word 'Sify' coupled with the reputation of the appellant can rationally lead us to the conclusion that the respondent was seeking to cash in on the appellant's reputation as a provider of service on the internet." **[2004 Supp(2) SCR 465]**

Therefore, based on Complainant's clear rights in the Marks, along with the widespread popularity of Complainant's mark "**CarDekho**", it is quite obvious that an Internet User would likely mistakenly believe that a website accessible by the URL: www.cardekho.co.in (i.e. Disputed Domain) is managed or endorsed by Complainant, or enjoys the benefit of Complainant's news and information

resources. And no doubt, Disputed Domain Name is confusingly similar to Complainant's Mark.

Besides it is also well-established that the extensions such as '.co.in' in a disputed domain name does not affect a finding of similarity. In the INDRP matter of **The Hershey Company V. Rimi Sen**, it has been held that the addition of the country top level domain ".co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant's mark [**INDRP/289 - Hersheys.co.in**]. Also in UDRP matters, it has been held that it is technically required for the operation of a domain name, and thus it is without legal significance in an inquiry of similarity. [**Tumblr, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd., Host Master, WIPO Case No D2013-0213**]. Also in the recent matter of **Compagnie Générale des Etablissements Michelin Michelin Recherche et Technique S.A. V Artemio Garza Hernandez [WIPO Case No D2015-0257]**, the Panel observes that the extension ".com" is typically not taken into consideration when examining the identity or similarity between a complainant's trademarks and a disputed domain name.



Thus, this Arbitrator comes to the conclusion that the disputed domain name <cardekho.co.in> is confusingly similar or identical to the Complainant's mark. Therefore, it concludes that the Complainant has satisfied the requirement of paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(ii) the Registrant has no rights or legitimate interests in respect of the domain name [Para 4(ii) of INDRP Policy]

The circumstances has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in at least one circumstance under this clause in order to prove legitimate interest:

Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests 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 interests 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 in connection with a 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 trademark “**CarDekho**” is a coined term, first adopted by the Complainant only. Complainant contends that the brand and domain name “**CarDekho**” has come to be solely associated with the Complainant and none else. The Complainant has established its reputation through its “**CarDekho**” brand and has extensive coverage of its products and services.

It is well established that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and then the burden shifts to the Respondent to come forward with concrete evidence of such rights or legitimate interests. The Arbitrator finds that

the Complainant has made such showing in this case but no information has been submitted by the Respondent on what rights or legitimate interests he may have in the disputed domain name. [**Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270**]. Also Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the domain names [**Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221**].

There is no showing that 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 bona fide offering of goods or services. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but leads to a parking page displaying PPC (pay per click) advertising links. It has been held that merely registering the domain name is not sufficient to establish right or legitimate interests. [**Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244**].

Complainant contends Respondent's use of the said domain name is not in connection with a bona fide offering of goods or services. This is evident by the

fact that the said domain name is completely unused by the Respondent up until the filing of the present complaint. In fact, on the right hand corner of the website, the Respondent has admittedly indicated that it has no intention to use the said domain name at all and that it is offering the same for sale at a price of USD 8888. Clearly, the Respondent's misuse of the said domain name reveals a clear case of domain squatting !

In the WIPO matter of **American Home Products Corporation vs. Ben Malgioglio, [WIPO Case No. D2000-1602]**, it was held that the Respondent's website is not operational and the Panel infers that it never has been. The Panel simply does not see such passive use to constitute a legitimate non-commercial or fair use without any intent to misleadingly divert consumers or tarnish the trademark or service mark at issue. Further in the WIPO matter of **Paris Hilton v. Deepak Kumar, [WIPO Case No. D2010-1364]**, if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to

unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill.”

The disputed domain name directs towards a parking page displaying sponsored links does not constitute a bona fide offering of goods. Therefore, it is an indication that Respondent lacks of rights or legitimate interests [**National Bedding Company L.L.C. v. Back To Bed, Inc., WIPO Case No. D2010-0106 and LEGO Juris A/S v. J.h.Ryu, WIPO Case No. D2010-1156**].

In the WIPO matter of **Express Scripts, Inc. v. Windgather Investments Ltd. / Mr. Cartwright**, the Panel accepted that before notice of the dispute began, the Domain Name was not being used by the Respondent in connection with a bona fide offering of goods and services. The Respondent had apparently “parked” the Domain Name until it could be sold and the advertisements on the site were generated by the parking company. The Panel therefore finds that the Respondent has no legitimate rights or interests in the Domain Name and that the Complainant has therefore satisfied the requirements of the Policy. [**WIPO Case No. D2007-0267**]

Further, there is no indication that Respondent is commonly known by that name or carrying on business under the name, corresponding to the disputed domain name. Further obviously neither Complainant has assigned, granted, licenced, sold, transferred or in any way authorized the Respondent to use the distinctive mark “**CarDekho**” or to register the disputed domain name.

In the matter of **Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum February 10, 2003)** it was held: “nothing in Respondent’s WHOIS information implies that Respondent is ‘commonly known by’ the disputed domain name” as one factor in determining that Policy paragraph 4(c)(ii) does not apply. Also in the matter of **Gallup Inc. v. Amish Country Store, FA 96209 (Nat. Arb. Forum Jan. 23, 2001)** “finding that the respondent does not have rights in a domain name when the respondent is not known by the mark. Therefore, the Arbitrator finds that Respondent is not commonly known by the disputed domain name under Policy paragraph”.

Lastly, it is quite evident from the parked webpage at the disputed domain name that neither any legitimate, noncommercial or fair use of the disputed domain name being made, but the Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant’s well-known



trademark “**CarDekho**”, in order to capitalize / profit from the goodwill associated with the famous mark.

Given the long and widespread reputation of the Complainant’s mark, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant’s widely known and distinctive mark but identical, intended to ride on the goodwill of the Complainant’s trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant’s site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [**Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO Case No. D2005-0321 – mtvbase.com**].

Thus, this Arbitrator comes to the conclusion that the Respondent has no Rights or Legitimate Interests in the Domain Name <cardekho.co.in>. Therefore, it concludes that the Complainant has satisfied the requirement of paragraph 4(ii) of the IN Domain Name Dispute Resolution Policy.



(iii) the Registrant's domain name has been registered or is being used in bad faith [Para 4(iii) of INDRP Policy]

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

Paragraph 6 of the INDRP policy: 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:

(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 said Domain Name has been parked at the BODIS parking service, and according to the annexure produced previously indicated on the parking page that the Domain Name is available for sale at a price of USD 8888, which implies that Respondent had no intention to use the said domain name at all. Though to some extent, the above evidences the fact that the Domain Name was registered by the Complainant primarily for the purpose of selling or otherwise transferring the domain name registration for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name.

Further, it is contended by the Complainant that it appears from the noting at the bottom of the said domain page that the said domain name was made available to the Respondent free of cost. The later contentions are not correct as what footer mentions is that just the parking page has been made available for free by the Parking Company 'Bodis.com' and not the Domain Name. Otherwise also said contention are quite irrelevant.

It seems obvious that the Respondent has registered the domain name in order to prevent the Complainant from reflecting the mark in a corresponding domain name but no evidence as to any pattern of such conduct has been made available. But by using the disputed domain name <cardekho.co.in>, no doubt the Registrant has intentionally attempted to attract Internet users to the Respondent's website 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 complainant contends that the Respondent has clearly attempted to use the popularity of the Complainant's well-known “**CarDekho**” brand for his own personal benefits. This action of the Respondent clearly constitutes an attempt to free-ride on the Complainant's goodwill and reputation. The Respondent has sought to squat/hoard the said with mala fide intent and to the Complainant's detriment and prejudice.

In the matter of **Telstra Corporation Limited v. Nuclear Marshmallows [WIPO Case No D2000-0003]** the question was considered as to what circumstances of inaction (passive holding) other than those identified in paragraphs 4(b)(i), (ii) and (iii) can constitute a domain name being used in bad faith ?

In the said matter, the Administrative Panel has considered whether, in the circumstances of this particular Complaint, the passive holding of the domain name by the Respondent amounts to the Respondent acting in bad faith. It concludes that it does. The particular circumstances of this case which lead to this conclusion are:

- (i) the Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use in Australia and in other countries,
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,
- (iii) the Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name,
- (iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and
- (v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

Clearly, the above factors are proved in the current matter of **<cardekho.co.in>** as well, as the Complainant has a strong reputation on the one hand, on the other hand Respondent has failed to respond or provide any evidence in support and further Respondent seems to have deliberately provided false WHOIS

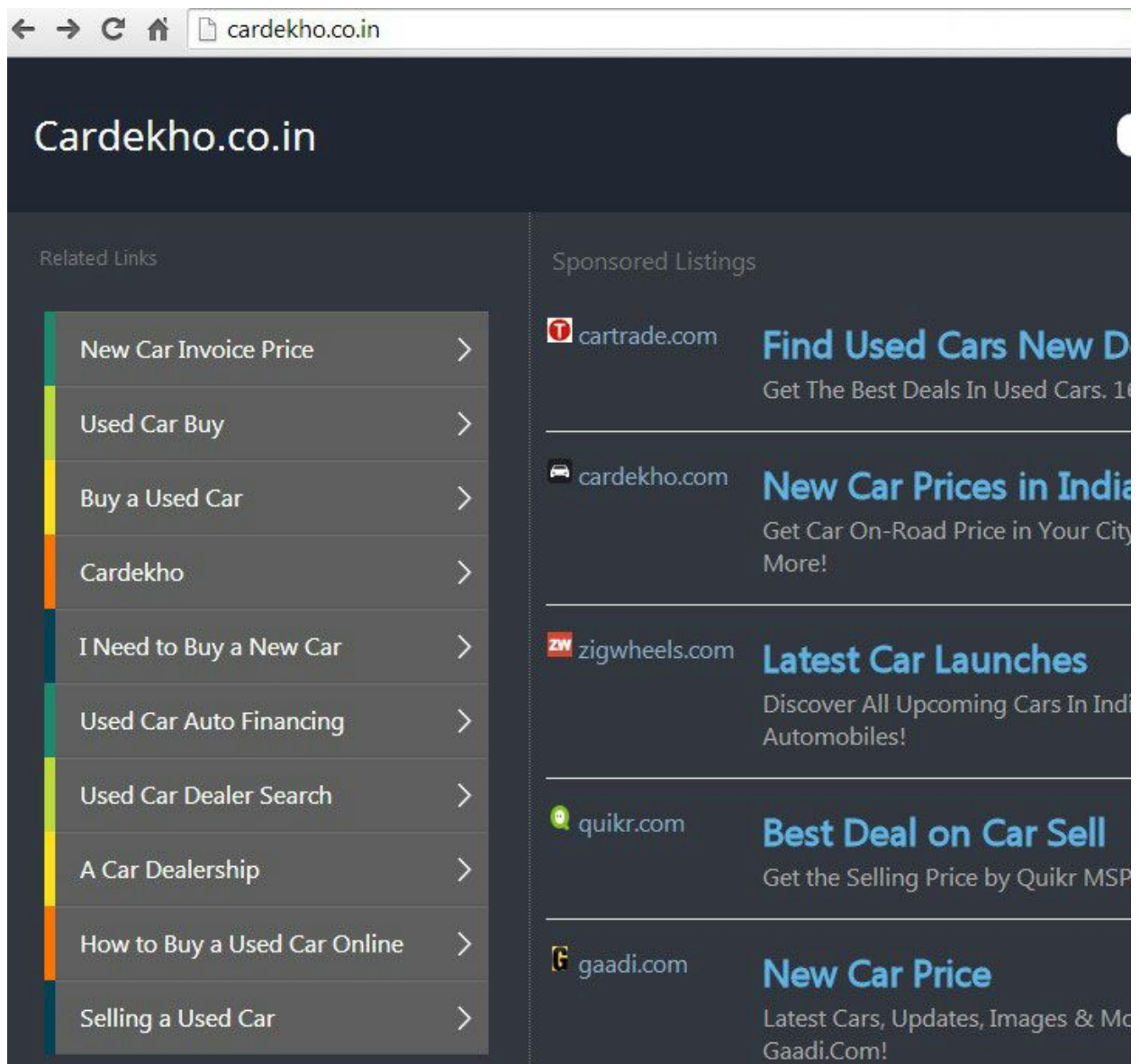
contact details on which neither the hard copy of the Complaint could be delivered nor a phone call could have been made, when contacted by the courier agency.

It is impossible that the Respondent was not aware of the Complainant's rights to the mark as the Complainant's Domain names cardekho.com and cardekho.in were registered in the year 2008 and 2009 respectively. They already had good internet traffic by the year 2010 and there were rarely any such websites offering online car comparison, etc services in 2010, when the Respondent seems to have first registered the Domain Name. The archives for the website cardekho.co.in at www.archive.org show that the Domain has been put on sale since 2011, initially on SEDO.com and recently at BODIS.com and no legitimate use of the said Domain has ever been made.

Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. Where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known

trademark, it constitutes bad faith registration. **[LEGO Juris AS V. Robert Martin - INDRP/125 - 14 February 2010]**

Clearly, the disputed Domain Name cardekho.co.in incorporates the said Complainant's mark in its entirety. The paragraph 3 of the INDRP policy clearly states that it is the responsibility of the Respondent to find out before registration that the domain name that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. And a simple google search for the keyword "**CarDekho**", throws the google results referring to the Complainant only. Therefore, it can be safely presumed that Complainant's use of mark was in the knowledge of the Respondent at the time of registration of the said domain name. The screenshot of the parking page at the Disputed Domain as produced by the Complainant and even the current parking page carries related advertising links of the Complainant and also that of Competitors as reproduced herein below.



UDRP panels have found that a domain name registrant will normally be deemed responsible for content appearing on a website at its domain name, even if such



registrant may not be exercising direct control over such content – for example, in the case of advertising links appearing on an “automatically” generated basis. To the extent that the presence of certain advertising or links under such arrangement may constitute evidence of bad faith use of the relevant domain name, such presence would usually be attributed to the registrant unless it can show some good faith attempt toward preventing inclusion of advertising or links which profit from trading on third-party trademarks. [LEGO Juris - **WIPO Case No. D2015-0555**]

In the UDRP matter of **PepsiCo, Inc. v. “null”, aka Alexander Zhavoronkov, WIPO Case No. D2002-0562**, it has been held that registration of a well-known trademark as a domain name may be an indication of bad faith in itself, even without considering other elements of the Policy. And given the popularity of the Complainant’s <cardekho.com> website, the Complainant's mark "**CarDekho**" is now acknowledged as a “well-known” mark, and is as such exclusively associated with Complainant's services.

The Complainant already had active and official website on **CarDekho.com** since 2008. Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant’s well-known trademark

“**CarDekho**”, in order to capitalize / profit from the goodwill associated with the famous mark. Only a person who is familiar with Complainant’s mark could have registered a domain name that is confusingly similar [**Barney’s Inc. v B N Y Bulletin Board: WIPO Case No D2000-0059**].

It was held in the matter of **L’Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, [WIPO Case No. D2005-0623]**, exploitation of the reputation of trademarks to obtain click-through commissions from the diversion of internet users is a common example of use in bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous decisions: see **Future Brands LLC v. Mario Dolzer, WIPO Case No. D2004-0718; ACCOR v. Mr. Young Gyoon Nah, WIPO Case No. D2004-0681 and Deloitte Touche Tohmatsu v. Henry Chan, WIPO Case No. D2003-0584**.

In the matter of **HSBC Holdings plc v Hooman Esmail Zadeh, [INDRP Case No 032]**, it was held that non-use and passive holding are evidence of bad-faith registration. The evidence furnished by the Respondent does not give a plausible explanation as to why there was no use of the domain name for more than two years. [**Bayer Aktiengesellschaft v. Henrik Monssen, Wipo Case No D2003-0275**]



Thus, this Arbitrator comes to the conclusion that the Domain Name <cardekho.co.in> was registered and is being used in Bad Faith. Therefore, it concludes that the Complainant has satisfied the final requirement of paragraph 4(iii) of the IN Domain Name Dispute Resolution Policy.

8. Decision:

In the lights of the circumstances and facts discussed above, Arbitrator decides, “The disputed domain name is identical and confusingly similar to the ‘**CarDekho**’ mark / trade name in which Complainant has rights and the Respondent has no right or legitimate interests in respect of the Domain Name and the Respondent’s Domain Name has been registered and is being used in Bad Faith”.

Consequently the Arbitrator orders that **the Domain Name <cardekho.co.in> be transferred from the Respondent to the Complainant** with the following order as to costs.

Costs:

In the facts and circumstances as discussed above, the Respondent is also ordered to pay to the Complainant, the documented costs of these proceedings. Further for any delays, it shall be accompanied with interest @ 15% p.a. (fifteen percent per annum) from the date of implementation of the decision till the date of payment.



Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 20th July 2015

Place: New Delhi