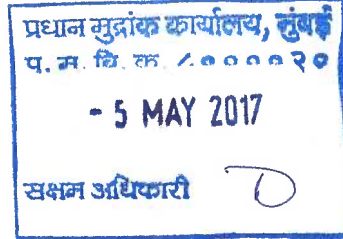


महाराष्ट्र MAHARASHTRA

2017

RY 449584



BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR  
.IN REGISTRY  
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

श्री. प्र. ना. विचघाई

1. Colgate – Palmolive Company
  2. Colgate – Palmolive (India) Ltd. ...Complainants
- v/s
- Zhaxia ...Respondent

In the matter of Disputed Domain Name <COLGATE.IN>

#### 1 The Parties

The Complainant no. 1 is Colgate – Palmolive Company having its office at 300, Park Avenue, New York, NY 10022, USA. The Complainant no. 2 is Colgate – Palmolive (India) Ltd. having its office at Colgate Research Centre, Main Street, Hiranandani Gardens, Powai, Mumbai – 4000076. (hereinafter collectively referred to as 'Complainants') The Complainants are represented by Anand & Anand, India.

The Respondent is Zhaxia, having its address at Doublefist Limited, Milwaukee, Wisconsin, WI 53214, USA, Postal Code 53202.

## 2 Procedural History

- 2.1 A Complaint dated April 13, 2017 has been filed with the National Internet Exchange of India (hereinafter referred to as the 'Exchange'). The Complainants has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the 'INDRP') and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On May 2, 2017, the Arbitrator had directed the Respondent to file his reply to the Complaint on or before May 16, 2017. On May 12, 2017, the Arbitrator had extended the deadline for submission of reply to May 21, 2017. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed ex-parte.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainants, the Respondent and the Exchange.

## 3 Factual Background

From the Complaint and its annexures, the Arbitrator has found the following facts:

- 3.1 The Complainant no. 1 is a public company incorporated under the laws of the State of Delaware, United States of America. The Complainant no. 2 is a public limited company incorporated under the Indian Companies Act, 1913. The Complainants are carrying business inter alia of manufacturing and/or selling of oral care products. The Complainant no.1 was incorporated in the early years of the 19<sup>th</sup> century and it has presence in India through the Complainant no. 2 which is the subsidiary of the Complainant No. 1.
- 3.2 The Complainant no. 1 is the registered proprietor of the trademark 'COLGATE' in various countries including India and the US. The Complainant no. 1 uses its Intellectual Property in



India entirely through the Complainant no. 2. The Complainant no. 2 is the licensed/registered and authorized user in India of the Complainant no.1's trademarks, designs and copyrights.

- 3.3 The Complainants are the registrant of the domain names <Colgate.com> and <Colgate.co.in>.
- 3.4 The Complainants have devoted an enormous amount of time, effort and energy in promoting and advertising the trademark 'COLGATE' in print and online media. The Complainants have been repeatedly acknowledged and appreciated worldwide for the superior quality of their oral care products and have accumulated immense brand recognition for said products. There are innumerable such titles and awards earned by the Complainants with its presence in India for over the span of century. Consequently, the trademark 'COLGATE' has become a household oral care brand in India as well as globally and is easily recognizable by one and all in get-up and trade dress which are long established.
- 3.5 The Disputed Domain Name <COLGATE.IN> was registered by the Respondent on April 15, 2014.

#### **4 Parties' Contentions**

##### **4.1 Complainants**

The Complainants contends that the Disputed Domain Name is identical to its trademark 'COLGATE'; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered and is being used in bad faith.

##### **4.2 Respondent**

The Respondent did not file reply to the Complaint.

#### **5. Discussion and Findings**

- 5.1 In view of the default and the absence of any reply to the Complaint by the Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP.
- 5.2 According to the INDRP, the Complainants must prove that:
- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants has rights;
  - (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and





- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

### 5.3 **Identical or Confusingly Similar**

The Complainant no. 1 is the registered proprietor of the trademark 'COLGATE' in various countries including India and the US. The Complainants are also the registrant of domain names <Colgate.com> and <Colgate.co.in>. The Disputed Domain Name <Colgate.in> incorporated the Complainants' trademark 'COLGATE' in its entirety without any other word or letter. It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains and Country Code Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The '.in' suffixes should not be taken into account while comparing the Complainants' trademark and the Disputed Domain Name. Therefore, the Arbitrator finds that the Disputed Domain Name <Colgate.in> is identical to the Complainants' trademark 'COLGATE'.

### 5.4 **Rights or Legitimate Interests**

The Complainants asserts that it has not licensed or otherwise permitted the Respondent to use the trademark 'COLGATE'. The Complainants also asserts that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name nor the trademark 'COLGATE', in which the Complainants has sole and exclusive interest. The Respondent is not commonly known as 'COLGATE'. The Disputed Domain Name was intentionally adopted by the Respondent substantially subsequently, for commercial gain, to misleadingly divert internet traffic to its website. A website parked on the Disputed Domain Name showcases various links which inter alia includes 'COLGATE', 'COLGATE TOOTHPASTE', 'COLGATE PALMOLIVE' etc. If you click these links then it will feature various sponsored listings. This unauthorised use of the trademark 'COLGATE' will cause confusion as to the source, sponsorship, affiliation or endorsement of the Disputed Domain Name. In line with the previous UDRP and INDRP decisions, the Arbitrator concludes that the Complainants has made out a *prima facie* case that of the Respondent has no right or legitimate interest in the Disputed Domain Name and as such the burden of proof shifts to the Respondent. The Respondent chosen not to challenge the Complainants' allegations<sup>1</sup>. There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests

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<sup>1</sup>In the absence of a Response, it is appropriate to accept as true all allegations of the Complaint. Talk City, Inc. v. Michael Robertson, WIPO Case no. D2000-0009



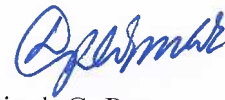
in the Disputed Domain Name <Colga-te.in>.

#### 5.5 **Registered or Used in Bad Faith**

At the time of registration of the Disputed Domain Name, the Complainants' trademark 'COLGATE' was registered in various countries, including India and the US. The Respondent knew or should have known of the Complainants' rights in the trademark 'COLGATE' at the time of registration. The Respondent had registered and is using the Disputed Domain Name with intention to attract users to its website by creating likelihood of confusion with the Complainants' trademark 'COLGATE'. Such fact constitutes bad faith under paragraph 6 of the INDRP. Further, the Respondent did not put forward any justification for choosing and using the Complainants' trademark 'COLGATE' in the Disputed Domain Name. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

#### 6. **Decision**

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <Colgate.in> be transferred to the Complainants.



Dipak G. Parmar  
Sole Arbitrator

Date: May 26, 2017