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2018

TU 198039

प्रधान मुद्रांक कार्यालय, मुंबई
प.म.सि.क्र. ८००००२०

17 JUL 2018

सिद्धम अधिकारी

ARBITRATION AWARD

श्री. पं. प्र. विचारे

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

Shenzhen Yi Si Lang E-Commerce Co Ltd ...Complainant

v/s

Salim M ...Respondent

In the matter of Disputed Domain Name "gearbest.in".

1 The Parties

The Complainant is Shenzhen Yi Si Lang E-Commerce Co Ltd, 4D02, 4lou, 1 Dong, Yangguang Huayi Dasha, Nanshan quNanhai Dadoa, Shenzhenshi, Gunagdong, China, represented by S Majumdar & Co.

The Respondent is Salim M, New no: 4768.5 Chavakkad, Thrissur – 680506, Kerala, India.

(Signature)

2 Procedural History

- 2.1 A Complaint dated October 2, 2018 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant 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 November 16, 2018, the Arbitrator had directed the Respondent to file his reply to the Complaint on or before November 30, 2018. On December 1, 2018, the Arbitrator had sent the final reminder to the Respondent with direction to file reply on or before December 7, 2018. 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 Complainant, the Respondent and the Exchange.

3 Factual Background

Given the absence of a reply, the Arbitrator has found the following facts are undisputed:

- 3.1 The Complainant is a company incorporated in 2014 and is one to the fastest growing export network retail platforms in the world. It is popular overseas online shopping platform, which runs on the website GEARBEST.COM, has approximately 30 million registered users, 160 million monthly visits on average, over 400,000 online products, and over just the last 4 years, has racked up sales, including in India, in excess of USD 8 million, in the field of 3C electronic products, toys, and clothing.
- 3.2 GEARBEST.COM has quickly emerged as one of the best known platforms of its kind, ranking 332nd globally on Alexa, 292nd globally on Wolfram Alpha, and 44th globally in the shopping category.
- 3.3 The Complainant is the owner of the trademark "GEARBEST" and



“GEARBEST.COM” worldwide and “GEARBEST.COM” in India. The Complainant’s first international trademark registration in European Union of device mark “GEARBEST.COM” dated back to May 4, 2015.

- 3.4 The Complainant has been consistently using the trademark “GEARBEST.COM” in India since March 1, 2014 whereas the disputed domain name <GEARBEST.IN> was registered on March 26, 2018.

4 Parties’ Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical to its trademark “GEARBEST”; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered or 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 Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.

- 5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant 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’s trademark “GEARBEST” / “GEARBEST.COM” are a registered trademarks in the United States, United Kingdom, European Union, Australia, New Zealand and India. The Complainant has provided evidence of its registered trademarks, based on which, it is found that the Complainant has established its rights in the trademark “GEARBEST”. It is well accepted that



submitting proof of trademark registration is considered *prima facie* evidence of enforceable rights in a mark.¹ The Disputed Domain Name <GEARBEST.IN> incorporates the Complainant's trademark "GEARBEST" in its entirety, and merely adds the generic top-level domain, ".in". A domain name that incorporates a trademark in its entirety is adequate to establish that the disputed name is identical to the mark.² 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, 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 Complainant's trademark and the Disputed Domain Name. Therefore, the Arbitrator finds that the Disputed Domain Name <GEARBEST.IN> is identical and confusingly similar to the Complainant's trademark "GEARBEST".

5.4. Rights or Legitimate Interests

The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name. The Complainant asserts that it has not permitted or licensed the Respondent to use the trademark "GEARBEST". The Respondent's use of the Disputed Domain Name is merely intended to divert customers to Respondent's website, which provides parking/listing page, thereby enabling users to place offers to purchase the Disputed Domain Name. Hence, it cannot be considered a bona fide offering of goods and services. The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent³. The Respondent chosen not to challenge the Complainant's allegations.⁴ 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 in the Disputed Domain Name <GEARBEST.IN>.

5.5 Registered and Used in Bad Faith

At the time of registration of the Disputed Domain Name, the Complainant's

- 1 In the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER WIPO Case No. D2010-0858 it was held that trademark registration constitutes *prima facie* evidence of the validity of trademark rights. See Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case no. D2001-0654.
- 2 See Indian Hotel Company Limited v. Sanjay Jha, INDRP case 148 <gingerhotels.co.in>
- 3 See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762
- 4 In the matter of Pavillion Agency, Inc., Cliff Greenhouse and Keith Greenhouse v. Greenhouse Agency Ltd., and Glenn Greenhouse, WIPO Case No. D2000-1221, it was held that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the Domain Names.



trademark "GEARBEST" was registered trademark internationally and the Respondent was aware of the same. The Respondent has in fact knowingly incorporated the Complainant's trademark to attract Internet users to the Disputed Domain Name by creating a likelihood of confusion with the Complainant's trademark with the intent of making illegal profits from the sale thereof.⁵ In fact, a link of the top of the Disputed Domain Name, while redirecting to the Complainant's own website, informs users via a hyperlink that the Disputed Domain Name <GEARBEST.IN> is available for sale and makes an invitation to place an offer for purchasing the same. These facts supports the inference that the Respondent deliberately registered the Disputed Domain Name using the Complainant's trademark with the intention to exploit it. 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 <GEARBEST.IN> be transferred to the Complainant.



Dipak G. Parmar
Sole Arbitrator

Date: December 14, 2018

⁵ See Weny's LLC v. Apex Limited, INDRP Case no. 737. In this case the domain name <wendys.co.in> was found to be registered with the intention of trading on the goodwill and reputation associated with Wendy's trademark and was held to be registered and use of domain name in bad faith.