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NATIONAL INTERNET EXCHANGE OF INDIA
121-123, ANSAL TOWER, NEHRU PLACE
NEW DELHI-110019

The Gillette Company vrs Mr. Gaurrav Kanal

Case No. of 2006

AWARD

The Parties

The Complainant is the Gillette Company, Prudential Tower Building, Boston, Massachusetts 02199, United States of America.

The Respondent is Mr. Gaurrav Kanal, 8345 NW 66th Street, Apartment 4969, Miami 33166, United States of America

The Domain Name and Registrar

The disputed domain name is <www.gillette.in>. The said domain name is registered with .IN Registrar.

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3. Procedural History

The Complaint was filed with the National Internet Exchange of India on September 3, 2007. The Complainant has made the registrar verification in connection with the domain name at issue. The print out so received are attached with the Complaint. It is confirmed that the Respondent is listed as the registrant and the contact details for the administrative, billing, and technical contact for the disputed domain name are that of the Respondent. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on September 12, 2007. 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.

In accordance with the Rules, the Exchange through an email formally notified the Respondent of the Complaint along with all its annexure. The sole arbitrator also by his letter dated September 16th 2007 (annexed to this award) notified the Respondent of the Complaint. The Respondent was required to submit his defence within 15 days, that is, by October 1st, 2007. The Respondent was informed that if his response were not received by that date, he would be considered in default. The Respondent did not submit any response.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant, the Gillette Company was incorporated in 1901 by King Camp Gillette in Boston, Massachusetts, United States of America. Presently, it has its operations in more than 200 countries.



It carries on business in respect of wide range of consumer goods, particularly, in disposable, inexpensive and high quality shaving razors and blades. All the products of the Complainant and of its many subsidiaries are marketed under the trade name GILLETTE.

Respondent's Identity and Activities

The Respondent did not reply to the Complainant's contentions. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that it is known amongst consumers worldwide as GILLETTE. The GILLETTE mark is used in the United States and in as many as 125 countries in the world. It is not possible to presently indicate the names of all the countries in which it is registered as a trademark. The Complainant's trademark GILLETTE was registered in India in the year 1943. The said registration is valid and subsisting till today, having been renewed from time to time.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark GILLETTE. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and the customers of the Complainant.

Regarding the element at (iii) and (iv), the Complainant contends that the main object of registering the domain name <www.gillette.in> by the Respondent is to earn profit and to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of*



goods and services".

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The 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 interests in respect of the domain name that is the subject of Complaint;
- (iii) The domain name in question has been registered and is being used in bad faith; and

A. Identical or Confusingly Similar

The Complainant's trademark GELLETTE is registered in many countries including Argentina, Australia, Brazil, Canada, China, Denmark, France, Germany, Hong Kong, India, Japan, Korea, Malaysia, New Zealand, Taiwan, etc. The present dispute pertains to the domain name <www.gillette.in>. The other domain names possessed by the Complainants are <www.gillette.com>, <www.gillettefusion.com>, <www.gillettem3power.com>, <www.gillettecomplete.com>, etc. The disputed domain name is very much similar to these domain names and the trademark of the Complainant. Thus, the disputed domain name is identical to the trademark of the Complainant.

The Complainant has been using the trade name GILLETTE in many countries including the United States. As such, consumers looking for GELLETTE may instead reach the Respondent's website. Therefore, I hold that the domain name <www.gillette.in> is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent 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
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent 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 Respondent has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the default and the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name. GILLETTE is the name and trademark of the Complainant. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. I, therefore, find that the Respondent has



no rights or legitimate interests in the domain names.

C, Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent 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 is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web sites, by creating a likelihood of confusion with the Complainant's mark. The Respondent's registration of the domain name <www.gillette.in> is likely to cause immense confusion and deception and lead the



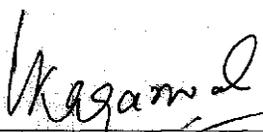
general public and the members of the trade into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The Complainant has also stated that after it served a legal notice on the Respondent dated June 21, 2007, the Respondent posted the dispute domain name on sale.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. As the Respondent has failed to rebut this presumption, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith and for the purposes of trafficking, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name www.gillette.in be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: November 12, 2007