



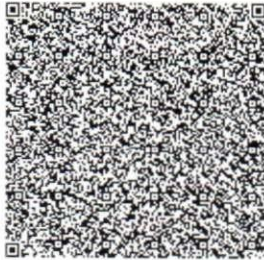
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL49736635332413N
Certificate Issued Date	: 28-Aug-2015 02:27 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ ROHINI/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP1797062126247171N
Purchased by	: JAMES M
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: JAMES M
Second Party	: Not Applicable
Stamp Duty Paid By	: JAMES M
Stamp Duty Amount(Rs.)	: 150 (One Hundred And Fifty only)



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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: JAMES MUKKATTUKAVUNKAL

Google, Inc.
V.
Pablo Rigo

ARBITRATION AWARD
Disputed Domain Name: www.gmailcom.in

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.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.

The Parties

The **Complainant** in this arbitration proceeding is *Google Inc.*, is a Delaware corporation having its principal place of business is 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America. The complainant is represented by the authorized representatives, Shwetasree Majumdar and Chaity Chattopadhyay.

The **Respondent** in this arbitration proceeding is *Pablo Rigo*, located at Bolivar, Cordoba 5000, Argentina as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

The Domain Name and Registrar

The disputed Domain name is "*www.gmailcom.in*". The Registrar with which the disputed domain name is registered is *Name.com LLC (R65- AFIN)*

Procedural History [Arbitration Proceedings]

This arbitration proceeding is 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 the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

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 James Mukkattukavunkal as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Name Dispute Resolution Policy and the Rules framed there under. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

The request for submission with a complete set of documents was dispatched to the Respondent by the National Internet Exchange of India [NIXI] on 6th July, 2015. Electronic copy of the complete set of documents was also sent to the Respondent on 31st July, 2015. The Respondent replied to the mail which was received by the panel on 5th August 2015. The panel had taken the mail from the respondent as a reply and had asked for certain documents as per evidentiary requirements vide mail dated 5th August 2015. The respondent did not sent the documents, however he expressed the intention to transfer the disputed domain name to the respondent on 8th August, 2015.

Grounds for the administrative proceedings

1. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.

3. The disputed domain name has been registered or is/are being used in bad faith.

Background of the Complainant and its statutory and common law rights Adoption:

The complainant in this arbitration proceeding is *Google Inc.*, incorporated under the laws of United States of America. The company has been operating the 'GMAIL' in connection with its email and electronic messaging services from 1998 till date in USA. Since its inception it has emerged as free, web based email services in the world, with over 900 million users worldwide as of May 2015.

The primary GMAIL website is located at 'www.gmail.com' and is accessible around the world. The same has been operated since 1995. The GMAIL email service integrates with various other product and services of the complainant.

Statutory rights:

The Complainant contends that the trademark "GMAIL" and its variants in all forms of multiple classes (including classes 9, 38 and 42) have acquired global reputation and goodwill and are well known marks. The Complainant holds several domain name registrations incorporating the "GMAIL" trademark.

Respondent

The respondent is of the intention of transferring the domain name to the complainant and does not want to contest the complainant's contentions and assertions.

Discussion and Findings

The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand "GMAIL". Moreover, the Complainant has neither given any license nor authorized the Respondent to use the Complainant's mark. Also it is a well-established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption. However, the complainant has not provided for any such evidence regarding registration of "www.gmailcom.in" or evidence as to acquirement of secondary meaning in the word "GMAIL". The disputed domain name in question is "www.gmailcom.in"

The Respondent's Default

The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows

"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."

Rule 11(a) empowers the arbitrator to proceed with an ex parte decision in case any party does not comply with the time limits or fails to reply against the complaint. Rule 11(a) reads as follows:

"In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the

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Complaint in accordance with law."

The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated; the Respondent has replied to the Complaint and expressed an intention to transfer the disputed domain name to the Complainant. The panel finds that the Respondent has been given a fair opportunity to present his case and will take into account the intention of the Respondent to transfer the disputed domain name while deciding on the three essential elements for proving ownership over the disputed domain name.

The 'Rules' paragraph 12(a) 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 replies to the Complainant's assertions and evidence or to otherwise contest the Complaint or otherwise to not to 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 replies and intention of the Respondent to transfer the disputed domain name to the Complainant.

The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads:

"Types of Disputes -

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) the Respondent's domain name is identical or confusingly similar to a name, 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; and*
- (iii) the Respondent's domain name has been registered or is being used in bad faith.*

The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute, which are being discussed hereunder in the light of the facts and circumstances of this case.



Parties Contentions

- I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.

Complainant

The Complainant, based on various international trademark registrations across various classes owns the trademark "GMAIL". Based on the use of the said trademark in USA submitted that, it is the sole proprietor having sole and exclusive rights to use the said trademark "GMAIL".

The Complainant submits that as the disputed domain name is 'www.gmailcom.in', it incorporates the famous GMAIL mark in its entirety and clearly identical/confusingly similar to the Complainant's registered website – "www.gmail.com" in which the Complainant has exclusive rights and legitimate interest.

Famous marks/Well known marks can be understood as those that enjoy a high degree of consumer recognition in a particular jurisdiction or in a specific field of commerce or industry. It is essential to show that the mark is commonly known by the consumers or general public as the owner's mark. In India the Indian Trademarks Act 1999 does not refer to famous marks. Section 2(1)(zg) defines "well known trademarks", which in relation to any goods or services, means a mark which has become well-known to a substantial segment of the consumer public.

It has been proved by the Complainant that it has trademark rights and other rights in the mark "GMAIL" by submitting substantial documents. The mark has been highly publicized, advertised by the Complainant in both the electronic media and print media. Furthermore the same has been done globally. The Complainant has been offering services in India and acquired the status of well-known trademark in the territory of India.

The complainant has painstakingly built up an admirable reputation globally for itself and has invested substantial amounts of resources in advertising its products under the trademark "GMAIL". The GMAIL mark is distinctive and has gained fame in the years it has been used. It has become widely popular and accepted among the public because of its quality and kind of services it provides. The complainant has adopted, conceived and used the mark and the domain name for a considerable time and now the mark has become exclusively associated with the complainant.

The fame of GMAIL mark and the non-distinctiveness of the added terms ('com') will cause the users into mistakenly believe that it originates from, is associated with or is sponsored by the complainant.

Therefore, the panel agrees that the mark "GMAIL" is used and known extensively as complainants mark. And using it in any another form will mislead the public and will cause unfair advantage. [Relevant Decisions: *Aktiegesellschaft v. Hybo Hindustan*, 1994 PTC 287; *HONDA case*, 2004(28) PTC 332 and *TATA case* 2003 (27) PTC 422] A mere glance at the



disputed domain name gives rise to enormous confusion in the minds of users because of it being well-known mark/famous mark. [**Relevant Decisions:** *Ferrero S.p.A. v. Jacques Stade*, Case No. DBZ2003-0002 (WIPO August 25, 2003); and *Ferrari S.p.A. v. American Entertainment Group, Inc*, Case No. D2004-0673 (WIPO October 10, 2004)]

The disputed domain name registered by the Respondent is identical to the Corporate as well as the trademark of the Complainant. Also it has been proved that the mark has acquired the status of a well-known mark in India.

Now to consider two different scenarios. It has been held that the standard to decide what amounts to infringement in cases of dissimilar goods & products is "likelihood of deception". [**Relevant decision:** *Hamdard National Foundation v. Abdul Jalil* (2008 (38) PTC 109 (Del.)); *Mattel, Inc v. 3894207 Canada Inc.*, [(2006) 1 S.C.R. 772]; *Moseley, Victor's Little Secret, Petitioners v. Secret Catalogue, Inc.* (537 U.S. 418 (2003); *Ford Motor Co. & Anr. V Mrs. C R Borma & Anr* (2008 (2) CTMR 474 (Delhi)(DB)]. If the facts were similar to the aforementioned cases the complainant still would have its rights protected under Section 29(4) of the Trademark Act 1999. This is so as the registered trade mark has a reputation in India. Any unauthorized use without due cause would be taking unfair advantage of and/or is detrimental to, the distinctive character or repute of the registered trademark of the complainant. Even the courts have recognized the same and give due credence to the international character of trademarks and recognizes the well-known status in order to protect consumer interests and also to protect the interest of brand owners. [(**Relevant decision:** *Bloomberg Finance LP v Prafull Saklecha* 207 (2014) DLT 35; *Microsoft Corporation v Kurapati Venkata Jagdeesh Babu* [CS (OS) 2163/2010 decided on 3.02.2014])]

However, in the present dispute, the well-known trademark has been used in relation to similar services. Therefore provisions of Section 29(5) of the Trademark Act 1999 also has direct bearing and has been fulfilled in full. The above provision sets out that if a registered trademark is used by a defendant as a part of the trade name (and by extension & interpretation of law can be said to now include domain names) and the defendant is dealing in the same goods/services in relation to which the trademark is registered, then such use will amount to infringement. [(**Relevant decision:** *Bloomberg Finance LP v Prafull Saklecha* 207 (2014) DLT 35; *Microsoft Corporation v Kurapati Venkata Jagdeesh Babu* [CS (OS) 2163/2010 decided on 3.02.2014])] For the purposes of Section 29(5) of the Trademarks Act 1999, there is no requirement to show that the mark has a distinctive character or that any confusion is likely to result from the use of a registered mark by the infringer as part of its trade name or the name of its business concern. Therefore in either scenario the complainant has proved that the complainant has rights in the disputed domain name www.gmailcom.in through the mere fact that the trademark of the complainant has been used in it. The complainant enjoys statutory and common law proprietary rights over the trademark 'GMAIL' in the United States and India and the public there identifies the said trademark exclusively with the complainant and no one else.

It has to be noted that the paragraph no. 4 of the INDRP policy starts with following words , "Any person who considers that a registered domain name conflicts with his legitimate rights or interest may files complain to the in registry on follow premises." This is a positive assertion and sentence. Further paragraph 4(i) also constitutes a positive assertion and

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sentence. Paragraph 4(iii) and paragraph no.6, which is supplementary/explanation to it, also have positive assertions/sentences. The above clearly indicates that the onus of proving the contents of para no.4 (1) and 4(iii) are upon complainant. To succeed he must prove them.

Also, the provisions of sections 101 to 103 of Indian Evidence Act also show that onus in present proceedings is primarily on complainant.

The panel notes that all the proofs given by the complainant has proven his trademark in "GMAIL" and in "www.gmail.com".

It has been held by the Hon'ble Supreme Court of India that the criteria to be considered while deciding on the similarity/dissimilarity of the marks the following criteria need to be considered; the nature of the marks (i.e. whether they are word, label or composite marks); the degree of resemblance between the marks; the nature of the goods for which they are used as trademarks; similarities in the nature, character and performance of goods of rival traders; the class of purchasers who are likely to buy goods bearing the marks, the method of purchasing the goods or placing orders; and other circumstances that may be relevant. It is immaterial whether the plaintiff and defendant trade in the same field or in the same or similar products. [(**Relevant decision:** *Cadila Health Care Ltd. V. Cadila Pharmaceuticals Ltd.* 2001 (5) SCC 73)]

This panel holds that a trademark has to be considered in its entirety. It has been held that when a domain name contains a trademark in its entirety, the domain name is identical or at least confusingly similar to the trademark. [**Relevant Decisions:** *Sony Ericsson Mobile Communications AB v Salvatore Morelli*, INDRP/030; *Orange Brand Services Limited v PRS Reddy*, INDRP/644; *International Business Machines Corporation v. Zhu Xumei*, INDRP/646, (January 30, 2015); *Jaguar land Rover v. Yitao*, INDRP/641, (January 4, 2015)]

The panel while following the rule of law is of the opinion that while considering the trademark "GMAIL" in its entirety, the domain name www.gmailcom.in is identical or confusingly similar to the trademark of the complainant.

According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations -

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that:

- the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate;*
- to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- the Respondent is not registering the domain name for an unlawful purpose; and*



- *the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."

The panel also would like to note that disputed domain name was registered on August 22, 2013, many years after the complainants established rights on the GMAIL trademark.

Respondent

The respondent is of the intention of transferring the domain name to the complainant and does not want to contest the complainant's contentions and assertions.

Therefore, the Panel comes to the conclusion that the disputed domain name is identical or deceptively similar to the Complainants' marks and its business. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Complainant

The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.

The Respondent cannot have any right or legitimate interest in the disputed domain name because the disputed domain name incorporates the "GMAIL" mark; a mark in which the Complainant has the sole and exclusive right and that has become famous globally owing to the Complainant's efforts.

The panel would like to notice that the disputed domain name www.gmailcom.in is giving information about how to use complainant's website. But the information is already present over the internet. This information is provided by the complainant itself. Therefore, such a use in no circumstances can be termed as a legitimate use.

The panel agrees that Respondent is not authorized by the Complainant to use its trademark. In the present case then in the absence of any license or permission from the Complainant to use any of its trademarks or to apply for or use any domain name incorporating those trademarks, it is clear that no actual or contemplated bonafide or

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legitimate use of the domain name could be claimed by the Respondent. [**Relevant Decisions:** *Statoil ASA v. Bright, AK*, D2014-1463 (WIPO October 14, 2014) and *Swiss Eco Patent S.A. v. Verdicchio Simon*, D2014-1804 (WIPO November 21, 2014)]

The panel does not agree with the complainant on the issue of phishing. The respondent is nowhere defrauding customers into revealing personal and proprietary information. It is only asking to 'leave a reply', which is an optional option. Anywhere if a choice is given to the user to give or not give the information which is not personal, and if the user gives it, then the user cannot demand privacy over that information.

Respondent

The respondent is of the intention of transferring the domain name to the complainant and does not want to contest the complainant's contentions and assertions.

For these reasons, the Panel holds that the complainant has proved that the respondent does not have any rights or legitimate interests or is infringing the trademark of the complainant in the disputed domain name.

III. The disputed domain name has been registered or is being used in bad faith.

Complainant

It has been contended by the Complainant that the Respondent has registered the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or use of bad faith has to be proved.

Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

"Circumstances indicating that the Respondent has registered or has 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 the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

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 the Respondent has engaged in a pattern of such conduct; or

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 its Website or location or of a product or service on its Website or location."

From the circumstances of the case and from the evidences put before the Panel by the



Complainant, the Panel is of the opinion that the complainant had no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception in trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent. It must also be noted that the registration of the domain name www.gmail.com by the Complainant was a constructive notice to the Respondent on the Complainant's rights in the GMAIL mark and domain name. Also, the respondent is linking its website to the complainant's website and using all the registered marks of the complainant on the website. This all points towards usage in bad faith. Thus, the adoption of an identical trademark/domain name [www.gmailcom.in] by the Respondent is very much in bad faith.

If the disputed domain name is opened, an advertisement of software can be seen. It is an accepted fact that whatever will be shown on the website is under the control of the website owner. Hence, this shows the financial gain that the respondent is making riding on the reputation of the complainants mark.

It is a well laid down principle that if on perusal of the disputed domain name the panel finds that the Respondent has used the disputed domain name to intentionally attract internet website users to its website or the on-line location by creating a likelihood of confusion with the complainants GMAIL Trade Mark as to source, sponsorship or affiliation or endorsement of the website www.gmailcom.in, then the assumption would be that the Respondent is deriving a financial benefit and an unfair profit from the goodwill of the complainants brand. [Relevant Cases: *Satyam Infoway Ltd. V Siffynet Solutions (P) Ltd.* 2004 (6) SCC 145; *Maher Mohammad Najib Mikati v. Domain Privacy Service FBO Registrant / Kaleb Jacob Mikati, Mikati Associates*, D2014-1960 (WIPO, December 22, 2014) *Woolworths Limited v. Mucahid Saki*, D2014-0952 (WIPO July 24, 2014); *The Coco-Cola Company v. Ma Ying Jo*, WIPO Case No. D2012-1823]

It is also a well settled principle that the registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is evidence of bad faith. [Relevant Decision: *The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc.*, INDRP/250 (December 30, 2011)]

The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Since the trademarks of the Complainant are so distinctive and famous that the Respondent must have had actual knowledge of the trademarks prior to registering the disputed domain name. There cannot be any doubt from the evidences put before this panel that the Complainant's marks are well known and that the Respondent intended to capitalize on that confusion. Therefore the panel comes to the conclusion that the registration is in bad faith. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent acted in bad faith by breaching its service agreement with the registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant. [Relevant Decision: *Swarovski Aktiengesellschaft v. WhoisGuard, Inc. / Person, Johnny D.*, D2013-1450, (WIPO October 2, 2013); *Zingametall BVBA v. Mister Alexey Navalny* INDRP/639 (January 21, 2015)]



Therefore the panel comes to the conclusion that the registration is in bad faith.

Respondent

The respondent is of the intention of transferring the domain name to the complainant and does not want to contest the complainant's contentions and assertions.

Consequently it is established that the disputed domain name was registered in bad faith or used in bad faith.

Decision

The following circumstances are material to the issue in the present case:

- (i) the Complainants' trademark has a strong reputation and is widely known on a global basis;
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name;
- (iii) taking into account the nature of the disputed domain name and in particular the .in extension alongside the Complainant's mark, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of the disputed Domain Name by the Respondent is and would be illegitimate. Use by the Respondent as such would amount to passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

The Respondent failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third party rights. [**Relevant Decisions:** *Salmi Oy v. PACWEBS* WIPO Case No. D2009-0040; *Graco Children's Products Inc. v. Oakwood Services Inc.* WIPO Case No. D2009-0813; *Artemides Holdings Pty Ltd v. Gregory Ricks*, WIPO Case No. D2008-1254; *Ville de Paris v. Jeff Walter*, WIPO Case No. D2009-1278].

It is Registrant's/Respondent's duty under para. 3 of the .IN Dispute Resolution Policy to warrant and prove to the contrary that:

"(a) the Registrant/Respondent has accurately and completely made the Application Form for registration of the domain name;

(b) to the Registrant's knowledge, 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 purpose; and

(d) the Registrant will not knowingly use the domain name in violation of any applicable laws

or regulations.

It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights." The Complainant has given sufficient evidence to prove extensive global trademark rights on the disputed domain name. Further, the Respondent's adoption and registration of the disputed domain name is dishonest and malafide.

While the overall burden of proof rests with the Complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is clear that the Respondent is using the disputed domain name in bad faith and 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.

[Relevant decisions: *PJS International S.A. v. Xianwang* INDRP/616 (September 1, 2014); *Mozilla Foundation v. Mr. Chandan* INDRP/642 (January 15, 2015); *Mr. Marcus Angell v. Mr. Mohit Mehta* INDRP/621 (September 22, 2014); *Walcom Co. Ltd v. Liheng* INDRP/634 (November 24, 2014) ; *AB Electrolux v. GaoGou of Yerec* INDRP/630 (October 19, 2014) *Kelemata SPA v. Mr. Bassarab Dungaciu* WIPO D2003-0849; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO D2003-0455; *Uniroyal Engineered Products , Inc. v. Nauga Network Services* WIPO D2000-0503; *Microsoft Corporation v. Chun Man Kam* INDRP/119; D2012-0466 WIPO *Luigi Lavazza S.p.A. v. Noori net*; D2008-1474 WIPO *Serta Inc. v. Charles Dawson*; *Guerlain S.A. v. Peikang*, D2000-0055 (WIPO March 21, 2000); *Univ of Houston Sys, v. Salvia Corp.*, FA 637920(Nat. Arb. Forum March 21st 2006); *Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24th 2006; *Lockheed Martin Corporation v. Steely Black*, INDRP/183 (January 5, 2011), *Revlon Consumer Products Corporation of New York v. Ye Genrong, et al*, D2010-1586 WIPO November 22, 2010]

The Respondent's registration and use of the domain name [www.gmailcom.in] is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with Policy and Rules, the Panel directs that the disputed domain name [www.gmailcom.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.



JAMES MUKKATTUKAVUNKAL

Sole Arbitrator

Date: 31st August, 2015