

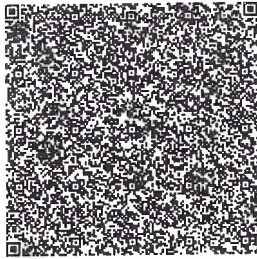
सत्यमेव जयते

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Certificate Issued Date	: 24-Jan-2018 12:06 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP1763110250337234Q
Purchased by	: DIVYA BALASUNDARAM
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DIVYA BALASUNDARAM
Second Party	: Not Applicable
Stamp Duty Paid By	: DIVYA BALASUNDARAM
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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Before the Sole Arbitrator, Divya Balasundaram
C/o National Internet Exchange of India

In the matter of :

Goldman Sachs & Co. LLC, 200 West Street, New York, New York 10282, USA
Vs.

Lina, Doublelist Limited, No.2, HengDaMingDu, QingPu, HuaiAn, Jiangsu 223003 CHINA

Divya Balasundaram

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ARBITRAL AWARD

**.IN REGISTRY
C/O NATIONAL INTERNET EXCHANGE OF INDIA**

**DISPUTED DOMAIN NAME:<goldmansachs.in>
BEFORE THE SOLE ARBITRATOR, DIVYA BALASUNDARAM**

Goldman Sachs & Co. LLC
(previously known as Goldman, Sachs & Co.)
200 West Street
New York, New York 10282
United States of America

... Complainant

Versus

Lina
Doublefist Limited
No.2, HengDaMingDu, QingPu,
HuaiAn, Jiangsu 223003
CHINA

... Respondent

1. The Parties

1.1 The Complainant is Goldman Sachs & Co. LLC, previously known as Goldman, Sachs & Co., a New York limited liability company of the address 200 West Street, New York, New York 10282, USA. The Complainant is represented by its authorized representatives James E. Rosini and Jeremy S. Boczko of Andrews Kurth Kenyon LLP, One Broadway, New York, New York 10004-1007, USA.

1.2 The Respondent is Lina, of Doublefist Limited, No.2, HengDaMingDu, QingPu, HuaiAn, Jiangsu 223003, China.

2. The Domain Names and Registrar

2.1 The disputed domain name is <goldmansachs.in> registered with Netlynx Technologies Pvt. Ltd., 103, Tirupati Udyog Premises, I.B. Patel Road, Off. Western Express Highway, Near HP Petrol Pump, Goregaon East, Mumbai-400063.

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3. Procedural History

3.1 Arbitrator received an email on December 04, 2017 inquiring if NIXI can avail its services as an arbitrator for the dispute pertaining to the domain name <goldmansachs.in>. Arbitrator confirmed availability by email of December 05, 2017 and also sent the signed Statement of Acceptance and Declaration of Impartiality and Independence as required by the Rules.

3.2 The .IN Registry appointed Divya Balasundaram as the Sole Arbitrator on December 18, 2017 and Arbitrator received soft copy of the Complaint along with Annexures. Hard copy was also received by courier.

3.3 Arbitral proceedings were commenced by Arbitrator on December 19, 2017 by issuance of a notice by email to the Respondent directing her to file reply to the Complaint within 15 days.

3.4 The Respondent has not entered appearance nor filed any reply.

3.5 Arbitrator sent email on January 11, 2018 to Respondent notifying it of its default.

3.6 The language of these proceedings is English.

4. Background of the Complainant and its rights in the trademark GOLDMAN and GOLDMAN SACHS as stated in the Complaint

4.1 Founded in 1869 by Marcus Goldman and Samuel Sachs, the Complainant is a subsidiary of The Goldman Sachs Group, Inc., a leading global investment banking, securities and investment management firm that provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments and individuals.

4.2 Complainant is the owner of a family of trademarks in connection with these services, including its famous house marks, GOLDMAN (R) and GOLDMAN SACHS(R) (collectively, the "GOLDMAN SACHS Marks"), which are registered in jurisdictions worldwide. Some of the registrations in India are Nos. 1241667, 1241668, 725435, 636220 and in the U.S., Nos. 1975880, 1985196 and 4384481. These registrations are valid, and in full force and effect.

4.3 These registrations serve as prima facie evidence of Complainant's ownership and the validity of the GOLDMAN(R) and GOLDMAN SACHS(R) mark(s) which creates a "rebuttable presumption" that these marks are "inherently distinctive". The Complainant relies on Banconsumer Service, Inc. V. Mary Langthorne, (WIPO Case No.D2001-1367) to support this averment.

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- 4.4 As a result of the preeminence of Complainant's services, Complainant's GOLDMAN(R) and GOLDMAN SACHS Marks are famous worldwide and have achieved extraordinary brand recognition and market penetration. In fact, unsolicited international media often refer to Complainant among the "most prestigious company(ies) on Earth."
- 4.5 The GOLDMAN SACHS Marks have also been confirmed in previous UDRP cases. See National Securities Depository Limited V. Supratik Basu (INDRP Case No.847); Goldman, Sachs & Co. V. Lis Wevers C/o Goldman Advertising Services BV, FA 812109 (Nat. Arb. Forum Nov. 22, 2006); Goldman, Sachs & Co. V. NA, FA 741852 (Nat. Arb. Forum Aug. 31, 2006).
- 4.6 Complainant owns and conducts its internet activities under the GOLDMAN SACHS Marks through its websites, including [www. goldmansachs.com](http://www.goldmansachs.com) and www.goldman.com (collectively, the "GOLDMAN SACHS Domains"). Complainant also makes extensive use of its GOLDMAN SACHS Marks on the Internet, such as via the content available on the website to which the GOLDMAN SACHS Domains resolve.
- 4.7 Complainant offers their financial services all over the world, including in its two offices in India.
- 4.8 Complainant protects and enforces its GOLDMAN SACHS Marks throughout the world. Because of Complainant's extensive promotion and enforcement of its GOLDMAN SACHS Marks, consumers around the world associate the GOLDMAN SACHS Marks with Complainant and its services offered under these Marks. Because of Complainant's extensive use of the GOLDMAN SACHS MARKS, these Marks have acquired extensive consumer recognition and invaluable goodwill throughout the world.

5. **Respondent and its registration of the impugned domain name**

- 5.1 The impugned domain name was registered by the Respondent on June 2, 2011. No response has been filed by the Respondent in this matter to the notice sent by Arbitrator.

6. **Additional submissions by the Complainant**

- 6.1 In or about June 22, 2017, Complainant learned of Respondent's registration of the Disputed Domain Name. The Disputed Domain Name incorporates Complainant's GOLDMAN SACHS marks in their entirety. Complainant has no affiliation with Respondent, and has never authorized, licensed, or permitted Respondent to use its GOLDMAN SACHS Marks.
- 6.2 Further, the Disputed Domain Name resolves to <goldmansachs.in>. The content hosted by Disputed Domain Name further reveals Respondent's

intent to purposefully confuse an unsuspecting Internet user into believing that Respondent is either the Complainant or associated with it.

- 6.3 The Disputed Domain Name infringes Complainant's trademark and orchestrates a public fraud by making prominent use of Complainant's GOLDMAN SACHS Marks throughout.
- 6.4 In particular, the Disputed Domain Name resolved to a web page featuring sponsored links, including links that purport to advertise for "Goldman Employment Jobs" and "Goldman Sachs Investments Bank," as well as other financial services by competitors such as "American Express Savings" and "Clarfeld Financial Advisors". Such advertising appeared on the Disputed Domain Name's homepage.
- 6.5 The links appearing on <goldmansachs.in> that appear related or associated to Complainant, such as "Goldman Employment Jobs" or "Goldman Sachs Investments," did not, however, lead to Complainant or its website. Instead these links redirected Internet users to unrelated third parties including but not limited to unrelated domains : <everyjobforme.com> and <informationvine.com>.
- 6.6 Thus, the only content hosted on the Disputed Domain Name was a pay-per-click advertising scheme with links that specifically target Complainant's customers and others interested in Complainant with the type of information that those customers and members of the public would be interested in. However, none of the links - most importantly, those incorporating the GOLDMAN SACHS Marks - forward Internet users to Complainant's websites. Instead, these links forwarded Internet users to unrelated websites for which Respondent receives referral fees.
- 6.7 Following its investigation, counsel for Goldman Sachs sent an email to Respondent on July 3, 2017, explaining that the Disputed Domain Name violates Complainant's rights in and to its GOLDMAN SACHS Marks, and demanding that Respondent transfer the Disputed Domain Name to Complainant.
- 6.8 Respondent replied by admitting that it is "violating Goldman Sachs's trademark rights," and taking the opportunity to attempt to extort Goldman Sachs into buying the domain.
- 6.9 Additionally, on July 3, 2017, counsel for Goldman Sachs contacted the server host that Respondent had been using to host the Disputed Domain Name, i.e., Bodis, LLC ("Bodis"), to report that Respondent's use of the Disputed Domain Name violated Complainant's trademark rights.

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- 6.10 On July 8, 2017, an administrator for the Bodis informed counsel for Complainant that it had reviewed the complaint and had disabled the content, and removed the Disputed Domain Name from its servers. As the Disputed Domain Name is no longer hosted by Bodis, it currently does not resolve to a website for the time being. There, however, remains a substantial concern that Respondent will resume its infringement. Further, there exists a substantial concern the Disputed Domain Name may also be used as an instrument in a "phishing" scam wherein Internet users are led to believe that they are seeking financial services, including banking services, from Complainant and/or its affiliates, and provide Respondent, through the Disputed Domain Name, with their personal financial data, including names, addresses, personal identification numbers, and other private information.
- 6.11 With these actions, Respondent is trading off Complainant's goodwill in and to its GOLDMAN SACHS Marks by confusing Internet users into visiting the website <goldmansachs.in> in search of Complainant's website with the intention that these users be duped into clicking on the sponsored links confusingly referring to Complainant or its competitors. Further, it is also clear by Respondent's answer to counsel for Goldman Sachs that Respondent registered the Disputed Domain Name in order to attract an offer for its subsequent purchase at a higher price from Complainant or a third party.

7. Legal grounds for relief - Contentions of the Complainant in establishing the 3 elements required under the INDRP

The Disputed Domain Name is identical or confusingly similar to a trademarks or service marks in which Complainant has long established rights

- 7.1 The Disputed Domain Name is either identical or confusingly similar to the GOLDMAN SACHS Marks, because not only does it incorporate the primary, distinctive element of these Marks - it incorporates these Marks in their entirety. The addition of the suffix ".in" to the Disputed Domain Name is not a distinguishing factor. For these reasons, the Disputed Domain Name is identical or confusingly similar to Complainants' GOLDMAN SACHS Marks and the GOLDMAN SACHS Domains.

The Respondent has no rights or legitimate interests in respect to the Disputed Domain Name

- 7.2 Respondent is not using the Disputed Domain Name for a bonafide offering of goods or services, nor is Respondent making a legitimate noncommercial or fair use of the Disputed Domain Name.
- 7.3 As stated above, the Disputed Domain Name is identical or confusingly similar to Complainant's GOLDMAN SACHS Marks and Domains. It is a

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well-established principle that an unauthorized party cannot claim a legitimate interest in a domain name that contains, or is confusing with, a complainant's mark, as such party's activities cannot constitute a bonafide offering of goods and services under the Policy.

- 7.4 Respondent's use of the Disputed Domain Name and infringing use of Complainants' GOLDMAN SACHS Marks on its website, make it clear that Respondent is trading off the extensive fame and goodwill associated with the GOLDMAN SACHS Marks and Domains for commercial gain. It has been held in INDRP and UDRP cases that registering and using a confusingly similar domain name in order to divert or redirect internet users seeking a complainant to a respondent's own website or the complainants' competitors is not a legitimate interest in or bonafide use of the domain. Respondent can therefore claim no rights or legitimate interests in the Disputed Domain Name.
- 7.5 Respondent is further precluded from claiming a right or legitimate interest in the Disputed Domain Name by the fact that it had notice of Complainants' GOLDMAN SACHS Marks before any use or demonstrable preparation to use the Disputed Domain Name.
- 7.6 Complainant first started using its marks in India and obtained registrations in India much prior to Respondent. Complainant also registered the domain <www.goldmansachs.com> on July 25, 1995. Respondent, however, did not register the Disputed Domain Name until in or about June 6, 2011.
- 7.7 Accordingly, long before Respondent even registered the Disputed Domain Name, it had atleast "Constructive notice of the [GOLDMAN SACHS Marks] because the trademark(s) were registered".
- 7.8 Further, even if the Arbitrator fails to hold that Respondent had constructive notice of the GOLDMAN SACHS Marks, based on the scope and breath of the fame of these marks, any claim by Respondent that it was not aware of the GOLDMAN SACHS Marks at the time it registered the Disputed Domain Names is meritless.
- 7.9 To the best of Complainant's knowledge, Respondent does not have any proprietary rights in any registered trademark for the GOLDMAN SACHS Marks or any other similar name, term, phrase, symbol, device, or combination of the foregoing.
- 7.10 Complainant has never consented to Respondent's use of the GOLDMAN SACHS Marks in connection with the Disputed Domain Name and there is no affiliation or connection between the two.

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- 7.11 To the best of Complainant's knowledge, Respondent has never been known by the Disputed Domain Name or any other term that incorporates GOLDMAN SACHS in whole or in part.
- 7.12 As discussed below, Respondent registered the Disputed Domain Name in bad faith. This supports a finding that "any use of the Disputed Domain Name would be neither 'legitimate' nor 'fair'.
- 7.13 Upon information and belief, Respondent has no other ground upon which to claim any rights or a legitimate interest in the Disputed Domain Name. Accordingly, and for the reasons stated above, Respondent has no rights or legitimate interests in the Disputed Domain Name, and is not making a legitimate noncommercial or fair use of the Disputed Domain Name.

The Disputed domain Name was registered and is being used in bad faith

- 7.14 The Disputed Domain Name incorporates the Complainant's GOLDMAN SACHS Marks in entirety, with just the use of .in instead of .com. It is clear that Respondent has registered and issuing the Disputed Domain Name in bad faith. Further, where, as here, the reputation of a complainant is significant, and its marks are similar to the disputed domain name, the likelihood of confusing is such that bad faith may be inferred.
- 7.15 Based on the foregoing, it is clear that Respondent chose the Disputed Domain Name in an effort to free ride off the fame and goodwill amassed by Complainant in the GOLDMAN SACHS Marks, to confuse Internet users for its own commercial gain, and in furtherance of its fraudulent activity.
- 7.16 Respondent is not using the Disputed Domain Name in connection with a bonafide offering of goods or services. This is further evidence of Respondent's bad faith.
- 7.17 A search for Respondent's "ymgroup@msn.com" email address illustrates that Respondent has used several alias company names and addresses, to register domains with that emailaddress, including but not limited to an entity named "Zhaxia" with a fake address in Milwaukee, Wisconsin. In Colgate V. Zhaxia (INDRP Case No. 887) Respondent registered the colgate.in as under the guise of Zhaxia Doublefist Limited, a fake Wisconsin address and the ymgroup@msn.com email address.
- 7.18 Respondent has also engaged in a pattern of conduct designed to prevent legitimate trademark owners from using their marks in corresponding domain names. For example, Respondent has registered almost 500 domains, most if not all, of which appear to be the full expression of various famous trademarks unrelated to Respondent including, inter alia, <astonmartin.co.in>, <balanciaga.co.in>, <cocacola.co.in>, <deloitte.in>,

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<dowjones.in>, <fourseasons.co.in>, <guinness.co.in>, <hewlett-packard.in>, <Polaroid.in>, <timberland.co.in>, <tmobile.co.in>, <toysrus.co.in>, and <wyndham.in>. Such activity plainly demonstrates the bad faith of the Respondent in registering the Disputed Domain Name.

- 7.19 Based on the above, it is not a surprise that the present Complaint is not the first time the person or persons behind the ymgroup@msn.com email address was named as a respondent in a domain dispute. In past INDRP decisions, Arbitrators have determined that the long list of domains incorporating famous trademarks, including those registered by Respondent, illustrate that this Respondent is a habitual infringer and in each case found Respondent to have acted in bad faith.

8. Discussions

- 8.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant. The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 8.2 The Arbitrator finds that the Complainant has been able to establish its prior rights and interests in the trademark GOLDMAN SACHS based upon the contentions, supporting documents and case law cited.
- 8.3 The Arbitrator also finds that the Complainant has established all the 3 elements essential to maintain its complaint, being that the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith. There are several factors to support this conclusion, including the following:
- 8.4 The Complainant is the prior adopter and user of the mark GOLDMAN SACHS derived from the names of its founders; and the Complainant has made extensive use of its mark, the same has also been recognized as famous in a number of domain name dispute decisions;
- 8.5 Not even a single letter differs between the disputed domain name and the trademark of the Complainant, the Respondent has merely lifted the mark of the Complainant in its entirety;
- 8.6 The Respondent is not named GOLDMAN SACHS nor is commonly known by this name;

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- 8.7 GOLDMAN SACHS is not a dictionary word; Respondent has registered the impugned domain name much subsequent to Complainant's adoption of the mark and the Respondent could not have adopted it except with reference to the Complainant's mark;
- 8.8 The Respondent has no statutory or common law rights in the disputed domain name nor is it authorized or licensed by the Complainant to use the same;
- 8.9 The Respondent is not making a legitimate noncommercial or fair use of the disputed domain without intent for commercial gain;
- 8.10 There appears to be no legitimate reason for the Respondent based in China to have an interest in a .in domain name and webpage offering links for financial services;
- 8.11 When contacted by the Complainant's counsel, the Respondent made an offer to sell the domain back to Complainant for an unreasonable sum of about 4000 dollars;
- 8.12 There are many decisions wherein it has been found that the present Respondent is a cybersquatter and has registered several domain names of different entities through the same email address, even using a false name and address for the same, this shows a clear pattern of bad faith on part of Respondent;
- 8.13 The Respondent was given sufficient time to reply to the Complaint, however, Respondent has chosen not to submit any response.

9. Decision

- 9.1 For all the foregoing reasons, the Complaint is allowed.
- 9.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <goldmansachs.in > be transferred to the Complainant.
- 9.3 The Parties shall bear their own costs.



DIVYA BALASUNDARAM
ARBITRATOR

Date: January 25, 2018
Place: New Delhi, India