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Certificate No.

Certificate Issued Date

Account Reference

Unique Doc. Reference

Purchased by

Description of Document

Property Description

Consideration Price (Rs.)

First Party

Second Party

Stamp Duty Paid By

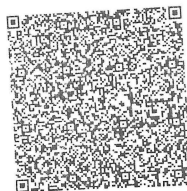
Stamp Duty Amount(Rs.)

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

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 : 03-Mar-2021 01:31 PM
 : IMPACC (SH)/ dlshimp17/ TIS HAZARI/ DL-DLH
 : SUBIN-DLDSLHIMP1711493859250384T
 : R K KASHYAP
 : Article 12 Award
 : Not Applicable
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 : (Zero)
 : R K KASHYAP
 : Not Applicable
 : R K KASHYAP
 : 100
 : (One Hundred only)



Please write or type below this line

NATIONAL INTERNET EXCHANGE OF INDIA
 B Wing, 9th Floor, Statesman House Building
 148, Barakhamba Road,
 New Delhi-110001

PATREON.IN

V/s

ALEX WANG

Paul

AWARD

1. THE PARTIES

The Complainant is PATREON.IN... a Delaware (USA) situated at 600 Townsend, 5th Floor, San Francisco, California 94103, USA being represented by Mr. Douglas M. Isenberg, The GIGALAW FIRM, One Glenlake Parkway, Suite 650, Atlanta, Georgia 30328, USA.

Email: Doug@Giga.Law

The Respondent is Alex Wang, 995, Shangchuan Road, Pudong, Shanghai, China.

2. THE DOMAIN NAME AND REGISTRAR:

This Arbitration pertains to a dispute regarding the Domain name PATREON.IN

The disputed Domain name is PATREON.IN

The abovesaid domain registered particulars in detail is provided and available in Annexure-1.

Registrar Name : 1 APi GmbH

IANA ID : 1387

ASSIGNED NAMESERVERS: ns2.bodis.com/ns1.bodis.com

ROID : D8300594-IN

Date of creation : 13-04-2014

Date of Expiry : 13-04-2021

Registrant Client ID : D1_16710463

Registrant ROID : C4264504-IN

Email: foodgaga@gmail.com

Phone: (+86)02186868888

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3. PROCEDURAL HISTORY

- (a) The Complainant has filed a complaint dated December 22, 2020 with the NATIONAL INTERNET EXCHANGE OF INDIA. The Complainant made the registrar verification in connection with the Domain name at issue. The annexures received with the complaint are **Annexure-1** to **9**. The exchange verified the complaint, satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the 'Policy') and the Rules framed thereunder.
- (b) The Exchange has appointed Sh. R.K.Kashyap, Advocate as the Sole Arbitrator in this matter vide letter dated 14.01.2021. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted his Statement of acceptance and Declaration of Impartiality and Independence as required by the Exchange.
- (c) The Arbitrator, as per the INDRP Policy and the Rules, has duly issued the notice on 15.01.2021 and directed the complainant to serve the Respondent with a copy of the Complaint alongwith annexures on the given e-mail as well as on physical address. In the Notice it has also been mentioned that the respondent to file the reply/response within 15 days from the receipt of notice. The direction of the arbitrator to serve the respondent has duly been complied with; as the US postal service receipt dated 18-01-2021 at the correct address of the respondent and filed USPS Tracking report placed on record vide number CJ184447359US, wherein mentioned that it was duly delivered in China on January, 30, 2021 at 5:31 pm and the respondent also served on the given email foodgaga@gmail.com. Hence, the respondent has been duly served through all modes.
- The Respondent has failed /neglected to file its reply to the specific allegations made in the complaint within the stipulated time despite receipt of copy of the Complaint and Annexures

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through all modes, as mentioned above. I feel that enough opportunity has been given to the Respondent. Since, no response has been received. Hence, the present proceedings have to be ex-parte.

4. **Factual Background:**

The following information has been derived from the Complaint and the various supporting annexure to it, the Arbitrator has found the following facts:

Complainant's Activities

The Complainant Company **PATREON** is based on the Trade Mark/Service Mark PATREON. The entire details of the classes under which the mark is registered are duly provided in Annexure-2.

The Complainant Company was originally registered at California (USA), corporation on July 5, 2013, the entire detail is provided in Annexure-3.

The Complainant is a creator-founded membership platform for artists and their most passionate fans. The complainant helps creators support their work through direct fan membership, so they can afford the freedom to do their best work and the stability to build an independent creative carrier. In turn, fans get a chance to get access to community, exclusive content and the chance to become active participant in the work they love.

The Complainant Company powers membership businesses for creators by giving them the tools they need to acquire manage and energize their paying patrons. With a subscription-style payment model, fans pay their favorite creator a monthly amount of their choice in exchange for exclusive access, extra content or a

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closer look into their creative journey.

The complainant is home to more than 2,00,000 creators supported by more than 6 million monthly active patrons. The complainant's creator categories are video, visual arts, podcast, writers and journalists, music, communities and websites.

The complainant has its headquarter in San Francisco, California (USA) and offices in New York, Omaha, Nebraska (USA), Porto, Portugal, Dublin, Ireland and Berlin and Germany.

The complainant has raised more than US\$ 166 million in total funding and has enabled its creator member to earn more than 2 billion US\$.

The complainant company is the owner of Patreon trade mark and was first used in commerce on August 1, 2013 and the same was duly registered on February 27, 2013. The details have been provided in Annexure- 5&6.

The details for some of the complainant's wordmark for patreon under classes 35 and 36 in United States of America, as under:-

- PATREON trademark, United States of America, registration number 4.803.360 under class 36, date of registration, September 1st, 2015.
- PATREON trademark, United States of America, registration number 4.862.222 under class 35, date of registration, December 1st, 2015. The entire details provided in **Annexure-8**.

The details for some of the complainant's wordmark for Patreon under classes 36 in India and in China are provided as under:-

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- PATREON trademark India registration number 3173159 (International registration number 1263840) under class 36, date of filing July 15, 2015, date of registration January 27, 2017. The entire details provided in **Annexure-9**.
- PATREON trademark China registration number 86506230 (International registration number 1263840) under class 36, dated November 23, 2016, registration date April 2, 2017.

TRADE MARK REGISTRATIONS AND COMPLAINANT:

The Complainant has statutory protection of its trade mark “Patreon” in several jurisdictions.

DOMAIN NAMES AND COMPLAINANT:

The Complainant owns at least 35 trademarks registrations in 18 countries or jurisdictions worldwide for marks that consist of or contain the word “Patreon” or the “Patreon” logo, which is a strong mark because it is entirely distinctive of the complainant.

RESPONDENT’S IDENTITY AND ACTIVITIES :

The Respondent registered the disputed domain name on April 13, 2014(The entire detail provided in Annexure-1). Eight months after complainant first began using the trademark “Patreon” (complete detail provided in Annexure-2) and 16 months after complainant registered the domain name “Patreon.com” (entire detail provided in Annxure-5).

The respondent is using the disputed domain name in connection with pay-per-click (PPC) website that includes links for goods and services that compete with complainant’s customers including links

Ramesh Adv.

labeled Gallery, Books Quick and Wanna Betta Butt Jeans, also using may be for sale (complete details provided in **Annexure-7**).

5. PARTIES CONTENTIONS:

A: COMPLAINANT:

The Complainant contents that each of the elements specified in the policy are applicable to this dispute.

The Complainant Company **PATREON** is based on the Trade Mark/Service Mark PATREON. The entire details of the classes under which the mark is registered are duly provided in Annexure-2.

The Complainant Company was originally registered at California (USA), corporation on July 5, 2013, the entire detail is provided in Annexure-3.

The Complainant is a creator-founded membership platform for artists and their most passionate fans. The complainant helps creators support their work through direct fan membership, so they can afford the freedom to do their best work and the stability to build an independent creative carrier. In turn, fans get a chance to get access to community, exclusive content and the chance to become active participant in the work they love.

The Complainant Company powers membership businesses for creators by giving them the tools they need to acquire mange and energize their paying patrons. With a subscription-style payment model, fans pay their favorite creator a monthly amount of their choice in exchange for exclusive access, extra content or a closer look into their creative journey.

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The complainant is home to more than 2,00,000 creators supported by more than 6 million monthly active patrons. The complainant's creator categories are video, visual arts, podcast, writers and journalists, music, communities and websites.

The complainant has its headquarter in San Francisco, California (USA) and offices in New York, Omaha, Nebraska (USA), Porto, Portugal, Dublin, Ireland and Berlin and Germany.

The complainant has raised more than US\$ 166 million in total funding and has enabled its creator member to earn more than 2 billion US\$.

The complainant company is the owner of Patreon trade mark and was first used in commerce on August 1, 2013 and the same was duly registered on February 27, 2013. The details have been provided in Annexure- 5&6.

The Complainant is the prior adopter of the Mark "Patreon" and the owner of The Trademark Mark/Service mark "Patreon" the Complainant is well known all around the World by the name of "Patreon", and has made profits under this name.

The Complainant further states that its use of the well-known Trademark has been Extensive, Exclusive and Continuous all around the World. As a result of the Complainant's Marketing and promotion of its Goods and Services under its Trademark "Patreon", the mark has gained Worldwide Recognition and Goodwill, and has become well known. Moreover the Complainants Trademark has firmly been associated with the Complainant.

The Complainant contents that the disputed Domain name contains the Registered Trademark of the Complainant, that is, "Patreon.in". The respondent does not lead to any distinctive or

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reduce the similarity to the Trademark "Patreon" of the Complainant. They will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the Services offered under the disputed Domain name from the Complainant. Further that they do not help in distinguishing the disputed Domain name from the Complainant's Trademark. On the contrary, the disputed Domain name leads the public to believe that it relates to the Services rendered by the Complainant.

It is critical especially because the Complainant has operations in India and the customers will mistakenly be redirected to the Respondents website which uses the identical Domain name "Patreon.in" that it belongs to the Complainant.

Therefore, the Complainant contends that the disputed Domain name is identical and/or confusingly/deceptively similar to their Registered Trademark "Patreon".

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 "Patreon.in". The Respondent does not own any Trademark registration as "Patreon.in" or a mark that incorporates the expression "Patreon.in". The Respondent has no license or authorization or permission from the Complainant to either use the designation "Patreon.in" or to register the disputed Domain name. The Respondent does not have any *bona fide* reasons to adopt the Domain name which is identical to the Trademark of the Complainant.

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.

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Therefore, the Respondent has no legitimate Justification or interest in the disputed Domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has registered the disputed Domain name in bad faith and for its actual use in bad faith. The main object of registering the Domain name "Patreon.in" by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent has registered the disputed Domain name; but has not demonstrated any preparations to use the Domain name or a name corresponding to the Domain name in connection with any bona fide offering of goods or Services.

This clearly demonstrates that the respondent has registered the Domain name solely with an intention to derive undue pecuniary benefit from the Complainant trade name and not for any genuine or legitimate use.

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*".

The disputed domain name clearly incorporates the famous trademark "Patreon" of the Complainant in its entirety. Such use of the disputed domain name is considered evidence of bad faith registration and use under the INDRP. In this regard, the Complainant relies on the decision of this Hon'ble NIXI Arbitration and Mediation Centre passed in the case of **Vodafone group PLC Vs. Syed Hussain Trading as IBN7 Media group**, NIXI case no. INDRP/1009 and another case titled as **"Genpact Ltd Vs. Manish Gupta, NIXI case No. INDRP/055.**

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The disputed domain name wholly incorporate, the prior registered trademark of the complainant, the disputed domain name is identical or confusingly similar to the trademark for the purpose of INDRP. The complainant has relied on Kenneth Cole Productions Inc. Vs. Viswas Infomedia, NIXI case number INDRP/093, another NIXI case number INDRP/347, wherein held "incorporating a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to a registered trademark. Reliance also placed on the following cases:-

- NIXI case number INDRP/956,
- NIXI case number INDRP/997,
- NIXI case number INDRP/1038,
- NIXI case number INDRP/992,

B: RESPONDENT :

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.Patreon.in> or any Trademark right, Domain name right or contractual right.

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 by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any Rules and Principles of Law that it deems applicable".

According to the Policy, the Complainant must prove that:-

- (i) The Registrant's Domain name is identical or confusingly similar to a name, Trademark or Service mark in which the Complainant has rights;

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- (ii) The Registrant's has no rights or legitimate interests in respect of the Domain name that is the subject of Complaint; and
- (iii) The Registrant's Domain name has been Registered or is being used in bad faith.

A. Identical or Confusingly Similar:

The disputed Domain name <www.Patreon.in> was Registered by the Respondent on **April 13, 2014**. The registration of the said disputed Domain name is due to expire on April 13, 2021. It is pertinent to note that the Complainant has not taken swift action and filed complaint on December 22, 2020.

The Complainant is an owner of the Registered Trademark <Patreon.in>. The Complainant is also the owner of a large number of domains with the Trademark <Patreon.in> as stated above and referred to in the Complaint and duly mentioned in detail in Annexure-2. Most of these Domain names and the Trademarks have been created by the Complainant much before the date of creation of the disputed Domain name by the Respondent. The disputed Domain name is Trademark <Patreon.in>. Thus, the disputed Domain name is very much similar to the name and the Trademark of the Complainant.

The Hon'ble Supreme Court of India has recently held that the Domain name has become a business identifier. A Domain name helps identity the subject of trade or Service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for <Patreon.in> products in India or elsewhere would mistake the disputed Domain name as of the Complainant.

Paula Adv.

Furthermore, it appears that the impugned domain is owned by Mr. Alex Wang. Upon checking the official website of the respondent, which is crystal clear from the Annexure-7 that the Respondent, being in the same field of business as the Complainant and cognizant of the reputation and goodwill associated with the trademark / domain "Patreon.in", registered the domain name www.Patreon.in to disingenuously exploit the Complainant's stellar reputation and goodwill.

Contention of Complainant is squarely covered in a decided Case No. **INDRP/776, Amundi versus GoaGou** "The disputed Domain name incorporates the trade name "Amundi" in its entirety and this is adequate to prove that the disputed Domain name is either identical or confusingly similar to the mark".

Contention of Complainant is also squarely covered in Case of *Walmart Stores, Inc. v. Richard MacLead*, (WIPO Case No. **D2000-0662**) wherein it has been held that "When the Domain name includes the Trademark, or a confusingly similar approximation, regardless of the other terms in the Domain name" it is identical or confusingly similar for purposes of the Policy. The reliance can be placed on the following cases of NIXI in this regards :-

- NIXI case number INDRP/956,
- NIXI case number INDRP/997,
- NIXI case number INDRP/1038,
- NIXI case number INDRP/992,

Therefore, I hold that the Domain name <www. Patreon.in> is phonetically, visually and conceptually identical or confusingly/deceptively similar to the Trademark of the Complainant.

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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 Registrant of the dispute, the Registrant'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 Registrant (as an individual, business or other organization) has been commonly known by the Domain name, even if the Registrant has acquired no Trademark or Service mark rights; or
- (iii) The Registrant 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's response is not available 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 evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and as such the Respondent has no rights or legitimate interests in the disputed Domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or Trademark <Patreon.in> or to apply for or use the Domain name incorporating said mark. The Domain name bears no relationship with the

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Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

Contention of Complainant is squarely covered in a decided Case number **INDRP/776 Amundi versus GoaGou**, the Complainant is required to make out a prima facie case that Respondent lacks right or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating right or legitimate interests in the Domain name. If Respondent fails to do so, the Complainant is deemed to have satisfied para 4(II) of the INDRP policy.

I, therefore, find that the Respondent has no rights or legitimate interests in the Domain name under INDRP Policy, Paragraph 4(ii).

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 Registrant 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 bears the name or is the owner of the Trademark or Service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the Domain name; or
- ii) The Registrant has Registered the Domain name in order to prevent the owner of The Trademark or Service mark from reflecting the mark in corresponding Domain name, provided

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that the Registrant has engaged in a pattern of such conduct;
or

- iii) by using the Domain name the Registrant has intentionally attempted to attract the internet user to the Registrants website or other online location by creating a likelihood of confusion with the Complainant's name or Mark as to the source, Sponsorship, Affiliation, or Endorsement of the Registrant's website or location of a product or Service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

Further, as has been mentioned above if there are circumstances indicating that the Registrant 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 bears the name or is the owner of the Trademark or Service mark or to a competitor of that Complainant for valuable consideration in excess of the Registrant's documented out of pocket cost directly related to the Domain name, it will amount to the registration or use of the main name in bad faith.

The very use of a domain name by someone with no connection with the Complaint suggests opportunistic bad faith as stated **INDRP Case No 934 between Mozilla Foundation and Mozilla Corporation Vs LINA Double**

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The respondent has no right or legitimate interest in the disputed domain name. The complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to register or used the Patreon trademark in any manner. The respondent is neither a license of the complainant nor has it otherwise obtained authorization of any kind whatsoever to used the trademark of the complainant. In this regard the reliance can be placed in the following decision:-

NIXI Case No.INDRP/027.

NIXI Case No.INDRP/999.

NIXI Case No.INDRP/442.

NIXI Case No.INDRP/725.

SIX Continents Hotels, Inc. Versus Patrick Ory, WIPO Case No.D2003-0098.

Marriott International Versus Thomas Burstein and Miller, WIPO Case No.D2000-0610.

MBI, Inc Versus Moniker Privacy Services, WIPO Case No.D2006-0550.

Western Union Holdings Versus Anna Valdieri, WIPO Case No.D2006-0884.

By using the disputed Domain name in connection with a monetized parking page, as well as advertising the disputed Domain name for sale, refer annexure-7, respondents actions are clearly commercial and therefore respondent cannot

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establish rights or legitimate interest pursuant to para 7 (iii) of the INDRP. Reliance can be placed on the following decisions in this regard:-

NIXI Case No.INDRP/258.

NIXI Case No.INDRP/127.

NIXI Case No.INDRP/725.

In addition, respondent's attempt to sale the disputed Domain name (refer annexure-7) is additional evidence of bad faith, the reliance can be placed on the following decision:-

NIXI Case No.INDRP/481.

NIXI Case No.INDRP/457.

NIXI Case No.INDRP/917.

Finally the respondent has lost atleast two previous disputes under the INDRP, vide case No.788 and 789.

Accordingly, the respondents has no rights or legitimate interests in respect of the disputed Domain name.

The foregoing circumstances lead to the presumption that the Domain name in dispute 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/deceptively similar to Complainant's well known brand "PATREON.IN", a mark in which the Complainant has rights, that the Respondent has no claims, rights or legitimate interests in respect of the disputed Domain name, and that the disputed Domain

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name was Registered in bad faith and is being used in bad faith, in accordance with the policy and the rules, the Arbitrator orders that the Domain name "www.Patreon.in" be transferred to the Complainant.

This award is passed at New Delhi on this 04th day of March, 2021.

Recd *Adv* *04/3/2021*

R. K. KASHYAP
SOLE ARBITRATOR

R. K. KASHYAP
(Advocate)
DELHI HIGH COURT
Enrl.No. D/650/90
Chamber No. 784, Western Wing,
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