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### NATIONAL INTERNET EXCHANGE OF INDIA

9<sup>th</sup> Floor, B-Wing, Statesman House  
 148, Barakhamba Road,  
 New Delhi – 110 001 India

The Westland Distillery Company Limited, US vs. Dingcorp, US  
 INDRP Case no. 1455  
 Arbitrator : Mr. P.K.Agrawal

by

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## **AWARD**

### **1. The Parties**

The Complainant is M/s The Westland Distillery Company Limited, 2931 First Avenue South, Suite B 98134, Seattle, United States.

The Respondent is Dingcorp, A3, JiaZhaoYe, JiangBei, Huicheng District, HuiZhou GuangDong, China 516000 US.

### **2. The Domain Name and Registrar**

The disputed domain name is <www.westlanddistillery.in>. The said domain name is registered with the Registrar – **Dynadot LLC** (IANA ID: 472), 210 S Ellsworth Ave, 345 San Mateo, CA 94401 US.

The details of registration of the disputed domain name (as per Annexure attached to the Complaint) are as follows:

- a. Domain ROID: D8EA5B1E4FB6744D6AC0DF574982017F4-IN
- b. Date of creation: Oct 16, 2021
- c. Expiry date: Oct 16, 2022

### **3. Procedural History**

- (a) A Complaint dated 25<sup>th</sup> October, 2021 has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Advocate and former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.



- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were served by the National Internet Exchange of India on 12.11.2021 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint with annexures to the parties through email on 12.11.2021. The Respondent was given 14 days for reply to the complaint. The Complainant reluctantly sent the physical copies of complaint & annexures by courier to the Respondent on 16.11.2021, after he was instructed by the NIXI to do so. However, the Complainant confirmed its delivery through email on 12.11.2021 itself to all parties including the Registrar of the domain name. In view of this, the Complaint and its annexures may be deemed to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. Since, the Respondent has not responded to the repeated notices served through emails, the present proceedings have to be conducted ex-parte as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

#### **4. Factual Background**

In the first paragraph of the complaint, it is said that the company is a Luxembourgish steel manufacturing company and is represented in this proceeding by **NAMESHIELD** of France, but on Page-3 the Complainant says that it is an American single malt whiskey distillery operating in Seattle, Washington. The Complainant is an acquisition of Rémy Cointreau Group since January 2017. Even the name & address of the Respondent was not mentioned in the original complaint, which was added after the NIXI instructed the Complainant to do so and file an amended complaint. From the Complaint and the various annexures to it, the Arbitrator has found the following facts:

##### **Complainant's activities**

The Complainant in this arbitration proceeding - THE WESTLAND DISTILLERY COMPANY LIMITED ("The Complainant") is an American single malt whiskey distillery operating in Seattle, Washington. The Complainant is an acquisition of Rémy Cointreau Group since January 2017.

The Complainant is the owner of trademarks "WESTLAND" :



- WESTLAND, International trademark n° 1343799, registered on 2017-03-01 in class 33;
- WESTLAND, European trademark n° 1343799, registered on 2017-03-01 in class 33;
- WESTLAND, United states trademark n° 1343799, registered on 2017-03-01 in class 33;
- WESTLAND, Canadian trademark n° 1343799, registered on 2017-03-01 in class 33;

The Complainant owns and communicates on the Internet through various websites in worldwide. The main one is <www.westlanddistillery.com> registered on August 28th, 2009.

The disputed domain name <westlanddistillery.in> was registered on October 16<sup>th</sup>, 2021 and resolves to parking page with commercial links.

### **Respondent's Identity and Activities**

The Respondent's activities are not known. The Respondent has not responded to the Notice and complaint.

## **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 the disputed domain name <westlanddistillery.in> is confusingly similar to its trademark WESTLAND®. The association of the generic term "Distillery" refers to the activities of the Complainant.

Furthermore, the Complainant contends that the addition of the ccTLD ".IN" is not sufficient to escape the finding that the domain is confusingly similar to its trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

Therefore, the Complainant contends that the disputed domain name <westlanddistillery.in> is confusingly similar to its trademarks.



In relation to **element (ii)**, the Complainant contends that the Respondent does not have any legitimate interest in using the disputed domain name. According to the Case No. INDRP/776, *Amundi v. GaoGou*, the 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, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant.

Finally, the complainant has contended with reference to the disputed domain name <schneider-electric.com>, which is factually incorrect. The disputed domain name in this case is <www.westlanddistillery.in> which also redirects to parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. The complainant has referred to

-NAF Case No. FA 970871, *Vance Int'l, Inc. v. Abend* (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees);

-WIPO Case No. D2007-1695, *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe* ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name.

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Regarding the **element (iii)**, the Complainant contends that the bad faith is implicit in the registration of the Disputed Domain Name. The association of the generic term "Distillery" to the Complainant's trademark proves that the Respondent had actual knowledge of the Complainant's prior rights while the registration of the disputed domain name. Thus, given the distinctiveness of the Complainant's trademarks and reputation, it is inconceivable that the Respondent could have registered the disputed domain name <westlanddistillery.in> without actual knowledge of Complainant's rights in the trademark, which evidences bad faith.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith. He has referred to WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

On these facts, the Complainant contends that the Respondent has registered the disputed domain name and is using it in bad faith.

## **B. Respondent**

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



## 6. Discussion and Findings

The Rules instruct 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:

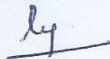
- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

Although Respondent has failed to respond to the complaint, the default does not automatically result in a decision in favour of the Complainant, nor is it an admission that Complainant's claims are true. The burden remains with Complainant to establish the three elements of the Policy by a preponderance of the evidence.

### A. Identical or Confusingly Similar

The disputed domain name <www. westlanddistillery.in> was registered by the Respondent on October 16<sup>th</sup>, 2021.

The Complainant is an owner of the registered trademark "WESTLAND" for the last many years. The Complainant is also the owner of the domain as stated above and referred to in the Complaint. 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. In the present case the disputed domain name is < westlanddistillery.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.



The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify 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 "WESTLAND" products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) 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.

Therefore, I hold that the domain name <www.westlanddistillery.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

#### **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. The name of the Registrant / Respondent is DingDing as given in Whois details. Based on 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.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "WESTLAND" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide 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.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <www.westlanddistillery.in> 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 a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line 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 or 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.

The foregoing circumstances lead to the conclusion 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 similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www. westlanddistillery.in> be transferred to the Complainant.

No order to the costs.



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**Prabodha K. Agrawal**

**Sole Arbitrator**

Dated: 29<sup>th</sup> November, 2021