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INDRP ARBITRATION CASE NO.1468
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

GOOGLE LLC

Vs.

KHAN RAUF

Arch

DISPUTED DOMAIN NAME : "GOOGLEFIT.IN"

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INDRP ARBITRATION CASE NO.1468
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

GOOGLE LLC
1600 Amphitheatre Parkway,
Mountain View, CA 94043,
United States of America

...Complainant

Vs.

KHAN RAUF
Employee
Virar East,
Mumbai,
Maharashtra-401305

...Respondent

Disputed Domain Name : Googlefit.in



The Parties

The **Complainant** in this arbitration proceeding is Google LLC, who are operator of internet search engine under the trademark GOOGLE and having its principal place of business in 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America. The complainant in this proceeding is represented by Ms. Shwetasree Majumder, Ms. Astha Negi, Ms. Shipra Shandilya, Ms. Taranjeet Kaur, Fidus Law Chambers, F-12, Ground Floor, Sector 8 , Noida-201301.

The **Respondent**, in this arbitration proceeding, is, Khan Rauf, Employee, Virar East, Mumbai, Maharashtra-401305 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 Googlefit.in. The Registrar with which the disputed domain name is registered is National Internet Exchange of India (NIXI) and sponsoring Registrar is CSC e-Governance Services India Limited.

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.

The history of this proceeding is as follows :

In accordance with the Rules, 2(a) and 4(a) , NIXI on 10.12.2021 formally notified the Respondent of the complaint, and appointed Ajay Gupta 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 Resolution Policy and the Rules framed there under . That on 10.12.2021 Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

That commencing the arbitration proceedings an Arbitration Notice Dated 13.12.2021 was sent to the respondent by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file reply of the complaint if any within 10 days. The copy of complaint was also mailed to respondent by complainant on the directions of this panel on 14.12.2021. That the complainant also sent the hard copy of complaint to the respondent on address as mentioned in WHOIS Domain Name Information through courier on 15.12.2021 and courier receipt of the courier was supplied to this panel by complainant vide their mail dated 15.12.2021. That no reply of the notice and complainant was however, received from the respondent within stipulated time of 10 days. However, this panel in the interest of justice granted further period of 10 days to the respondent to file the reply and same was communicated to respondent by this panel through mail dated 24.12.2021. The Respondent despite the further opportunity given to him again failed to file the reply of the Arbitration notice and complaint even within the extended period of 10 days despite the receipt of mail dated 24.12.2021 of this panel and subsequently the respondent was proceeded ex parte on 05.01.2022.



The Respondent's Default

The Respondent failed to reply to the notice regarding the complaint. It is a well established principal 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. The disputed domain name in question is "googlefit.in"

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."

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

The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file reply of the Complaint if any but Respondent neither gave any reply to notice nor to the complaint. The 'Rules' paragraph 12 provides that "In event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidences, inferences and merits, only as the Respondent has not replied and is proceeded ex parte.

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

The Complainant in the present arbitration proceedings to support their has relied and placed on records documents as Annexures and made the following submissions :

The Complainant submits that the Complainant is a limited liability company registered under laws of Delaware in the United States of America. The Complainant is the operator of one of the most highly recognized and widely used internet search engines in the world under the trademark **GOOGLE**. Since its launch, the search engine under the trademark **GOOGLE** has become one of the largest, most highly recognized, and widely used internet search services in the world. The Complainant's primary website is located at www.google.com (registered since 1997), and they own and operate websites at over 190 **GOOGLE**-formative domain names. That the Complainant further submitted that ever since its formation, the Complainant has been carrying on business in internet related services and products, which include advertising technologies, internet search, cloud computing and software, and mobile and computer hardware.



The Complainant submits that in addition to search technologies and related activities, the Complainant is also well-known for a wide range of goods and services, including online advertising, digital distribution services, web browser software, email services, mobile phones, laptops, and its accessories.

The Complainant submits that it has been found to be one of the top-most valuable global brands with 'Brand Finance Global 500' in 2021. As per the 2021 rankings, the Complainant was valued at USD 191,215 million. Further, the Complainant's parent company, Alphabet, was also ranked #1 among the World's Best Employers in a Forbes study in 2019. In a 2021 survey report published by Glassdoor, the Complainant was ranked at the top amongst the "Best Places to Work" as voted by its Employees.

The Complainant further submits that trademark GOOGLE is also a part of the Complainant's company name i.e., Google LLC as well as various other trademarks of the Complainant. Thus, the trademark GOOGLE is not only associated with the search engine services offered under it but also with various other goods and services that the Complainant offers.

The Complainant submits that the popularity and fame of the Complainant's goods and services under the GOOGLE Trademarks can be gauged from the Complainant's social media presence. The Complainant maintains a Twitter account for the same (<https://twitter.com/google>) which currently has over 23.8 million followers. The Complainant also maintains a Facebook page (<https://www.facebook.com/Google/>) which has over 32 million followers.

Complainant Submissions about the trademark GOOGLE FIT :

The Complainant submits that under the trademark GOOGLE FIT, the Complainant offers a health tracking platform which helps consumers to monitor their health and track physical activities. The said platform was announced at the Google I/O conference 2014 as an open platform for developers to easily build fitness apps and details regarding the same were discussed on the Complainant's blog post dated 7 th August 2014, titled "Google Fit Preview SDK now available". The platform under the trademark GOOGLE FIT also provides customized coaching and actionable tips based on the user's health and activity history. It also makes it easier for the user to monitor their progress and allows them to track their activity right from their phone or smartwatch.

The Complainant further submitted that under the trademark GOOGLE FIT, has collaborated with World Health Organization (WHO) and American Heart Association (AHA), to develop Heart Points, which is an activity goal based on WHO's global recommendations and is known to have positive impact on health. Details regarding the said platform are available on the Complainant's website <https://www.google.com/fit/> (hereinafter "Complainant's website").

The Complainant submits that Mobile Application for the health tracking platform under the trademark GOOGLE FIT is available on Google Play Store

for Android users and on AppStore for Apple iOS users. A total of more than 1 billion users worldwide have downloaded the app GOOGLE FIT from the Google Play Store.

The Complainant submits that the Complaint is based on the trademarks GOOGLE and GOOGLE FIT, both registered in favour of the Complainant. The Complainant also owns rights in logos that are used as representative icons for its services under the trademark GOOGLE FIT, for example (GOOGLE FIT trademarks).

The Complainant submits that the Complainant owns numerous registrations for the trademarks GOOGLE (earliest registration dating back to September 16, 1998 in the United States of America) and GOOGLE FIT (earliest registration dating back to December 15, 2015 in the United States of America) in various jurisdictions. The Complainant's earliest registration, for the trademarks GOOGLE and GOOGLE FIT, in India is dates back to 1999 and 2015 respectively. The Complainant further submitted that each registration remains valid and in full force and effect.

The Complainant submits that it has successfully pursued domain name complaints before the WIPO and National Arbitration Forum and obtained favorable decisions in respect of numerous infringing domain names such as 'googleplace.in, googleseoservices.in, googlepays.in, googlebank.in, googleblog.com, google-o.com, chotagoogle.com, google-montenegro.me, google-sina.com, google-vietnam.com, google-plaiys.net' etc. All these decisions acknowledge the Complainant's proprietorship over the trademark GOOGLE trademarks.

The Complainant further submits that the trademark GOOGLE has also been declared well-known and a renowned mark in several jurisdictions such as Brazil, China, Denmark, and India.

Submissions of Complainant about the Respondent and its use of the domain name –

The Complainant submits that the Respondent in the present dispute has registered the domain name <www.googlefit.in> ['Disputed domain'] thereby using without authority the Complainant's trademarks **GOOGLE** and **GOOGLE FIT** that are the exclusive property of the Complainant.

The Complainant submits that the Disputed domain was registered on 25th January 2021, more than two decades subsequent to the adoption of the trademark **GOOGLE**, and more than 7 years subsequent to the adoption of the trademark **GOOGLE FIT** by the Complainant.

The Complainant further submits that at present, the landing page of the Disputed domain directs to <https://www.googlefit.in/www.google.com/fit/index.html>, the latter part (i.e. the extension) of which is the Complainant's domain [https:// www.google.com/fit](https://www.google.com/fit) and the same mirrors the Complainant's website available at www.google.com/fit. The said act on the part of the Respondent violates the rights of the Complainant in its trademarks including

but not limited to **GOOGLE, GOOGLE FIT**, and. Further, the Respondent has hyperlinked the Complainant's website on various tabs at the Disputed domain.

The Complainant submit that the Respondent is a habitual offender who has admitted to having more than 35 domain names comprising the complainant's well-known trademark **GOOGLE** and has also attempted to sell them to the Complainant for profit. The Complainant has already taken action against the Respondent for the domain names held by him. Few of such domain names include googleadsense.org, googledoc.net, googleplaystore.net, googlewallet.org, googleadmob.us, googleanalytics.us, googleblog.us, googlechrome.us.

The Complainant submit that it is therefore evident that the domain name has been registered by the Respondent in bad faith and with a *mala fide* intention to deceive and confuse the consumers into believing that the Disputed domain name belongs to the Complainant and to make undue gain.

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 :-

1. *The disputed domain name is identical or confusing 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."*

The above mentioned 3 essential elements of a domain name dispute are being discussed hereunder in the light of the facts and circumstances of this case.

Parties Contentions

1. **The domain name is nearly identical and thus confusingly similar to a trademark or service mark in which the Complainant has rights.**

Complainant

The Complainant submits that the Disputed domain <www.googlefit.in> is identical to Complainant's trademark **GOOGLE FIT** and it incorporates the

complainant's well-known trademark GOOGLE in entirety along with the country code top level domain '.in'. The Complainant further submits that While the domain name <www.googlefit.in>, which is identical to Complainant's trademark GOOGLE FIT is in itself sufficient to deceive and confuse the consumers, the chances of confusion and deception are further bolstered by the fact that contents hosted on the Disputed name are identical to the contents of the Complainant's website. The fact that the landing Disputed domain name directs to the extension <https://www.googlefit.in/www.google.com/fit/index.html>, and it mirrors the content hosted on the complainant's website www.google.com/fit shows that the deliberate intention of the Respondent is to create confusion.

The Complainant submits that irrespective of the inclusion of the country-code second-level domain (ccSLD), the fact that the Disputed domain comprises the Complaint's trademarks GOOGLE/GOOGLE FIT in their entirety, has the potential to cause consumer confusion. Consumer recall behind the Complainant's trademark GOOGLE is such that if any person comes across the Disputed domain, they will automatically associate the same with the Complainant only and none other.

The Complainant in its submission has relied upon *Nike Inc. v. Nike Innovative CV Zhaxia* (Case No. INDRP/804); *Metropolitan Trading Company v. Chandan Chandan* (Case No. INDRP/811); *Lego Juris A/s v. Robert Martin* (Case No. INDRP/125), where it was held that if a Disputed domain name completely incorporates the trademark / service mark of the Complainant, then the mere addition of domain codes such as ".in" and/or ".co.in" will not distinguish the Respondent's Disputed domain name.

The Complainant submits that it has used GOOGLE as a trademark, trade name and as a part of various domains, well prior to 25th January 2021, which is the registration date of the Disputed domain. It is submitted that the Complainant has established rights in its trademarks GOOGLE since 1997 and in GOOGLE FIT since 2014.

The Complainant further submitted that the Sole Arbitrator appointed in the matter of *Google Inc. v. Mr. Gulshan Khatri* (Case No. INDRP-189 May 06, 2011), in relation to the domain *googlee.in*, held that the act of registering a domain name similar to or identical with a well-known trade mark is an act of unfair competition whereby the domain name registrant takes unfair advantage of the fame of the trademark to either increase traffic to the domain, or to seize a potential asset of the trademark owner in the hope that the trademark owner will pay the requirement to relinquish the domain name. The Complainant submits that the same principle is applicable here as well, since the Disputed domain completely subsumes the trademarks GOOGLE/GOOGLE FIT of the Complainant.

Respondent

The respondent has not replied to the complainant contentions.



Panel Observations –

This Panel on pursuing the documents and records, submitted by the Complainant, observes that the Complainant has been carrying on business in internet related services and products, which include advertising technologies, internet search, cloud computing and software, and mobile and computer hardware. It is observed that the Complainant is the operator of one of the most highly recognized, and widely used internet search engines in the world under the trademark GOOGLE and Complainant owns and operates websites at over 190 GOOGLE-formative domain names. The adoption, use and registration of the mark by Complainant is also predates the registration of disputed domain which is clear from the fact that the Complainant's primary website is located at www.google.com and registered since year 1977.

This panel observe the fact that Disputed domain "www.googlefit.in" comprises the Complaint's trademarks GOOGLE/GOOGLE FIT in their entirety and has the potential to cause consumer confusion and will cause the user into mistakenly believe that it originates from, is associated with or is sponsored by the complainant and further suffix "in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.

Therefore, the panel is of opinion that disputed domain name "googlefit.in" being identical/confusingly similar to the trade mark of complainant will mislead the public and will cause unfair advantage to respondent. The Panel is of the view that there is likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "GOOGLEFIT" of the Complainant.

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 file complaint to the registry on the following premises." This is a positive assertion and sentence. Further paragraph 4(i) also constitutes a positive assertion and sentence. The above clearly indicates that the onus of proving the contents of Para 4(i) is upon complainant. To succeed he must prove them."

It has been proved by the Complainant that it has trademark rights and other rights in the mark "GOOGLE FIT" by submitting substantial documents in support of it. This panel while following the rule of law is of the opinion that while considering the trademark "GOOGLE FIT" in its entirety, the disputed domain name "googlefit.in" is confusingly similar to the trade mark of complainant.

Paragraph 3 of the INDRP states that, 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 :

1. *the statements that the Respondent made in the Respondent's Application form for Registration of Domain Name are complete and accurate;*
2. *To the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
3. *The Respondent is not registering the domain name for an unlawful purpose; and*
4. *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 respondent has not replied to the Complainant's contentions despite the opportunity given for same.

This Panel therefore, in light of the contentions raised by the Complainant comes to the conclusion that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(i) of the INDR Policy.

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

Complainant

The Complainant submits that under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP), any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a Disputed domain name :

1. Before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or



2. The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
3. The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Complainant submits that the Respondent is not a part of or is related to the Complainant. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to use as a part of their trade name, as a part of an email server or register domain names comprising its trademarks GOOGLE/GOOGLE FIT.

The Complainant further submits that as already held in previous Panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name. In the present case, the Respondent is not commonly known by the Disputed domain.

The Complainant submits that it has not authorized or licensed the Respondent to use any of its trademarks in any way. Such unlicensed, unauthorized use of the Disputed domain incorporating the Complainant's trademark is strong evidence that Respondent has no rights or legitimate interest in the Disputed domain name.

The Complainant further submits that the Respondent's services are not sponsored or endorsed by the Complainant and the Respondent has registered the Disputed domain solely to mislead consumers. The Complainant is the prior legitimate adopter of the trademarks GOOGLE and GOOGLE FIT and that the Respondent's act of including the same in the Disputed domain and mirroring the Complainant's website to make it appear as that of the Complainant is misleading.

The Complainant submits that website at the Disputed domain currently mirrors the Complainant's website as it directs to <https://googlefit.in/www.google.com/fit/index.html>, the latter part (i.e., the extension) of which is the Complainant's website <https://www.google.com/fit/>. This goes on to show that the Respondent has deliberately attempted to pass off its domain name as that of the Complainant and to divert web traffic to the Disputed domain name. Further, the adoption and use by the Respondent of the Disputed domain are significantly after the Complainant's adoption of the trademarks GOOGLE/GOOGLE FIT. Thus, the question of the Respondent being known by the Disputed domain does not arise in the first place.

The Complainant in its submission has relied upon *Al Jazeera Media Network Vs. Mishal m, q8webmaster / Domain Hostmaster, Customer ID: 89314531430345, Who is Privacy Services Pty Ltd, WIPO Case No. D2014-1719* where "it was held that the disputed domain name is confusingly similar to the Complainant's trademark and the fact that it has been used to display

content directly copied from the Complainant's website further indicates that it was registered and has been used with the intent to attract and mislead Internet users looking for the Complainant."

The Complainant submits that in the words of the Sole Arbitrator in *Kraft Foods Global Brands, LLC Vs. Jet Stream Enterprises Limited, Jet Stream* (Case No. D2009-0547) "...while the overall burden of proof rests with 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 a prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, a Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110." It is submitted by the Complainant that the said threshold has been satisfied in the present instance.

That based on the above based arguments, the Complainant submits that the Respondent is not using the Disputed domain for bonafide offering of services and not making legitimate, non-commercial and fair use of the Complainant's trademarks as per the policy.

Respondent

The respondent has not replied to the complainants contentions.

Panel Observations

This Panel holds that 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 prime facie case showing that the respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The respondent despite every opportunity failed to provide evidence to rebut the contention of complainant that the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to use as a part of their trade name, as a part of an email server or register domain names comprising its trademarks GOOGLE/GOOGLE FIT

This panel observes that Respondent failed to rebut the contention of the Complainant that Respondent is not commonly known by the Disputed Domain. The Respondent further failed to rebut the contention of the complainant that Respondent has nor rights or legitimate interests in respect of the domain name and respondent is not related in any way with the Complainant.



For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name.

3. The Disputed Domain name has been registered in bad faith.

Complainant

The Complainant has submitted that Respondent's bad faith is further established by the fact that Respondent has made no *bonafide* use of the Disputed domain name but has rather used the same to mirror the Complainant's official website with the *mala fide* intention to create confusion.

The Complainant submits that the Respondent has registered the Disputed domain for the sole purpose of extorting money from the Complainant by attempting to sell the Disputed domain name to the Complainant and further submitted that the same is evident from the Email received by the Legal Counsels of the Complainant from the Respondent..

The Complainant submits that the possibility that the Respondent created the Disputed domain name independently without any knowledge of Complainant's trademark is out of question given that the Respondent has mirrored the Complainant's website, which shows prior knowledge of the rights of the Complainant.

The Complainant has also submitted the following additional, specific instances of bad faith of Respondent:

- i. The Complainant states that the Respondent is a habitual offender who has admitted to having more than 35 domain names comprising the complainant's well-known trademark GOOGLE, some of which have already been auctioned by the Complainant.
- ii. The Complainant submits that the Respondent has blatantly mirrored the Complainant's website which shows clear intention to create a sense of the false connection between the Complainant and the Disputed domain name and has relied on WIPO decision of *Moneyweek Limited Vs. He Jianyi Case No. D2015-1700*)
- iii. The Complainant further submitted that the Respondent contacted the Legal Counsels of the Complainant offering to sell the Disputed domain. It is apparent that the Respondent aims to illegitimately monetize the Disputed domain name either by itself or by selling it at a premium to a third party. Based on the foregoing, it is submitted that the Respondent has registered and is using the Disputed domain name in bad faith.

That on the above based arguments Complainant submits that the Respondent has registered and is using the Disputed domain name in bad faith.

Respondent

The respondent has not replied to the complainants contentions.

Panel Observation

Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that 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 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 Registrar's 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 internet user 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 services on its website or location."

The panel is of the view that from the documents/records and evidence put before it by Complainant has establish that Respondent has no previous connection with the disputed domain name and has made no *bonafide* use of the Disputed domain name but has rather used the same to mirror the Complainant's official website with the *mala fide* intention to create confusion. This panel further observe that Respondent despite opportunity given failed to rebut the allegations of attempt to sell the Disputed name to the Complainant by contacting its counsel and allegations of habitual offender.

It is very unlikely that Respondent before registering the domain name googlefit.in had no knowledge of Complainant's rights in the trade mark GOOGLE FIT, which evidences bad faith.

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 vs. Nelton Brands Inc., INDRP/250, December 30,2011]

By registering the disputed domain name with actual knowledge of the Complainant's trademark "GOOGLE FIT", 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 case is the Complainant GOOGLE LLC.

The respondent has not replied to the Complainant's contentions despite the opportunity given for same.

The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Therefore the panel comes to the conclusion that the registration by Respondent is in bad faith. Consequently it is established that the disputed domain name was registered in bad faith or used in bad faith.

Remedies Requested

The Complainant has prayed to this Administrative Panel that the disputed domain <www.googlefit.in> be transferred to the Complainant & costs of the present proceeding be granted to the Complainant.

Decision

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

The complainant through its contentions based on documents / records and evidence has been able to establish that the complainant has been carrying on business in internet related services and products, which include advertising technologies, internet search, cloud computing and software, and mobile and computer hardware. It is observed that the Complainant is the operator of one of the most highly recognized, and widely used internet search engines in the world under the trademark GOOGLE. The Complainant has also been able to establish that apart from significant common law rights in the Mark GOOGLE, the complainant has statutory rights in the Mark GOOGLE FIT through registration. The Respondent however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name and Respondent is related in any way with the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name.

Taking into account the nature of the disputed domain name and in particular the ".in" extension alongside the Complainant's mark which is confusingly similar, 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 disputed Domain Name by the Respondent is and would be illegitimate.

The Respondent also 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.

The Complainant has given sufficient evidence to prove extensive trademark rights on the disputed domain name. Whereas, the Respondent's adoption and registration of the disputed domain name is dishonest and done in bad faith.

This panel is of the view that it is for the Complainant to make out a prime 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 but the respondent has miserably failed to do that despite repeated opportunities given to him. Thus it is clear that the Respondent's registration and use of the domain name [googlefit.in] is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

RELIEF

- (1) In accordance with Policy and Rules, the Panel directs that the disputed domain name [googlefit.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.
- (2) The Complainant shall be entitled to recover sum of Rs.35,000/- towards cost from the respondents. It is, however, made clear that Complainant shall recover cost of its own and implementation of awarded cost will not be supervised or controlled by .IN Registry or NIXI.

New Delhi, India
Dated : January 12, 2022


AJAY GUPTA
Sole Arbitrator