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Twilio Inc., California, USA vs. Thomas Lee, Gehid Limited, Hong Kong
INDRP Case no. 1531
Arbitrator: Mr. P.K.Agrawal

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AWARD

1. The Parties

The Complainant is M/s Twilio Inc. 101 Spear Street, 1st Floor, San Francisco, California 94105, United States of America.

The Respondent is Thomas Lee, Gehid Limited, Room 1618, 11F, Enterprise Square Two, 3 Sheung Yuet Road, Kowloon, Hong Kong-68688, CN.

2. The Domain Name and Registrar

The disputed domain name is < **TWILIO.CO.IN** >. The said domain name is registered with the Registrar – NIXI Holding Account (IANA ID: 802142).

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

- a. Domain ROID: D7324776-IN
- b. Date of creation: May 11, 2013
- c. Expiry date: May 11, 2022

3. Procedural History

(a) A Complaint dated 7th March, 2022 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 29.3.2022 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 29.3.2022. The Respondent was given 14 days for reply to the complaint. However, the Notice email could not be served upon the Respondent as it returned undelivered by Gmail due to non-acceptance by the recipient's server. Several efforts made afterwards to send emails failed for the same reason. The Complainant, through his emails 31.3.2022 and 11.4.2022 has submitted that the WHOIS information about Respondent's contact details is false and misleading as the complaint served through email was returned with delivery failure message, and the complaint served through physical modes viz. Courier DHL and Airmail India Post could not be delivered because of incorrect address as intimated by both the courier agencies. This contention is substantiated by sufficient evidence. 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. The Respondent has not responded to the Complaint served to him. Since the Respondent has not responded and presented any grounds in his defence, 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

The Complainant in this arbitration proceedings is M/s Twilio Inc., 101 Spear Street, 1st Floor, San Francisco, California 94105, United States of America. Founded in the year 2008, the Complainant develops and publishes internet infrastructure solutions. The Complainant offers cloud computing platform to allow web developers to integrate phone calls, internet protocol voice communications, and text messages into web, mobile, and phone applications. The Complainant's products and services enable developers to build, scale and operate real-time communications within software applications, ultimately empowering every developer and company to improve their interactions with their customers through software.

Since its incorporation in the year 2008, the Complainant has continuously used the trade mark TWILIO in connection with its products and services. Presently, the Complainant has 26 offices in 17 countries,

which includes an office in Bengaluru, India. As of December 31, 2021, Twilio has over 2,21,000 Active Customer Accounts, representing organizations big and small, old and young, across nearly every industry. The Complainant is the leader in the cloud communications platform category based on revenue, market share and reputation.

In addition to the above, since 2008, the Complainant has used the trademark TWILIO as the part of its official domain name <https://www.twilio.com/>. The aforementioned website was registered and used by the Complainant long before the Respondent's registration of the Disputed Domain Name. The Complainant's trade mark is featured throughout the website, and the Complainant specifically claims ownership of the trade mark TWILIO on webpages of the aforementioned website.

The following are details of the trademark "TWILIO" owned by the Complainant in India while it owns domain names incorporating the trademark.

<i>NUMBER</i>	<i>CLASS</i>	<i>REGISTRATION DATE</i>
4928676	09	2021-03-31 (Use since Nov. 2008)
2092441	38	2011-01-31
4928675	38	2021-03-31 (Use since Nov. 2008)
4928677	09	2021-03-31 (Use since Nov. 2008)

The aforementioned registrations are valid and subsisting on the Trade Marks Register. By virtue of the aforesaid registrations, the Complainant claims that it has the exclusive right to use the said trademarks. Additionally, by virtue of the registrations and by virtue of the provisions of Section 31 of the Trade Marks Act, 1999, the registrations are prima facie evidence of their validity.

In addition to the above, the Complaint has also attained registrations for its well-known trade mark in several jurisdictions of the world including but not limited to Australia, Canada, European Union, Israel, Japan, Russian

Federation, Hong Kong, Malaysia, Mexico, New Zealand, Philippines, Singapore, United Arab Emirates, and the United States of America.

Respondent's Identity and Activities

The Respondent's activities are not known. He has submitted false contact details / address on WHOIS. The Respondent has not responded to the Notice and complaint served upon him through emails and couriers.

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 based upon information and belief, the Respondent registered the Disputed Domain Name on May 11, 2013. The Disputed Domain Name is identical to the Complainant's well-known trade mark. The Disputed Domain Name uses the Complaint's registered trademark TWILIO in its entirety. Additionally, the fact that the Disputed Domain Name uses the ccTLD does nothing to create a meaningful distinction from Complainant's earlier well-known trade mark. Overall, it is clear that the Disputed Domain Name is identical to Complainant's well-known trade mark.

As stated above, the Complainant has applied for and registered its well-known trade mark with the Trade Marks Registry in India and other intellectual property offices around the world. These registrations serve to establish Complainant's rights in its well-known trade mark and provide constructive notice of its trademark rights to third parties. At the time the Respondent registered the Disputed Domain Name, the Complainant had been using its well-known mark for a considerable period of time. The Respondent cannot claim or show any rights to the Disputed Domain Name that are superior to Complainant's rights, goodwill and reputation as established by way of documentary evidence.

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any legitimate interest in using the disputed

domain name. The Complainant's trade mark TWILIO is a highly distinctive and well-known trade mark, there can be no plausible justification for the adoption of the Disputed Domain Name. The Respondent can demonstrate no legitimate interest in the Disputed Domain Name. The Respondent registered the Disputed Domain Name after the Complainant had established rights in its well-known trademarks through extensive use and registration in various countries.

Furthermore, there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission, or authorization by which the Respondent could own or use the Disputed Domain Name, which is deceptively and confusingly similar to the Complainant's well-known trademarks. The Respondent is not commonly known by the Disputed Domain Name and is not making legitimate non-commercial or fair use of the Disputed Domain Name. The Respondent is clearly trying to associate itself with the Complainant with the mala fide intention to ride upon the immense goodwill and reputation of the Complainant's well-known trademarks to gain undue benefits. Such adoption is against the Indian Domain Name Dispute Resolution Policy. Therefore, the Respondent does not have and / or cannot be permitted to own or even be considered to have any legitimate right or interest in the Disputed Domain Name as the same has been registered only to make unlawful monetary gains.

The Complainant further contends that such adoption and use of the Disputed Domain is likely to confuse the members of trade and public that services under the Disputed Domain Name are being provided by the Complainant, which is not the case. Such adoption and use of the Disputed Domain Name is likely to dilute the brand equity of the earlier well-known trade mark of the Complainant. From all of the above it is amply clear that the Respondent has not made any legitimate or fair use of the Disputed Domain Name. The only interest of the Respondent is to earn undue monetary gains by such illegal adoption and use of the earlier well-known trade mark of the Complainant and to create an impression in the minds of members of trade and public that the Respondent is in some way affiliated or associated with the Complainant, when such is not the case. In fact, by such illegal adoption and use of the Disputed Domain Name, the Respondent is trying to create an impression to the customers of the Complainant that the services from the Disputed Domain Name originate from the Complainant. Therefore, the Respondent has no rights or legitimate interest in the Disputed Domain Name which contains the Complainant's well-known trade mark in its entirety.

According to the Complainant, given the fame of the Complainant's

Mark as a trade mark, trade name and domain name, it is not possible to conceive any use by the Respondent of the Disputed Domain Name that would not constitute an infringement of the Complainant's rights in its Trade Mark. The Complainant has referred to *Veuve Clicquot Ponsardin v. The Polygenix Group Co.*, WIPO Case No. D2000-0163 at Section 6. Mere registration by Respondent of the Disputed Domain Name is thus further evidence of Respondent's bad faith, and also *Telstra Corporation Limited v. Nuclear Marshmallows*, Case No. WIPO D2000-0003.

The Complainant contends that there is no evidence that Respondent (i) is using the Disputed Domain Name for a bona fide offering of goods or services, (ii) is known by the trade mark TWILIO or (iii) is making any legitimate non-commercial or fair use. Rather, the Respondent is redirecting the Disputed Domain Name to pay per click websites. Accordingly, the Respondent cannot establish any rights or legitimate interests in the Disputed Domain Name.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the bad faith is implicit in the registration of the Disputed Domain Name. The bad faith of the Respondent in registering the Disputed Domain Name can be simply established from the fact that the Respondent has registered the Disputed Domain Name by adopting the Complainant's well-known trade mark TWILIO.

The Respondent has created a website with an intention of misleading the members of trade and public that the website under the Disputed Domain Name belongs to or created by the Complainant in as much as, on logging on to the Respondent's website, users are directed to a pay-per-click page, containing sponsored links. This clearly evidences the fact that the Respondent is using the disputed domain name in "bad faith" with the intention of diverting traffic by attracting internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's well-known mark as to the source, sponsorship, affiliation or endorsement of its website and the services on them.

The Complainant contends that the Respondent had both constructive and actual notice of Twilio's trademarks by virtue of its registrations in India and internationally. Additionally, and as noted above, the Respondent features the TWILIO mark on Disputed Domain Name's resolving webpage, which also indicates that the Respondent had actual notice of Twilio's trademarks.



According to the Complainant, bad faith is further evidenced by the Respondent having affirmatively concealed its true identity by means of a proxy service. A review of the WHOIS information for the Disputed Domain Name shows that Respondent's name and address are redacted for privacy. Considered in light of Respondent's illegitimate selection and use of the Disputed Domain Name, this supports the inference that the Respondent has knowingly engaged in the registration and use of the Disputed Domain Name in bad faith. This clearly evidences the fact that the Respondent is using the disputed domain name in "bad faith" with the intention of diverting traffic by attracting internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's well-known mark as to the source, sponsorship, affiliation or endorsement of its website and the services on them.

Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith, Caravan Club v Mrgsale NAF Decision FA 95314.

In Bennett Coleman & Co Ltd v. Steven S. Lalwani (Case No. D 2000-0014) and Bennett Coleman & Co Ltd v. Long Distance Telephone Company (Case No. D 2000-0015) decided by WIPO, the Complainant, publisher of the daily newspaper "The Economic Times" and "The Times of India" held domain names, and for publication of their respective newspapers. The two respondents had registered the sites and <thetimesofindia.com> and the Complainant contended that this was use of identical marks in which it had prior rights. Moreover, the site redirected traffic to the site without having any legitimate interests in respect of the domain names. Hence, the Complainant alleged that the respective respondent's registrations and use of the domain names was in "bad faith" in the sense that their use amounted to an attempt to intentionally attract, for commercial gain, internet users to their websites by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of those websites and the services offered therein. The Administrative Panel held that it is not a sufficient answer to suggest that the defendant will dispel any misleading first impression by use of a different design of the web site. The Panel further held that the necessary implication is that the domains were specifically selected in order to take advantage of the Complainant's very considerable reputation in the two titles of its publications by misleading internet users into believing that the respondent's sites came from or were associated with the Complainant. The Panel ordered that the two domain names be transferred to the Complainant.

In Playboy Enterprises International, Inc. v. Hector Rodriguez, WIPO Case No. D2000- 1016 (playboychannel.com and playboynetwork.com), it was said that "People, who manifest an intent to traffic in domain names that

incorporate well-known or famous trademarks, as the Respondent does here, simply do not expend their efforts with the sole intention of relinquishing those domain names for just their out-of-pocket registration costs. The goal of their efforts, simply put, is an expectation of receiving an adequate reward, i.e. sufficient profit, from this trafficking." transfer awarded. Consequently, the Complainant submits that bad faith use of the Disputed Domain Name is quite clear in this case, given the content on the Respondent's web site and his intent to sell the Disputed Domain Name.

In the case of SATYAM INFOWAY LTD. vs. SIFYNET SOLUTIONS PVT. LTD. [2004 Supp (2) SCR 465], wherein the Appellant was the registrants of the domain names www.sifynet.com, www.sifymall.com, www.sifyrealestate.com, etc. since the year 1999. The Respondents subsequently adopted the domain names www.siffynet.net and www.sijfynet.com in the year 2001. The Supreme Court of India while allowing the Appeal, held the following:

"11. Analysing and cumulatively paraphrasing the relevant parts of the aforesaid definitions, the question which is apposite is whether a domain name can be said to be a word or name which is capable of distinguishing the subject of trade or service made available to potential users of the internet?"

"12. The original role of a domain name was no doubt to provide an address for computers on the internet. But the internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for internet communication but also identifies the specific internet site. In the commercial field, each domain name owner provides information/services which are associated with such domain name. Thus, a domain name may pertain to provision of services within the meaning of Section 2(z). A domain name is easy to remember and use, and is chosen as an instrument of commercial enterprise not only because it facilitates the ability of consumers to navigate the Internet to find websites they are looking for, but also at the same time, serves to identify and distinguish the business itself, or its goods or services, and to specify its corresponding online Internet location. Consequently, a domain name as an address must, of necessity, be peculiar and unique and where a domain name is used in connection with a business, the value of maintaining an exclusive identity becomes critical. "

As more and more commercial enterprises trade or advertise their presence on the web, domain names have become more and more valuable and the potential for dispute is high. Whereas a large number of trademarks containing the same name can comfortably co-exist

because they are associated with different products, belong to business in different jurisdictions etc, the distinctive nature of the domain name providing global exclusivity is much sought after. The fact that many consumers searching for a particular site are likely, in the first place, to try and guess its domain name has further enhanced this value". The answer to the question posed in the preceding paragraph is therefore an affirmative."

"16. The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar web site which offers no such services. Such users could well conclude that the first domain name owner had mis-represented its goods or services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off."

"18. However, there is a distinction between a trademark and a domain name which is not relevant to the nature of the right of an owner in connection with the domain name, but is material to the scope of the protection available to the right. The distinction lies in the manner in which the two operate. A trademark is protected by the laws of a country where such trademark may be registered. Consequently, a trade mark may have multiple registrations in many countries throughout the world. On the other hand, since the internet allows for access without any geographical limitation, a domain name is potentially accessible irrespective of the geographical location of the consumers. The outcome of this potential for universal connectivity is not only that a domain name would require world-wide exclusivity but also that national laws might be inadequate to effectively protect a domain name. The lacuna necessitated international regulation of the domain name system (DNS). This international regulation was effected through WIPO and ICANN. India is one of the 171 states of the world which are members of WIPO. WIPO was established as a vehicle for promoting the protection, dissemination and use of intellectual property throughout the world. Services provided by WIPO to its member states include the provision of a forum for the development and implementation of intellectual property policies internationally through treaties and other policy instruments."

According to the Complainant, the activities of Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's Mark to improperly benefit the Respondent financially, in violation of applicable trademark and unfair competition laws. Moreover, these activities demonstrate bad faith registration and use of the Disputed Domain Name in violation of the Policy under paragraph 7.

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 response (evidence or argument) indicating his relation with the disputed domain name <TWILIO.CO.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 not offered any arguments to defend himself on this complaint, the default does not automatically result in a decision in favour of the Complainant. 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 < **TWILIO.CO.IN** > was registered by the Respondent on May 11, 2013.

The Complainant is an owner of the registered trademark "**TWILIO**" for the last many years. The Complainant is also the owner of the similar domains as 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 < **TWILIO.CO.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 "**TWILIO**" 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 <**TWILIO.CO.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.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that 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 Respondent has not responded in this case despite sufficient notice. There is also 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 not known as per 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 "TWILIO" 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 <TWILIO.CO.IN> under INDRP Policy, Para- 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.

In 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."

The circumstances as evident from the foregoing paragraphs 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 <TWILIO.CO.IN> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 14th April, 2022