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L'Oréal, Paris, France vs. Tong Hao, Zhejiang, China  
INDRP Case no. 1760  
Arbitrator: Mr. P.K.Agrawal

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## AWARD

### 1. The Parties

The Complainant is L'Oréal, 14 rue Royale, 75008 Paris, France.

The Respondent is Tong Hao, ZheJiangHangzhou, Xihu, HangZhou, Zhejiang, 31000, China.

### 2. The Domain Name and Registrar

The disputed domain name is <cerave.co.in>. The said domain name is registered with the Registrar – DYNADOT, LLC (IANA ID: 472). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: DC7EF0C9DDC764C508247556ECEFDA325-IN
- b. Date of creation: Apr 06, 2019.
- c. Expiry date: Apr 06, 2024.

### 3. Procedural History

- (a) A Complaint dated 7.09.2023 by the Complainant 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, 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 sent by the National Internet Exchange of India on 25.09.2023 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 25.09.2023. The Complainant was advised to send copy of the amended complaint (physical delivery) to the Respondent's address as reflected in WHOIS details. The Respondent was given 14 days' time by the Arbitrator through Notice dated 25.09.2023 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant first requested on 25.9.2023 & 26.9.2023 to exempt sending of complaint through physical means, and then requested on 4<sup>th</sup> Oct to extend the deadline of sending the complaint by post to the Respondent. The Complainant was allowed to send the complaint by post till 10<sup>th</sup> Oct, 2023. The Complainant submitted proof of sending the complaint by post (EMS dated 7<sup>th</sup> Oct) on 9<sup>th</sup> Oct. In view of this, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. The Respondent responded through email dated 10.10.2023 and countered the complaint. The Complainant was advised to submit his Rejoinder which he did on 20.10.2023. The Respondent countered it through email dated 25.10.2023. Hence, these proceedings have to be conducted considering the pleadings brought on record by the Complainant and the Respondent.

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

The Complainant in this arbitration proceedings is L'Oréal, 14 rue Royale, 75008 Paris, France.

Complainant, L'Oréal, is a French industrial group specialized in the field of cosmetics and beauty and is the first cosmetics group worldwide. According to the Complaint, created in 1909 by a French chemist by the same name, L'Oréal is today one of the world's largest groups in the cosmetics business. It has a portfolio of 36 brands, employs 86,000 employees, and is present in 150 countries.

L'Oréal announced the signing of a definitive agreement with Valeant to acquire the skincare brands CeraVe, AcneFree and Ambi for a cash purchase price of 1.3 billion US dollars. CeraVe was founded in 2005 and offers a range of advanced skincare products, specifically cleansers, moisturizers, sunscreens, healing ointments and a dedicated baby line. According to the Complaint, the CeraVe story began in 2005 after experts noticed that many skin conditions such as acne, eczema, psoriasis and dry skin all had one thing in common: a compromised skin barrier. Developed with dermatologists, CeraVe offers a complete line of skincare products

that contain three essential ceramides enhanced with a revolutionary delivery system to help restore the skin's natural protective barrier.

Complainant and its brands are also present and well-known in India. Formed in 1994, L'Oréal India is a transformative beauty leader, providing consumers with sophisticated, safe, high quality and effective beauty products. Additionally, Complainant with its brand CeraVe is also active in China. L'Oréal China was founded in 1997 with a headquarters in Shanghai and offices in 5 other cities. Since then, L'Oréal China has earned its place as a leader in the country's beauty market with 25 brands, 1 research and innovation centre, 1 training centre, 2 plants in Yichang and Suzhou, and 5 distribution centres. This presence reflects the fact that China has become the 2nd largest market for the L'Oréal Group. With more than 10,000 people and 22 years of sustainable growth, its subsidiary has been recognized as one of China's Most Attractive Employers by Universum for several years.

CeraVe, makes high-quality cleansing and moisturizing products accessible to a wide number of consumers around the world. Developed with dermatologists, CeraVe's mission is to restore and maintain skin barrier for all through efficacy, safety, compliance and accessibility. The skincare products contain a blend of three essential ceramides (ceramides 1, 3, and 6-II), fatty acids and hyaluronic acid to restore skin barrier function, and sustain long-term moisturization with just one use. The Complainant claims that CeraVe is the No. 1 dermatologist recommended moisturizer brand in the United States and now available in over 40 countries worldwide.

According to the Complaint, the Complainant became aware of Respondent's registration of the domain name <cerave.co.in>, which reproduces Complainant's trademark CERAVE in its entirety, and does not associate it with any generic term that could reduce the risk of confusion. On the contrary, the composition of the domain name and the mere addition of the extension ".co.in" can mislead Internet users into believing the disputed domain name is endorsed by Complainant or that it will direct them to the official website promoting Complainant's products intended for the Indian market. Since its detection, the domain name <cerave.co.in> has been directing to a parking page displaying commercial links directly targeting Complainant's field of activity.

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

The Respondent's activities are not known as per WHOIS details. The Respondent responded through email dated 10.10.2023 and countered the complaint with the arguments as given in later paragraph.



## 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 submits that the disputed domain name <cerave.co.in> completely contains the complainant's CERA VE mark.

The Complainant argues that Complainant and its trademark CERA VE enjoy a worldwide reputation. Complainant owns numerous CERA VE trademark registrations around the world, including India. Complainant is in particular the owner of the following trademark registrations:

International Trademark Registration CERA VE No. 1365989 dated June 15, 2017, designating inter alia Vietnam, Egypt, Switzerland, Singapore and covering goods in class 3;

Indian Trademark Registration CERA VE No. 1432256 dated March 10, 2006, duly renewed and covering goods in class 3.

In addition, Complainant operates (through its US and Chinese subsidiaries), among others, the following domain names reflecting its trademark in order to promote its services:

<cerave.com> registered on November 18, 2004;

<cerave.co> registered on July 20, 2017;

<cerave.cn> registered on December 3, 2012.

The disputed domain name <cerave.co.in> is virtually identical to Complainant's trademark CERA VE. The domain name <cerave.co.in> reproduces Complainant's trademark CERA VE in its entirety. In many decisions, Panels considered that the incorporation of a trademark in its entirety may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered trademark (WIPO Case No. D2013-0150 *Swarovski Aktiengesellschaft v. mei xudong*; INDRP Case No. INDRP/493, <8raffi.in> decided on July 15, 2013, INDRP Case No. INDRP/887 <colgate.in> decided on May 26, 2017, INDRP Case No. INDRP/741 <goodyear.in> decided on February 8, 2016).

In many decisions, it is well established that "Where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark" (WIPO Case No. D2011-1627, *L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. D2010-1059, *Rapidshare AG*,

*Christian Schmid v. InvisibleRegistration.com, Domain Admin and WIPO Case No. D2000-0113, The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.).*

Likewise, the disputed domain name <cerave.co.in> is virtually identical to Complainant's domain names <cerave.com> and <cerave.co> easing eventual typing errors by Internet users; thus, resulting to diversion from Complainant's site to that of Respondent. Therefore, the structure of the disputed domain name enhances the false impression that this domain name is somehow officially related to Complainant, as it may be perceived as the official domain name differing only in the extension. The disputed domain name <cerave.co.in> has been registered in the TLD "co.in". The presence of the suffix ".co.in" is not to be taken into account when assessing the likelihood of confusion between Complainant's trademark and the disputed domain name. Indeed, it is well established in domain name cases that the suffix to indicate the top level of the domain name, such as ".co.in", has to be disregarded for the purpose of determining whether the domain name is identical or confusingly similar to Complainant's trademark (INDRP Dispute Decision n°L-2/1/R1 <Pepsico.in> decided on April 24, 2006; INDRP Dispute Decision n°L-2/1/R4 <Mothercare.in> decided on April 27, 2008 ; INDRP Dispute Decision no.2/9/R4 <sensex.in> decided on August 17, 2008).

The Complainant submits that Complainant uses the trademark CERAVE in connection with a wide variety of products and services around the world. Consequently, the public has learnt to perceive the goods and services offered under these trademarks as being those of Complainant. Therefore, the public would reasonably assume that the disputed domain name belongs to Complainant or is at least, related to Complainant. Accordingly, with the registration of the disputed domain name, Respondent created a likelihood of confusion with Complainant's trademarks. It is likely that this domain name could mislead Internet users into thinking that this is, in some ways, associated with Complainant and thus may heighten the risk of confusion.

For all of the above-mentioned reasons, it clearly appears that the disputed domain name is identical to the trademarks CERAVE in which the Complainant has rights.

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 Right or Legitimate Interest in <cerave.co.in>**.

The Complainant submits that the Respondent is neither affiliated with Complainant in any way nor has he been authorized by Complainant to use and register its trademark, or to seek registration of any domain name incorporating said mark. Furthermore, Respondent has no prior rights or legitimate interest in the domain name. The registration of the CERAVE trademarks preceded the registration of the disputed domain name for years. In previous decisions, Panels found that in the absence of any license or permission from the Complainant to use such widely-known trademarks, no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed (WIPO Case No. D2013-0188, *Groupe Auchan v. Gan Yu*; WIPO Case No. D2010-0138, *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, INDRP Case No. 1699, *Novartis AG v. Hemaswaroop Dindukurthi*).

Moreover, the domain name in dispute is virtually identical to the Complainant's CERAVE trademark and the official domain names <cerave.com> and <cerave.co>, so Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name. In the present case, the composition of the domain name constitutes clear evidence that the Respondent wishes to give an overall impression that the disputed domain name is related to Complainant and misleadingly divert consumers for fraud or commercial gain, therefore, such composition cannot constitute fair use, further demonstrating a lack of legitimate interests regarding said domain name. Besides, Respondent did not demonstrate use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the disputed domain name resolves to a parking page displaying commercial links relating to skincare products directly targeting Complainant's field of activity. Consequently, Respondent fails to show the non-commercial intention or the fair use of the disputed domain name. It is most likely to be believed that Respondent has no legitimate interest or rights in the disputed domain name.

Likewise, the domain name in dispute directs Internet users to a parking page with pay-per-clicks which are likely to generate revenues. Hence, as a matter of fact, it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of disputed domain name (WIPO Case No. D2009-1529, *Société nationale des télécommunications : Tunisie Telecom v. Ismael Leviste*, INDRP Case No. INDRP/167 <lazard.in> decided on November 30, 2010).

Respondent has never been given the authorization from Complainant for developing such website that will lead Internet users into wrongly believing it is endorsed by Complainant. Such circumstances, and the diversion of Internet traffic to an illicit website in order to generate revenues, do not represent a use in connection with a bona fide offering of goods and services. Respondent is thus not accurately disclosing its relationship with the trademark by falsely suggesting it is the trademark owner and its website is an official website, which is contrary to the Policy (WIPO Case No. D2001-0903, *Oki Data Americas, Inc. v. ASD, Inc.*).

Finally, given Complainant's goodwill and renown worldwide, and the nature of the disputed domain name, which is virtually identical to Complainant's trademark and confusingly similar to the official domain names, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant's rights.

For all of the above-cited reasons, it is undoubtedly established that Respondent has no rights or legitimate interests in respect to the domain name in dispute.

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 **Domain Name Has Been Registered and Used in Bad Faith**:

The Complainant submits that it is implausible that Respondent was unaware of Complainant when he registered the disputed domain name. Bad faith can be found where respondent "knew or should have known" of Complainant's trademark rights and, nevertheless registered a domain name in which he had no rights or legitimate interest (WIPO Case No. D2009-0320, *Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*; WIPO Case No. D2009-0113, *The Gap, Inc. v. Deng Youqian*).

Firstly, Complainant is well-known throughout the world, including India and China where Respondent is located. Secondly, the disputed domain name reproduces entirely Complainant's trademark CERAVE and associates it with the extension ".in" increasing the likelihood of confusion. Therefore, it is impossible that the Respondent was not aware of Complainant's trademarks and activities at the time of the registration of the disputed domain name. Even more so, considering the fact that the disputed domain name is virtually identical to Complainant's official



domain name <cerave.com> differing only in the extension, which makes potential typing error by Internet users more likely to happen, and as result diverting traffic from Complainant's site to the Respondent's.

In fact, bad faith has already been found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith (WIPO Case No. D2013-0091, *LEGO Juris A/S v. store24hour*; WIPO Case n° D2008-0226, *Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling*; WIPO Case n° D2006-0464, *Caixa D'Estalvis I Pensions de Barcelona ("La Caixa") v. Eric Adam*). Given the reputation of the CERAWE trademark, registration in bad faith can be inferred.

The Complainant argues that under Section 2 of the ICANN Policy, it is established that when someone registers a domain name, he represents and warrants to the registrar that, to his knowledge, the registration of the domain name will not infringe the rights of any third party. It means that it was Registrant's duty to verify that the registration of the disputed domain name would not infringe the rights of any third party before registering said domain name (WIPO Case no. D2009-0901, *Compagnie Gervais Danone contre Gueorgui Dimitrov / NETART*; WIPO Case no. D2002 0806, *Carolina Herrera, Ltd. v. Alberto Rincon Garcia*; WIPO Case no. D2000 1397, *Nike, Inc. v. B.B. de Boer*).

According to the complainant, a quick CERAWE trademark search would have revealed to Respondent the existence of Complainant and its trademark. Respondent's failure to do so is a contributory factor to its bad faith (WIPO Case no. D2008-0226, *Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling*). Supposing that Respondent was not aware of the possibility of searching trademarks online before registering a domain name, a simple search via Google or any other search engine using the keyword "CERAWE" demonstrates that all first results relate to Complainant's products or news. In this day and age of the Internet and advancement in information technology, the reputation of brands and trademarks transcends national borders. Taking into account the worldwide reputation of Complainant and its trademarks, it is hard to believe that Respondent was unaware of the existence of Complainant and its trademarks at the time of registration of the disputed domain name.

Previous Panels have established that knowledge of Complainant's intellectual property rights, including trademarks, at the time of registration of the disputed domain name proves bad faith registration (WIPO Case No. D2008-0287, *Alstom v. Domain Investments LLC*; WIPO Case No. D2007-0077, *NBC Universal Inc. v. Szk.com*). It can be presumed that many Internet users attempting to visit Complainant's website may have ended up on the site of Respondent. As the disputed domain name is confusingly

similar to Complainant's trademarks, previous Panels have ruled that "*a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from Complainant's site to Respondent's site*" (WIPO Case No. D2012-1765, *MasterCard International Incorporated ("MasterCard") v. Wavepass AS*; WIPO Case No. D2006-1095, *Edmunds.com, Inc. v. Triple E Holdings Limited*).

As previously indicated, there is little doubt in this case that, at all times, Respondent was not aware that CERAVE enjoyed a substantial reputation worldwide. In light of this knowledge, Respondent used the disputed domain name <cerave.co.in> to direct Internet users and generate more traffic to a parking page displaying commercial links targeting Complainant's field of activity, that are likely to generate revenue. Respondent has thus intentionally attempted to attract Internet users to its website for commercial gain by creating likelihood of confusion with the Complaint's mark and official domain name as to the affiliation or endorsement of either the Respondent or its website.

Respondent is taking undue advantage of Complainant's trademark to generate profits. The use of a well-known trademark to attract Internet users to a website for commercial gains constitutes a use in bad faith pursuant to the policy (WIPO Case No. D2007-0956, *F Hoffmann-La Roche AG v. Anna Valdieri*, WIPO Case No. D2009-1231 *L'Oréal SA v. LV Kefeng*, and WIPO Case No. D2007-1736, *Alstom v. FM Laughna*). The Respondent's use of a domain name that is confusingly similar to the trademark CERAVE may also prevent Internet users from accessing Complainant's official website by confusing prospective users.

Thus, it is likely that Respondent registered the domain name to prevent Complainant from using their trademarks in the disputed domain name. According to former panel, this type of conduct constitutes evidence of Respondent's bad faith (WIPO Case n° D2009-0242, *L'oreal v. Chenxiansheng*). Besides, given Complainant's goodwill and renown worldwide, and the nature of the disputed domain name, which is confusingly similar to Complainant's trademark and its official domain names, it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of Complainant's rights.

Therefore, it is more likely than not, that Respondent's primary motive in registering and using the disputed domain name was to capitalise on or otherwise take advantage of Complainant's trademark rights, through the creation of initial interest of confusion.





In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

## **B. Respondent**

The Respondent has submitted his reply as follows:

- 1: The Respondent agrees that the disputed domain name is the same as its trademark.
- 2: The Respondent did not resolve the disputed domain name to the AD parking page, the online display was set by the registrar, and the Respondent never obtained any business benefits.
- 3: The Respondent does not agree that the mark is well known in India, and the Complainant has not provided any evidence that it is well known locally.
- 4: The respondent registered the disputed domain name for the sale of small goods, and the website was not developed temporarily due to the COVID-19 epidemic.
- 5: The Disputed domain name was lawfully registered by the Respondent and the Respondent has not sold, leased, or otherwise transferred the disputed domain name to the Complainant or its competitors in exchange for a compensation greater than the actual cost value directly related to the dispute that the Respondent can prove;
- 6: Although the Complainant company was established more than 100 years ago, the disputed brand was acquired through acquisition in 2018. The Complainant has not submitted any sufficient evidence to prove when cerave was established in India. Sales data in India, whether it has been promoted on well-known local media advertising platforms.
- 7: The Complainant has registered ceraveindia.com as the official domain name of the brand, and the respondent does not have a competitive relationship with the Complainant, does not damage the reputation of the Complainant, interfere with the normal business activities of the Complainant, or confuse the difference with the Complainant, misleading the public.
- 8: The complainant has not provided any evidence about India to prove that cerave is well known in India. The Complainant has a blank period of more than 13 years to register the domain name directly, but the Complainant has never registered the domain name, the Complainant's trademark is not a well-known trademark, there is no evidence that it has a high reputation in India, the disputed domain name is legally registered by the Respondent,



and the Respondent has not sold, leased or otherwise transferred the disputed domain name to the Complainant or its competitors.

## 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 offered some arguments to defend himself on this complaint, the burden remains with Complainant to establish the three elements of the Policy by a preponderance of the evidence. In his Rejoinder dated 20.10.2023, the Complainant has countered the arguments of the Respondent. “Firstly, by addressing the Respondent’s contentions that the Complainant and its CERAVE trademark are not well-known in India, Complainant has underlined the fact the Respondent has acknowledged itself the presence of the Complainant and its CERAVE products in India by citing in its response the Complainant’s official domain name <ceraveindia.com> intended for the Indian market.

Additionally, and more importantly, Complainant and its CERAVE trademark are widely known in China, where the Respondent is located, as indicated in the complaint. CERAVE was officially launched in China in October 2018. According to Internet research, CERAVE had been in use since at least 2015.

The Respondent’s claims it registered the disputed domain name for the sale of small goods, and that the website development was halted temporarily due to the COVID-19 restrictions, are not substantiated with any evidence. Neither has the Respondent provided any proof about its



business nor an explanation as to why it chose this particular trademark to promote its alleged business. Therefore, the Respondent failed to support its claims of not interfering with the business activities of the Complainant, and not misleading the public by the confusing similarity of the disputed domain name and the Complainant's trademark, with facts.

The Respondent claims it has registered the disputed domain name lawfully. However, here it should be emphasized that the domain name registration agreement between the Respondent and its registrar binds it to certain obligations. One of these is not to infringe any intellectual property right of a third party. It is well established that when someone registers a domain name, he represents and warrants to the registrar that, to his knowledge, the registration of the domain name will not infringe the rights of any third party. This means that it was Registrant's duty to verify that the registration of the disputed domain name would not infringe the rights of any third party before registering said domain name.

Consequently, with the registration of the disputed domain name, the Respondent created a likelihood of confusion with Complainant's trademarks. In previous decisions, Panels found that in the absence of any license or permission from the Complainant to use such widely-known trademarks, no actual or contemplated bona fide or legitimate use of the domain name could reasonably be claimed (INDRP Case No. 1699, *Novartis AG v. Hemaswaroop Dindukurthi*).

As to the Respondent's statement it did not set up the parking page displaying commercial links on the disputed domain name, it chose to leave that page active with pay-per-clicks which are likely to generate revenues, instead of replacing it. Hence, as a matter of fact, it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of disputed domain name (INDRP Case No. INDRP/167 <lazard.in> decided on November 30, 2010)".

Keeping the complaint and above-mentioned response of the Respondent & Rejoinder of the Complainant in view, this Arbitrator proceeds further as follows.

#### **A. Identical or Confusingly Similar**

The disputed domain name <cerave.co.in> was registered by the Respondent on Apr 06, 2019.

The Complainant is an owner of the registered trademark CERA VE Mark 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 <cerave.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 CERAVE 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 <cerave.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.

There is no evidence to suggest that the Respondent has been known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not CERAVE 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 CERAVE Mark 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 <cerave.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 <cerave.co.in> be transferred to the Complainant.

No order to the costs.



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**Prabodha K. Agrawal**  
**Sole Arbitrator**

Dated: 26<sup>th</sup> Oct, 2023