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Google LLC, USA vs. Micheal Samuels, Dubai  
**INDRP Case no. 1777**  
Arbitrator: Mr. P.K.Agrawal

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## **AWARD**

### **1. The Parties**

The Complainant is Google LLC, 1600 Amphitheatre Parkway Mountain View, CA 94043 United States of America.

The Respondent is Micheal Samuels, A-1, 1333, Dubai 220609, UA.

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

The disputed domain name is <ytviews.in>. The said domain name is registered with the Registrar – GoDaddy.com, LLC (IANA ID: 146). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D41440000004403777-IN
- b. Date of creation: June 1, 2017.
- c. Expiry date: June 1, 2027.

### **3. Procedural History**

- (a) A Complaint dated 27.10.2023 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 6.11.2023 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 6.11.2023. The Complainant was advised to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the



Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator through Notice dated 6.11.2023 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant confirmed on 7.11.2023 that the complaint with annexures was communicated to the Respondent through email dated 6.11.2023 and through DHL Express Worldwide courier on 6.11.2023. The Respondent has responded through email dated 7.11.2023. 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 has responded to the Notice and submitted his reply. This Arbitrator, on 7.11.2023, advised the Complainant to submit Rejoinder to the contentions of the Respondent. Accordingly, the Complainant submitted the Rejoinder on 10.11.2023, and served upon the Respondent through email. Hence, these proceedings have to be conducted with the pleadings brought on record by both the parties.

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

The Complainant in this arbitration proceedings is Google LLC, 1600 Amphitheatre Parkway Mountain View, CA 94043 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. In addition to search technologies and related activities, the Complainant is well-known for a wide range of internet related goods and services, including online advertising, web browser software, and email services.

According to the Complainant, the services under the trademark **YOUTUBE** were originally launched in the year 2005 by YouTube LLC, which was then acquired by the Complainant in November 2006. By way of this acquisition, the Complainant expanded the scope of its business to include the video sharing and hosting platform that involves uploading, viewing, sharing, and commenting, under the trademark **YOUTUBE**. The **YOUTUBE** platform is one of the leading online video sharing platforms and one of the top internet destinations. The Complainant's platform under the trademark **YOUTUBE** is also referred to as YT (acronym of the trademark **YOUTUBE**) and also recognized by the said acronym.

According to the Complaint, the YouTube service was launched in India on 7th May 2008. By 2018, the video platform under the trademark **YOUTUBE** had reached 80 percent of all internet users across age-groups.

The Complainant's **YouTube Brand** comprises various elements such as the trademarks **YOUTUBE** (word), **YT** (popular acronym for **YOUTUBE**), web application logos, (the YouTube Icon). Apart from the

above, the colour combination of black, red, and white is also a consistent feature of the **YouTube Brand**. The word, logo, and Icon marks are a distinctive combination of words, colours, and shapes that have been coined and adopted by the Complainant. Over a period of time, the Complainant has introduced various versions and combinations of the word, logo, and Icon trademarks where the basic elements, such as the colour combination, the lozenge box, its distinct shape and the wordmark itself, continue to remain the same or contain slight variations.

The Complainant also uses the abbreviation YT to refer to its services under the YouTube brand. As per the Complainant's branding guidelines for YouTube platform, use of the trademark **YOUTUBE** or abbreviation, acronym, or variant such as YT in conjunction with the overall name for an application is impermissible. The Complainant has been using the trademark **YT** for several years. In November 2013, they introduced the inaugural YouTube Music Awards (YTMA) to celebrate music artists globally, with the event garnering over 5 million YouTube views. In May 2018, the Complainant launched a specific music streaming service under the trademarks **YOUTUBE MUSIC** and/or **YT MUSIC**. It offers official albums, singles, videos, remixes, live performances, and more for Android, iOS, and desktop devices. In addition to the Complainant, various third parties associate the abbreviation YT with the Complainant's YouTube platform and commonly use the said abbreviation interchangeably with YouTube. The Complainant claims that as per the internet vernacular, YT has been defined as an acronym for the Complainant's YouTube platform. Thus, the **YouTube Trademarks**, including "YT," symbolize the Complainant's high-quality services, signifying innovation and excellence.

According to the Complainant, in addition to the common law rights that accrue in favour of the Complainant, the Complainant has also been granted statutory recognition for the **YouTube Trademarks** in various jurisdictions of the world. Their earliest trademark application for the trademark **YOUTUBE** dates back to January 2006 in the United States of America, under S. No. 78802261. Further, the Complainant uses the abbreviation YT for its trademarks for example in the form of the 'YT Music' icon. The Complainant owns registered rights in the 'YT Music' icon in various jurisdictions. The trademark **YOUTUBE** has also been declared well-known in jurisdictions such as Japan and Portugal. The Complainant has also obtained registrations for the **YouTube Trademarks** in India since as early as 2006. The Complainant has also secured the domain name <yt.com> given the association of the **YT** mark and Complainant's **YOUTUBE** platform.



The Complainant submits that the Complainant has successfully pursued domain name complaints before the WIPO and National Arbitration Forum and obtained favourable decisions in respect of numerous infringing domain names such as <ytaccelerator.com>, <youtubeaccelerator.com>, <www-youtubeaccelerator.com> etc.

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

The Respondent in the present dispute has registered the domain name <ytviews.in> ('Disputed domain') which comprises the trademark **YT** (popular abbreviation associated with the Complainant's trademark **YOUTUBE**). The Respondent's activities are not known from the Whois details.

The Complainant first came across the Respondent's trademark applications for the marks 'Yt Views' (under application no. 5436756), 'YT Instaviews' (under application no. 5436757), **YT Views** (under application no. 5436758), and **YT Instaviews** (under application no. 5436759). After conducting due diligence, the Complainant came across the Respondent's website at the Disputed domain, through which the Respondent allegedly offers paid social media promotional services including buying of YouTube viewership, comments, subscribers etc. In addition to use of the abbreviation YT as part of the disputed domain, the said website features elements of the Complainant's YouTube Brand such as the **YOUTUBE Trademarks** and nearly identical/closely similar variations thereof to offer the alleged services. Notably, the use of such services or other means to artificially increase views or engagement on the YOUTUBE platform is a violation of the YOUTUBE terms of service. In this regard, the Complainant sent a legal notice dated 14th November 2022 requiring the Respondent to withdraw the trademark applications, take down the website content, and cancel their domain registration among other demands. The Respondent complied to the extent of withdrawing the trademark applications but refused to cease the infringing use. Thereafter, the Complainant sent a clarificatory letter dated 3rd February 2023 which detailed the Complainant's concerns in regards to the Respondent's use of YouTube branding elements and subsequently two more letters in an effort to give the Respondent ample opportunities to comply with its demands and cease the infringing use. In addition to this, the Complainant sent multiple emails requesting the Respondent's contact details to explain its concerns over a phone call and amicably resolve the matter. However, the Respondent has not complied with the Complainant's remaining demands.



## 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 domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Disputed domain <ytviews.in> prominently features the Complainant's trademark **YT**, in which the Complainant has legitimate interests and rights. The Disputed domain only comprises the additional term 'VIEWS' which simply describes the nature of offerings, being paid social media promotional services for increasing subscribers, views and likes on social media platforms including YouTube and therefore, does not affect the overall impression of the Disputed domain. As noted above, the use of paid promotional services to artificially increase engagement on the YOUTUBE platform is a violation of the YouTube terms of service. The abbreviation YT is commonly used by the Complainant and users to refer to the Complainant's YouTube platform. Along with its popular association in the common parlance, the Complainant owns statutory rights in the trademark 'YT Music' and the domain <yt.com> both of which prominently feature the abbreviation YT.

Furthermore, the Respondent's use of "YT" is clearly intended to allude to the Complainant's YouTube platform. The Respondent's website explicitly states the following: *"Yt Views is among the top **YouTube Views** service providers."* This usage distinctly indicates that the acronym "YT" is used in reference to the Complainant's YouTube platform. Given the asserted reputation in the abbreviation YT with the Complainant's trademark **YOUTUBE** coupled with the Respondent's unauthorized use of YouTube branding elements in order to make a reference to paid promotional services for the Complainant's YouTube platform, the Disputed domain is likely to create an impression in the minds of the consumers that the Disputed domain is associated with, or is sponsored by the Complainant, which is not the case.

In *Google Inc. v. Idan Feigenbaum / SpeedBit Ltd. FA1603001666993*, while transferring the disputed domain <ytaccelerator.com> to the Complainant, the Panel observed that "The third domain name, <ytaccelerator.com>, contains "yt," a common abbreviation for YOUTUBE, plus the gTLD ".com" and the generic term "accelerator." These alterations of the mark, made in forming the domain names, do not save them from the realm of confusing similarity under the standards of the Policy."



The Panel observed in the case of *Swinburne University of Technology v. Swinner a/k/a Benjamin Robert Goodfellow*, WIPO Case No. DAU2004-0003 that if a disputed domain is confusingly similar to the abbreviation of the complainant's mark and if such an abbreviation has no particular meaning, the respondent would have solely chosen it for the purpose of creating a likelihood of confusion with the complainant's mark. In *Banque Saudi Fransi v. ABCIB*, WIPO Case No. D2003-0656 and *Credit Suisse Group v. Credit Suisse Group* Case No. D2005-0213, the UDRP Panel observed that an abbreviation of a registered mark incorporated into a domain name may constitute confusing similarity. In *Kaporal Groupe v. Redacted for Privacy, Withheld for Privacy Purposes Privacy Service Provided by Withheld for Privacy ehf / Neville Berger*, WIPO Case No. D2021-3109, the UDRP Panel observed that, "the disputed domain name consists of the partial reproduction of the Complainant's KAPORAL trademark, with the addition of the French generic term "soldes" ("sales"). Furthermore, the use of the disputed domain name in connection with a webpage purportedly selling the Complainant's products and reproducing the Complainant's logo affirms a finding of confusing similarity between the disputed domain name and the Complainant's trademark". Further in *Hiawatha National Bank v. Martha Coe* Case No. D2018-1946, the WIPO panel observed the following with regard to use of an acronym of a mark, "... the Complainant has been using the HIAWATHA NATIONAL BANK and its acronym HNB as unregistered trademarks to identify its banking services online. The Complainant has provided evidence of offer of its services online in the domain name <hnbank.com> and also on social networks and the Google Play store. The Panel finds that the Disputed Domain Name <hnbwi.com> is confusingly similar to the Complaint's trademark HNB. The Disputed Domain Name fully incorporates the Complainant's HNB unregistered trademark."

The Panel in the INDRP proceedings of *Mumbai International Airport Limited vs. Sugra K.* INDRP Case No. 1223, observed that the complainant had rights in the abbreviation CSIA and had acquired the domain name <csia.in> and therefore adoption of the disputed domain name which contained the abbreviation CSMIA in its entirety was enough to confuse a consumer of average intelligence and imperfect recollection. In *Nippon Life India Asset Management Limited vs ABC XYZ* INDRP Case No. 1299 the Panel observed that complainants have rights in their brand names' abbreviations as well.

The Complainant has submitted that, by applying these principles in the present case, it can be concluded that the Disputed domain is deceptively similar to the Complainant's trademarks YT and YOUTUBE.

Addition of the descriptive term 'VIEWS' in the Disputed domain does not affect the overall impression, as the prominent part of the Disputed domain remains YT which is a popular abbreviation for **YOUTUBE**. The likelihood of confusion is aggravated from the fact that the Respondent allegedly offers paid promotional services for the YouTube platform and uses the Complainant's branding elements for advertising the said services. Consumer recall behind the abbreviation YT is such that if any person comes across the Disputed domain, they will automatically associate the same with the Complainant's YouTube platform. Additionally, a bare perusal of the Respondent's website clearly indicates that the use of "YT" is to make a reference to the Complainant's trademark **YOUTUBE**.

Numerous UDRP panels have agreed that supplementing or modifying a trademark with descriptive words does not make a domain name any less "identical or confusingly similar" for purposes of the Policy - *Inter Ikea Systems B.V. v. Polanski, WIPO Case No. D2000-1614* (transferring <ikeausa.com>); *General Electric Company v. Recruiters, WIPO Case No. D2007-0584* (transferring <ge-recruiting.com>); *Microsoft Corporation v. Step-Web, WIPO Case No. D2000-1500* (transferring <microsofthome.com>); *CBS Broadcasting, Inc. v. Y2K Concepts Corp., WIPO Case No. D2000-1065* (transferring <cbsone.com>).

The Complainant argues that the Complainant has established rights in its trademark **YOUTUBE** since 2005. Additionally, the Complainant has been using the abbreviation YT well prior to 1st June 2017, which is the registration date of the Disputed domain.

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 <ytviews.in>**.

The Complainant submits that Respondent has no rights or legitimate interests in the Disputed Domain Name as the Respondent is not a part of or related to the Complainant. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use the abbreviation YT as a part of a trademark or register domain name given its close similarity with the Complainant's trademarks, nor otherwise authorized the Respondent to use any of Complainant's trademarks. Such unlicensed, unauthorized use of the Disputed domain is



strong evidence that Respondent has no rights or legitimate interest in the Disputed domain.

The Respondent has registered the Disputed domain solely to mislead consumers or otherwise leverage the goodwill associated with Complainant's **YouTube Trademarks** for commercial gain. The Respondent is using "YT" to refer to the Complainant's YouTube platform and is offering paid promotional services for YouTube platform, which is not only unauthorized but is also misleading. The Complainant provided multiple opportunities for the Respondent to remove the website content at the Disputed domain and cancel domain registration. However, the Respondent only withdrew its trademark applications (which partial compliance only goes on to indicate that the Respondent believes their marks to be in violation of the Complainant's rights). Further, the adoption and use of the Disputed domain are not only subsequent to the Complainant's rights in the trademarks **YT** and **YOUTUBE** but in a manner that a reference/ association is made to the Complainant's YouTube platform. Thus, the question of the Respondent being known by the disputed domain does not arise in the first place.

Further, in the words of the Sole Arbitrator in *Kraft Foods Global Brands, LLC v. 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....."

The Complainant has submitted that the said threshold has been satisfied in the present instance.

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**. He submits that the Disputed domain has been registered in bad faith for the following reasons:

1. The Respondent is using the abbreviation YT in the Disputed domain in which the Complainant has prior established rights.

2.The Respondent has made no *bona fide* use of the Disputed domain. The Disputed domain is being used to allegedly offer paid promotional services for the Complainant's YouTube platform (which is against the YouTube terms of service) and the use of "YT" is to make a reference to **YOUTUBE**. The Respondent's malafide intent is further apparent from the fact that the Respondent is using YouTube branding elements to advertise and promote the said services, which is in violation of the Complainant's branding guidelines. Not only the above, the Respondent is falsely claiming to be a certified partner company of the Complainant on their website at the Disputed domain and their LinkedIn page which further demonstrates their attempt to draw a false association/connection with the Complainant, which does not exist.

3.The Respondent had attempted to acquire statutory rights in closely similar marks '**YT Views**' and '**YT Instaviews**' (all of which featured the abbreviation YT) by filing trademark applications before the Trade Marks Registry and withdrew these applications after a legal notice was issued to them by the Complainant. This further establishes the recognition of the Complainant's rights in the trademark **YT** by the Respondent.

4.The Respondent's bad faith is further established by the fact that despite several opportunities to takedown the website content and cancel their domain registration, the Respondent continues to offer the alleged services in violation of the Complainant's branding guidelines and terms of service.

Based on the foregoing, the Complainant contends that the Respondent has registered and is using the Disputed domain in bad faith.

In *Instagram, LLC v. Privacy Protect, LLC (PrivacyProtect.org) / Elnur Alizade, Case No. D2021-1845*, the WIPO Panel observed that "Furthermore, as the disputed domain name resolved to a website which, for a fee, purported to artificially increase the number of Instagram "followers", "likes", "views", and "comments", the Respondent has used the disputed domain name to attract, for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainant. Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith".

The Panel in *Swinburne University of Technology v. Swinner a/k/a Benjamin Robert Goodfellow Case No. DAU2004-0003*, observed that "...SWIN is a word that appears to have no meaning other than abbreviation of the Complainant's mark and name. It is therefore not a word the Respondent would choose unless the Respondent was



intentionally seeking to create a likelihood of confusion with the Complainant's mark."

In Google LLC v. Vladimir / YouProject, FA1905001845222, the Panel made the following observations while determining the bad faith element in the respondent's adoption of the domain <youtuby.xyz>: "The <youtuby.xyz> domain name addresses a webpage that prominently features Complainant's YOUTUBE trademark as well as images of its related red play-button icons. Respondent's use the at-issue domain name to impersonate Complainant and capitalize on Complainant's mark for financial gain demonstrates Respondent's bad faith registration and use of <youtuby.xyz> pursuant to Policy ¶¶ 4(b)(iii) and/or (iv)...Respondent's <youtuby.xyz> website "enables visitors to download and save content from Complainant's <youtube.com> website in violation of Complainant's terms of use prohibiting such activity. Respondent, by its intention to aid third parties in violating Complainant's terms of use, further shows Respondent's bad faith under the Policy."

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 responded to the Notice and submitted his reply on 7.11.2023. This Arbitrator advised the Complainant to submit Rejoinder to the contentions of the Respondent. Accordingly, the Complainant submitted the Rejoinder on 10.11.2023, and served upon the Respondent through email. The Reply of the Respondent is as follows:

*" We have received complaint that our domain name ytvIEWS.in have youtube elements where ever we need to mention ,their is no youtube word and element in our domain name. YOUTUBE & YTVIEWS names are totally different.We are giving you some examples of just few domains out of many.*

*<https://www.buyyoutubevIEWSindia.in/> - Directly using Youtube in their domain name*

*<https://www.buyyoutubesubscribers.in/> - Directly using Youtube in their domain name*

*<https://buyyoutubevIEWS.co.in/> - Directly using Youtube in their domain name*

*Their can be many more in India and so on ,these using directly youtube in their domain name , the target is being made our website only where we*

*are not using any element. Its just defamation done to our website and the complaint have no point of acceptance. If you can go in deep and understand the same. YT is a shortcode, Sir, we want you to go via this link <https://www.quickcompany.in/trademarks/trademark-search?page=6&q=yt&term=yt> , yt is no trademark registered by youtube . Their are many companies and trademark and domain name with yt including. This is done to to harras us & take us down.if some one have problem in our domain name, so first send complaint against domain names using YOUTUBE directly in domain in india. We have cleared with very basic point how that compliant is completely irrelevant Even reading the whole notice send by complainant, even complainant is also saying YT is abbreviation not a trademark, Our name is not Yt it is Ytviews is combine which is totally a different word. Best Regards, Himanshu”*

The Complainant, in the Rejoinder dated 10.11.2023, has reiterated the arguments made in the Complaint and countered all the points made by the Respondent. The Complainant has further argued that to the extent the Respondent is relying on third-party domain names, trademarks, and company names using the Complainant's trademarks **YT** and **YOUTUBE** as a part thereof, the Complainant submits that the Respondent's reliance on third party use or registrations provides little to no benefit to condone their own acts of infringement. It is a well settled principle of law that one's own act of infringement cannot be justified by showing similar use by others. Such use/registrations do not and cannot preclude the Complainant's entitlement to statutory relief against any party, including the Respondent herein, who has adopted the Disputed domain entirely subsuming the Complainant's trademark 'YT'. The Complainant reserves its right to take necessary legal action against third parties. To the Respondent claims that YT is a short code, the Complainant has submitted that the same is a mere afterthought in order to justify the Respondent's malafide adoption of the Disputed domain. The Complainant has highlighted the fact that the Respondent has conveniently omitted to address their use of 'YT' on the website hosted at the Disputed domain which clearly stems from the Complainant's YouTube platform.

## **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.

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

The disputed domain name <ytviews.in> was registered by the Respondent on June 1, 2017.

The Complainant is an owner of the registered trademark YT 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 <ytviews.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 YT or YOUTUBE 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 <ytviews.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 submitted a Reply which could not justify the action of Respondent. The Rejoinder submitted by the Complainant proved that the grounds provided in the Reply of the Respondent could not stand on its feet. 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 YT 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 YT 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 <ytviews.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 <ytviews.in> be transferred to the Complainant.

No order to the costs.



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**Prabodha K. Agrawal**

**Sole Arbitrator**

Dated: 14<sup>th</sup> Nov, 2023