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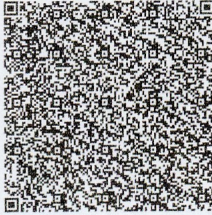
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Government of National Capital Territory of Delhi

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 First Party : SANJEEV CHASWAL
 Second Party : NA
 Stamp Duty Paid By : SANJEEV CHASWAL
 Stamp Duty Amount(Rs.) : 100
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INDRP ARBITRATION UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI] ADMINISTRATIVE PANEL PROCEEDING SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL

In the matter of Arbitration Proceeding for the Domain name

<westernasset.in> and in the matter of INDRP Case no: 1788

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**INDRP ARBITRATION
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
ADMINISTRATIVE PANEL PROCEEDING
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

In the matter of Arbitration Proceeding for the Domain name
<westernasset.in>

and in the matter of INDRP Case no: 1788

**Western Asset Management Company
385 E. Colorado Blvd.
Pasadena, CA 91101
United States of America**

Complainant

Vs.

**Feifei
Double fist Limited
A3, JiaZhaoYe, JiangBei, Huicheng District
HuiZhou City, GuangDong Province,
China
Email Address: ymgroup@msn.com**


..... Respondent

ARBITRATION AWARD

Disputed Domain Name: <westernasset.in>

History:

That the undersigned have been appointed by NIXI as sole arbitrator pursuant to the complaint filed by the complainant The Complainant in this administrative proceedings is M/s. Western Asset Management Company, 385 E. Colorado Blvd. Pasadena, CA 91101 United States United States of America, the complainant is a

American corporation with its principal place of business at United States of America represented through its authorized representative seeking invoking of arbitration proceedings, against the Registrant / Respondent Fei fei Double fist Limited A3, Jia ZhaoYe, Jiang Bei, Huicheng District Hui Zhou City, Guang Dong Province, China in respect of registration of domain name <***westernasset.in***>

As the Complainant has filed the above arbitral complaint against the Registrant / Respondent for registering the domain name <westernasset.in> though complainant being actual user and owner of the domain name ***the*** Registrant / Respondent took the similar domain name thus complainant moved an complaint eeking a claim of relief for transferring the domain name to the Complainant herein.

As the Registrant / Respondent, who had obtained registration of domain name <***westernasset.in***> in the year 2016 through the IN. registry Registrar's M/s. Dynadot, LLC, Address: 210 S Ellsworth Ave #345 San Mateo, CA 94401, U.S. Email Address: info@dynadot.com but the Registrar domain has withheld and concealed the registration record containing the address and the domain details of the Registrant / Respondent by invoking "REDACTED FOR PRIVACY" on request of the complainant the NIXI has provided the copies of WHOIS record containing the address and the domain details of the Registrant / Respondent to the complainant as such the same is being incorporated in the present notice.

As sole arbitrator the undersigned had issued the directions to the complainant and to the Registrant / Respondent for complying notice of 5th of December 2023 of the arbitrator further Registrant / Respondent was granted 15 days time to file reply, detail statement, if any, the reply detail statement, if any should reach by **20th of December 2023**. As the complainant had served the notice to the respondent / registrant to their email address as listed as per available WHOIS records.

Wherein the respondent was directed to submit reply, detail statement, if any, on or before **20th of December 2023**

as per INDRP Rules and procedure But even after grant of 15 days time to the respondent / registrant Feifei Double fist Limited A3, Jia ZhaoYe, Jiang Bei, Huicheng District Hui Zhou City, Guang Dong Province for filing statement or reply to the complaint, the respondent / registrant has failed to submit reply or detail statement to the arbitrator on given time.

In view of non receipt of reply or statement of the respondent / registrant the sole arbitrator is of considered view that the respondent / registrant have been duly served through their listed email address ymgroup@msn.com and despite of being served of this notice, the respondent / registrant had failed to submit its reply or Statement to the sole arbitrator office, thus it clearly shows that the respondent / registrant is not interested in pursuing the present arbitration proceedings as pending before me, as such the sole arbitrator forecloses the opportunity of filing of reply or statement granted to the respondent / registrant and now the undersigned arbitrator reserves this domain dispute complaint <*westernasset.in*> for final orders and this complaint pending before me shall be decided on merits.

1. The Parties:

That the Complainant in this arbitration proceeding is is M/s. Western Asset Management Company, 385 E. Colorado Blvd. Pasadena, CA 91101 United States United States of America, the complainant is a American corporation incorporated under the laws of the USA with its principal place of business at United States of America represented through its authorized representative, , has invoked this administrative domain arbitration proceedings against the Registrant / Respondent, in respect of registered domain name <*westernasset.in*>

Registrant / Respondent Feifei Double fist Limited A3, JiaZhaoYe, JiangBei, Huicheng District HuiZhou City, GuangDong Province, China in respect of registration of domain name <*westernasset.in*> As the Registrant / Respondent, who had obtained registration of domain name <*westernasset.in*> in the year 2016 through the IN. registry Registrar's M/s. Dynadot, LLC, Address: 210 S Ellsworth Ave #345 San Mateo, CA 94401, U.S. Email Address: info@dynadot.com



The image shows a handwritten signature in black ink to the left of a circular official stamp. The stamp is for the Sole Arbitrator, Sanjeev Kumar Chaswal, located in Delhi. The text around the stamp reads "SANJEEV KUMAR CHASWAL ADVOCATE SOLE ARBITRATOR * DELHI".

2. The Domain Name and Registrar:

- 2.1 The disputed domain name <***westernasset.in***> is registered by the IN. registry, the registrar of Registrar's M/s. Dynadot, LLC, Address: 210 S Ellsworth Ave #345 San Mateo, CA 94401, U.S. Email Address: info@dynadot.com but the Registrar domain has withheld and concealed the registration record containing the address and the domain details of the Registrant / Respondent by invoking "REDACTED FOR PRIVACY" on request of the complainant the NIXI has provided the copies of WHOIS record containing the address and the domain details of the Registrant / Respondent to the complainant as such the same is being incorporated in the present notice.

3. Arbitration Proceedings Procedural History:

- 3.1 This is a mandatory arbitration proceeding in accordance with the IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. The INDRP Rules of Procedure [the Rules] as approved by NIXI in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to there solution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed there under.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

- 3.2 In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent to the Complaint, and appointed the undersigned as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under. IN Domain Name Dispute Resolution Policy and the Rules framed there under.

The Arbitrator as submitted the Statement of Acceptance and Declaration of Impartiality and Independence as required by the NIXI.



The image shows a handwritten signature in black ink to the left of a circular stamp. The stamp is a grey circular seal with a grid pattern. The text around the perimeter of the stamp reads "SANJEEV KUMAR CHASWAL ADVOCATE SOLE ARBITRATOR *". In the center of the stamp, the word "DELHI" is printed.

As per the information received from NIXI, the history of the proceedings is as follows:

- 3.3 The present Arbitral Proceedings have commenced on 5th of December 2023 by issuing of 1st notice under rule 5(c) of INDRP rules of procedure and the same was forwarded through email directly to the Respondent / Registrant as well as to complainant separately, directing the complainant to serve the copies of the domain complaint along with complete set of documents in soft copies as well as physically or via courier or post to the Respondent / Registrant at the address provided in the WHOIS. The said notice was successfully served by the complainant to the Respondent / Registrant through email too.
- 3.4 Further as per the issued Notice to the Respondent / Registrant was directed to file their reply, detail statement, if any, to the above said complaint within 15 (fifteen) days from the date of this Notice or by 5th of December 2023, failing which the Complaint shall be decided on the basis of the merits.
- 3.5 Further on receipt of reply of Respondent / registrant, the sole arbitrator had directed complainant to submit its rejoinder to reply detail statement if any by 20th of December 2023. As the Respondent / registrant has failed to submit its reply statement hence the sole arbitrator foreclosed the right of Respondent / registrant to file reply or statement. On non receipt of reply as such the sole arbitrator now reserves this domain dispute complaint <*westernasset.in*> for final orders and shall be decided on merits.

Parties to Dispute:

The Complainant: Western Asset Management Company
385 E. Colorado Blvd. Pasadena, CA 91101 United States of America

Registrant / Respondent: M/s. Feifei Double fist Limited A3, JiaZhaoYe,
JiangBei, Huicheng District HuiZhou City, GuangDong Province, China

4 Complainant Contentions:



The image shows a handwritten signature in black ink to the left of a circular stamp. The stamp is a professional seal for an arbitrator. It has a double-lined border. Inside the inner circle, the text "DELHI" is printed in the center. Around the perimeter of the inner circle, the text "SANJEEV KUMAR CHASWAL * ADVOCATE * SOLE ARBITRATOR" is printed in a circular fashion.

- 4.1 The complainant has submitted many legal submissions under INDRP Rules of Procedure for seeking relief against the Registrant / respondent for registering domain name <**westernasset.in**> illegally.
- 4.2 The complainant has raised three pertinent grounds under INDRP Rules of Procedure for seeking relief against the Registrant / respondent disputed domain name <**westernasset.in**> is stated as under:


A. Complainant Grounds for proceedings

- I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.*
- II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.*
- III. That the disputed domain name has been registered or is/are being used in bad faith.*







The Complainant submits its detailed contentions in their complaint that are described in details as under:


- I. The Complainant counsel states that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.*

The Complainant's Claim of Statutory Rights



- 4.3 The complainant is the prior user and owner of the various marks WESTERN ASSET and  WESTERNASSET as well as domain names <**westernasset.in**> and have obtained various trademark registrations as proprietor of the trade mark in many countries USA, EU and Australia of besides other countries the world .

- 4.4 The Complainant has been using hundreds of domains names “WESTERN ASSET &  WESTERNASSET .com, .uk, .jp, .hk, .sg, .co, .cn, .eu, .us, .pl, .net, and .org etc besides the same as trademark in UK, USA, EUIPO, etc world over too. for long further the complainant has been operating  website that is being accessible and reachable to our customers from every country of world over.
- 4.5 The Complainant company provides varied services, including financial asset management services and financial services relating to commercial properties and began operations in late 1996 and is focused on making direct and indirect investments in leading North American middle market companies.
- 4.6 The Complainant enjoy prior trade name rights, prior trademark rights, prior domain name rights and other related rights in respect of the “WESTERN ASSET &  WESTERNASSET ” marks in various countries and regions worldwide. The Complainant has been using marks including “WESTERN ASSET &  WESTERNASSET ” as their trade name since long. They also hold registered trademarks for marks such as “WESTERN ASSET &  WESTERNASSET ” in United States, the European Union, UK and other countries and regions. The domain name <https://www.westernasset.com/> held by the Complainant’s was registered since long and has been in continuous operation since then.
- 4.7 The Complainant and its “WESTERN ASSET &  WESTERNASSET ” brands are well-known and influential all over the world in the focused on making direct and indirect investments.

That by virtue of prior adoption, extensive and continuous use in respect of the “WESTERN ASSET &  WESTERNASSET ” trademarks coupled with the registrations of the said trademarks, the Complainant is entitled to the exclusive proprietary rights therein, and the public at large associate the said trademarks with the goods/services offered by Complainant alone and none else. As the goods/services offered under the said trademarks conform to very high standards of quality.






 

- 4.8 That in addition to the popularity of the trademark “WESTERN ASSET” through the goods and services of the Complainant, one of the important factor is the popularity of the Complainant business is its online website <https://www.westernasset.com/> (hereinafter referred to as “the said website”) which is accessible to clients all over the world.
- 4.9 The disputed domain name <**westernasset.in**> incorporates the Complainant’s “WESTERN ASSET” mark in its entirety, with the descriptive word “asset” as a suffix. The alterations of the mark, made in forming the domain name, do not save it from the realm of confusing similarity. Precedents have shown that a domain name is identical to a trademark when the domain name contains or is confusingly similar to the trademark, regardless of the presence of other words in the domain name (**INDRP Case No.868, Amazon Technologies, Inc. v. Jack Worli**).
- 4.10 In totality, the domain name <**westernasset.in**> in dispute is identical or extremely similar to a domain name trademark or service mark <**westernasset.com**> owned by the Complainant and is extraordinary likely to confuse the relevant public. There is no relationship between the Complainant and the Respondent. The Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to “WESTERN ASSET”.
- 4.11 Due to the impeccable reputation of the Complainant around the world, the word “WESTERN ASSET &  WESTERNASSET ” is associated solely with the Complainant and no one else. Moreover, the Complainant’s prior registered the domain <**westernasset.com**> and Mark “WESTERN ASSET &  WESTERNASSET ” which features extensive information about the products and services offered by the Complainant.


The Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to “WESTERN ASSET” the impugned domain name is being registered and / or used in bad faith.

II. The Complainant counsel states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.


 



- 4.12 The Respondent acted in bad faith in registering the disputed domain name <***westernasset.in***> when it knows or shall know the Complainant's "WESTERN ASSET &  WESTERNASSET" marks. The Respondent was aware of or at least should have been aware of the Complainant, its "WESTERN ASSET &  WESTERNASSET" marks but still the respondent registered the disputed Domain Name <***westernasset.in***>.
- 4.13 Where there is a distinctive name and mark in which the Complainant has established considerable goodwill and reputation through using the name and mark online and offline for many years, it would be impossible to conceive that the Respondent could have registered the disputed domain name <***westernasset.in***> in good faith or without knowledge of the Complainant's rights in the mark.
- 4.14 As previously mentioned, the Complainant have prior trade name rights, prior trademark rights and prior domain rights in respect of the "WESTERN ASSET &  WESTERNASSET" marks. Moreover, the Complainant's "WESTERN ASSET &  WESTERNASSET" marks. Instead, they are highly original and distinctive made-up marks that have developed remarkable international reputation through the Complainant's long-term use.
- 4.15 Therefore, the Respondent should have full knowledge that the Complainant mark and domain name as the complainant has a prior rights and interests in the "WESTERN ASSET &  WESTERNASSET" marks, the Respondent still chose to register the disputed Domain Name <***westernasset.in***>, whose main body had incorporated the aforementioned name and mark.

III. That the disputed domain name has been registered or is/are being used in bad faith.

- 4.16. The domain name in dispute was registered on October 26, 2016, which is much later than the time of the Complainant earliest use and registration of the trademarks "WESTERN ASSET &  WESTERNASSET" and the domain name <***westernasset.co.uk***>; and there is no relationship between the Complainant and the Respondent.



The Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to “WESTERN ASSET &  WESTERN ASSET ” reasons justifying that the impugned domain name is being registered and/ or used in bad faith.

- 4.17 The Respondent's use of the disputed domain name <*westernasset.in*> is likely to confuse the relevant public to believe that website directed to by the disputed domain name is the official website of the Complainant or its affiliates, which is a typical case of impersonating the Complainant's identity and intentionally misleading the relevant public to obtain improper commercial benefits, which constitutes malicious use.
- 4.18 The Respondent's registration of the disputed domain name “WESTERN ASSET &  WESTERN ASSET ” that incorporated a well-known trademark leads to the suspicion of the intentions of the Respondents. The internet traffic generated by the disputed domain name as a result of the likelihood of confusion with the Complainant's trademarks “WESTERN ASSET &  WESTERN ASSET ” and the respondent use of its similar trademarks in corresponding domain name indicate bad faith use of the disputed domain name.
- 4.19 The Respondent has used the Domain Name <*westernasset.in*> misleadingly to attract Internet users to its website by creating a false impression of a connection between that website and the Complainant and the disputed Domain Name is being used currently, the use itself can constitute a threatened abuse hanging over the head of the Complainant till it is stopped.
- 4.20 That the complainant submit that in between the complainant counsel for the complaint had served ceased and desist notice to the Registrant / respondent on June 21st of 2023 but on 24th June 2023, the complainant had received the reply from the and has asked the price \$1590 only, for selling this domain name to the complainant and further stated that this offer price is as claiming to be this period as an promotional period, and are ready to complete the transaction through sedo.com or escrow.com platform.




- 4.21 That the complainant further submits that they have offered the \$200 USD offered in the letter to compensate for any administrative costs you have incurred. This offer is available until Friday, July 14, 2023 but the Registrant / respondent sought higher price for the impugned domain.

Brief Contention of the Complainant:

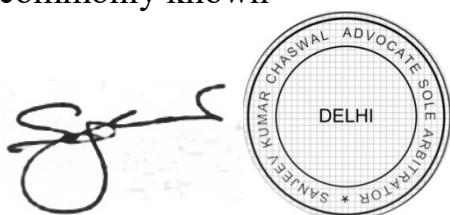
- 4.22 Firstly the Complainant submits that the Respondent has used the Complainant's well-known trademark "WESTERN ASSET" as part of the impugned domain name <*westernasset.in*> in which the Complainant has legitimate right under common law as well as under statutory rights. The said acts of the Respondent, therefore, amount to an infringement of the complainant's rights as are vested in the trade / service: mark "WESTERN ASSET". Secondly, the Respondent is well aware of the insurmountable reputation and goodwill associated with the Complainant's trade and service mark "WESTERN ASSET" which insures and continue to insure its legitimate right to Complainant only.
- 4.23 It is a settled law that registration of identical or confusingly similar domain name that is patently connected with a particular trademark owned by an entity with no connection with the trademark owner is indicative of bad faith as understood in the Policy. With regard to famous brands, successive UDRP panels have found Bad faith registration where:

a) **Brief Contention of the Respondent:**

- 4.24 The Respondent / Registrant had failed to file its detailed reply /statement rebutting the claim of the Complaint. The Complaint did not submit its submissions on record and to stake a claim that the respondent is registered owner of the mark but did not file the reply rebutting the claim of the complainant that the respondent domain does not come ambit within the conditions laid down in IDRP of the policy.

5 Discussion and Findings:

- 5.1 It is clear from the record of NIXI the Respondent / registrant redacted private policy to conceal their identity. Hence, the Respondent is not commonly known



by the disputed domain name in terms of the Policy. Rather, the Respondent is trying to take advantage of the Complainant's reputation, giving a false impression that the Respondent has some authorisation or connection with the Complainant in terms of a direct nexus or affiliation but the same is not true.

5.2 It is evidently clear that the Respondent knowingly chose to registered and use the disputed domain name <*westernasset.in*> to confuse customers from the Complainants' official website and drawing damaging conclusions as to the Complainant's operations in India, thus adversely affecting the Complainant's goodwill and reputation and its right to use said India specific domain name. Doing so, it also violated Rule 3 clause (b) of INDRP, whereby a domain registrant declared that he would not infringe the intellectual property rights of others.

5.3 As per the complaint herein, the Complainant in its complaint has invoked paragraph 4 of the INDRP which read as under:

"Brief of Disputes:

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the Respondent's domain name has been registered or is being used in bad faith.

5.3 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.



The image shows a handwritten signature in black ink to the left of a circular stamp. The stamp is a professional seal for an advocate in Delhi. The outer ring of the stamp contains the text "SANJEEV KUMAR CHASWAL * ADVOCATE * SOLE ARBITRATOR *". The inner circle contains the word "DELHI".

- I. The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.**
- 5.4 The Complainant further submits that any person or entity using the mark "WESTERN ASSET" as a domain name that too with related keyword referring to its corporate name "WESTERN ASSET" is bound to lead customers and users to infer that its product or service has an association or nexus with the Complainant and lead to confusion and deception. It is indeed extremely difficult to foresee any justifiable use that the Respondent may have with the disputed domain name. On the contrary, registering this domain name gives rise to the impression of an association with the Complainant, which is not based in fact. *[Daniel C. Marino, Jr. v. Video Images Productions, WIPO-D2000-0598]*.

The mark "WESTERN ASSET" has been known in both the electronic and print media; both in India and globally. According to the INDRP paragraph 3, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

"The Respondent's Representations: By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that: the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate;

to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; the Respondent is not registering the domain name for an unlawful purpose; and the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."



The image shows a handwritten signature in black ink to the left of a circular stamp. The stamp is a professional seal for an arbitrator. It has a double-lined border. Between the lines, the text "SANJEEV KUMAR CHASWAL" is written along the top arc, "ADVOCATE" along the top straight edge, "SOLE ARBITRATOR" along the bottom arc, and "DELHI" in the center.


5.11 The Respondent / Registrant has failed in his responsibility in submission of its detailed reply as discussed above and in the light of the pleadings and documents filed by the Complainant, the undersigned has come to the conclusion that the domain name <*westernasset.in*> is identity theft, identical with or deceptively similar to the Complainants' mark. Accordingly, the undersigned conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

5.12 The Respondent using illegally the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only fully similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [*Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO-D2005-0321 – mtvbase.com*]


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

5.13 The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

5.14 Moreover, the burden of proof is on a Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge and once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights in the domain name.

5.15 The domain name in dispute was registered on October 25, 2022, which is much later than the time of the Complainant and its affiliates' earliest use and registration of the trademarks "WESTERN ASSET &  WESTERN ASSET "

and the domain name <*westernasset.co.uk*> is in the year 2007 and there is no relationship between the Complainant and the Respondent. The Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to “WESTERNASSET” or “ WESTERNASSET ” reasons justifying that the impugned domain name is being registered and/ or used in bad faith.

- 5.16 The Respondent has not submitted its reply and has failed to rebut how the respondent has created the right over the domain name, when as a trademark it is registered and domain name by third party as such mere absence of contentions of the Respondent does not establish his/ her interest in protecting right and interest in the domain name.

Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name. Thus, it is very much clear that the Respondent who is web site designer and they have failed to prove as such it has no legitimate right or interest in respect of the disputed domain name <*westernasset.in*>

For these reasons, the Arbitrator opines that the Respondent / Registrant have no rights or legitimate interests in the disputed domain name.

III. The disputed domain name has been registered or is being used in bad faith.

- 5.17 It has been contended by the Complainant that the Respondent / Registrant has registered and used the disputed domain name in bad faith and rather done a identity theft on their back. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.
- 5.18 Further the due to act of the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark “WESTERNASSET” from reflecting in the domain name and also



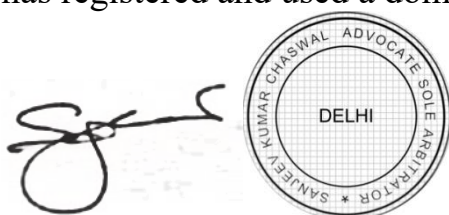
that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "WESTERNASSET". Moreover, the Respondent / Registrant, who have intently, invoke private policy to conceal its actual identity details and have not been replying to the communications sent by the complainant.

- 5,19 That the complainant submit that in between the complainant counsel for the complaint had served ceased and desist notice to the Registrant / respondent on June 21st of 2023 but on 24th June 2023 the complainant had received the reply from the and has asked the price \$1590 only, for selling this domain name to the complainant and further stated that this offer price is as claiming to be this period as an promotional period, and are ready to complete the transaction through sedo.com or escrow.com platform.

Further the Respondent has been registering a various similar domain names that are fully similar to the prior registrants that are widely known and distinctive trademarks but are also identical, intended to ride on the goodwill of the registrant domain names trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the actual owners. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [*Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO- D2005-0321 – mtvbase.com*]

The modus operandi of the present registrant is to register similar widely known domain names and later trade upon with prior owner of trademark to sell it to them on higher price value to the original domain owners, the complainant has submitted that the present respondent has registered many similar domain names to prove the point that the present registrant is regular squatter and there main job is to trade upon and exort maximum price from the actual; owner of the domain name thus present registrant is squatter of domain names. As such the present domain name is case of squatting and the impugned domain name is registered with bad faith.

- 5.20 The paragraph 6 of the INDRP Rules provides that the following circumstances are deemed to be evidence that a Respondent / Registrant has registered and used a domain name in bad faith:



The image shows a handwritten signature in black ink to the left of a circular stamp. The stamp is a professional seal for an arbitrator. It contains the text "SANJEEV KUMAR CHASWAL, ADVOCATE, SOLE ARBITRATOR" around the perimeter and "DELHI" in the center.

5.21 *"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."*

5.22 From the circumstances of the case and the evidences placed before me by the Complainant herein,

I am of the opinion that the Respondent / Registrant had no previous connection with the disputed domain name and being web designer it has clearly registered the disputed domain name in order to prevent the Complainant, who is the owner of the said trademark from reflecting the said trademark in a corresponding domain name, It is clear case identity theft.

5.23 Moreover, use of similar disputed domain name by the Respondent / Registrant would certainly result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainants as disputed domain name <**westernasset.in**>, is associated exclusively with the complainant, by the trade and public in India and all over the world.

5.24 Further the due to act of the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark "WESTERNASSET" from reflecting in the domain name



and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "WESTERNASSET". Moreover, the Respondent / Registrant, who have intently, invoke private policy to conceal its actual identity details and have not been replying to the communications sent by the complainant.

- 5.25 That the complainant submit that in between the complainant counsel for the complaint had served ceased and desist notice to the Registrant / respondent on June 21st of 2023 but on 24th June 2023 the complainant had received the reply from the and has asked the price \$1590 only, for selling this domain name to the complainant and further stated that this offer price is as claiming to be this period as an promotional period, and are ready to complete the transaction through sedo.com or escrow.com platform.
- 5.26 That the complainant further submits that they have offered the \$200 USD offered in the letter to compensate for any administrative costs you have incurred. This offer is available until Friday, July 14, 2023 but the Registrant / respondent sought higher price for the impugned domain.
- 5.27 The Respondent has been registering using illegally the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only fully similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [*Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO- D2005-0321 – mtvbase.com*]
- 5.28 Thus, all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name of the Respondent is a registered in bad faith.



6 DECISION

- 6.1 The Respondent / Registrant has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent / Registrant to ensure before the registration of the impugned domain name by the Respondent that the domain name registration does not infringe or violate someone else's rights other than the complainant herein
- 6.2 The Complainant has given sufficient evidence to prove trademark rights on the disputed domain name. Further; the Respondent's registration of the domain name is dishonest and malafide.
- 6.3 That the complainant has also provide domain details wherein the registrant / respondent has also registered many similar, where probably the actual prior domain owner does not know that the similar domain registered by the third party, the registration of many similar domain names by the present registrant / respondent clearly indicates that the respondent is regular squatter and it registers similar domain names regularly and later trade upon as ransom on higher rates with rightful owners right.

Further the due to act of the Respondent / Registrant has prevented the Complainant, who is the owner of the service mark "WESTERNASSET" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "WESTERNASSET". Moreover, the Respondent / Registrant, who have intently, invoke private policy to conceal its actual identity details and have not been replying to the communications sent by the complainant.

- 6.4 That the complainant submit that in between the complainant counsel for the complaint had served ceased and desist notice to the Registrant / respondent on June 21st of 2023 but on 24th June 2023 the complainant had received the reply from the and has asked the price \$1590 only, for selling this domain name to the complainant and further stated that this offer price is as claiming to be this period as an promotional period, and are ready to complete the transaction through sedo.com or escrow.com platform.



The image shows a handwritten signature in black ink to the left of a circular stamp. The stamp is a professional seal for an arbitrator. It has a double-lined border. The outer ring contains the text "SANJEEV KUMAR CHASWAL, ADVOCATE, SOLE ARBITRATOR" in capital letters. The inner circle contains the word "DELHI" in capital letters.

- 6.5 Further the Respondent has been registering a various similar domain names that are fully similar to the prior registrants that are widely known and distinctive trademarks but are also identical, intended to ride on the goodwill of the registrant domain names trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the actual owners. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [*Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO- D2005-0321 – mtvbase.com*]
- 6.6 The modus operandi of the present registrant is to register similar widely known domain names and later trade upon with prior owner of trademark to sell it to them on higher price value to the original domain owners, the complainant has submitted that the present respondent has registered many similar domain names to prove the point that the present registrant is regular squatter and there main job is to trade upon and exort maximum price from the actual; owner of the domain name thus present registrant is squatter of domain names. As such the present domain name is case of squatting and the impugned domain name is registered with bad faith.
- 6.7 The document attached by the complainant here in clearly shows that the thus it clearly shows that the domain owner of <*westernasset.in*> is a squatter and does not have legitimate right claim over the domain name and the present respondent cannot claim or derive right of the third party, who is owner of the trademark "WESTERN ASSET".
- 6.8 The Respondent / Registrant have not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent / Registrant had registered the domain name only to make monetary benefit by selling the domain name to the rightful owner or his competitor.

[Relevant WIPO decisions: *Uniroyal Engineered Products, Inc. v. Nauga Network Services D2000-0503*; *Thaigem Global Marketing Limited v. SanchaiAreeD2002-0358*; *Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano D2003-06611*



- 6.9 It is a settled proposition that the registration of a domain name incorporating a well-known trademark has been upheld to be in bad faith and this contention upheld by numerous INDRP as well as UDRP decision. Some notable cases reaffirming this proposition are INDRP decision in *Trivago N.V. is. Shiv Singh (INDRP/1 171)* and *WIPO decisions in Marie Claire Album v. Mari Claire Apparel, Inc., Case No D 2003 0767* another case *Verve ClicquotPonsardin, MaisonFortdée en 1772 v. The Polygenix group Co case Adidas D 2000 0163* and *Adidas-Solomon AG v. Domain Locations Case No D 2003 04*.
- 6.10 While the overall burden of proof rests with the Complainant, The 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.
- 6.11 Therefore a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* the case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is very much clear that the Respondent / Registrant who is actually squatter is using the disputed domain name in bad faith and has registered the domain name.
- [Relevant WIPO decisions: Croatia Airlines d.d. v. Modern Empire Internet Ltd. D2003-0455; Belupod.d. v. WACHEM d.o.o. D2004-01101***
- 6.12 The Respondent's registration and use of the Domain Name is abusive and in bad faith. The Respondent / Registrant has no rights or legitimate interests in respect of the domain name. In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy.
- 6.13 It has also well-settled and has been held by various Panels deciding under UDRP and INDRP that where the disputed domain name wholly incorporates the Complainant's registered trademark, the same is sufficient to establish the first element. ***FAIRMONT Sons Ltd v. mmt admin / OkFAIRMONTbyebye.com (WIPO Decision Case No. D2009-0646)***,



The image shows a handwritten signature in black ink to the left of a circular official stamp. The stamp is for Sanjeev Kumar Chaswal, an Advocate and Sole Arbitrator in Delhi. The text around the stamp reads "SANJEEV KUMAR CHASWAL ADVOCATE SOLE ARBITRATOR * DELHI".

F. Hoffmann-La Roche AG v. Jason Barnes, ecnopt, WIPO Case No. D2015-1305, Swarovski Aktiengesellschaft v. meixudong, WIPO Case No. D2013-0150, Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304

- 6.14 The prior decision of a Panel in ***M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705*** wherein on the basis of the Complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the Complainant much prior to the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent,

It was held that "The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become the business identifier.

A domain name helps identify the subject of trade or service that entity seeks to provide to its potential customers. Further that there is strong likelihood confusion that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant. "

- 6.15 It was observed that ***"it is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights"*** and since the Respondent failed to discharge such responsibility, it was held that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

In the present dispute as well, the Respondent, in registering the disputed domain name without legitimate interests, and the respondents has done so in clear violation of the exclusive rights of the Complainant in the FAIRMONT name and mark. ***In Lockheed Martin Corporation v. Aslam Nadia (INDRP/947)*** The WIPO Administrative Panel in ***Veuve Clicquot Ponsardin, Maison Fondée en 1772 vs. The Polygenix Group Co., WIPO Case No. D2000-0163*** has been held that registration of a domain name so obviously connected with a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith. The Respondent is also guilty of the same.

A handwritten signature in black ink is positioned to the left of a circular official stamp. The stamp contains the text "SAMRAJ KUMAR CHAWLA ADVOCATE, SOLE ARBITRATOR" around the perimeter and "DELHI" in the center.

- 6.16 In my considered view, the Respondent's as being regular squatter as the respondent company business has been registering the Domain Name is thus impugned registration is abusive and in bad faith. The Registrant / Respondent have no rights or legitimate interests in respect of the domain name.

Actually Respondent's as being regular squatter and registered this domain name to just to exhort money from the complainant herein, the email correspondence documents attached with the complaint clearly shows that the Respondent's had asked the price \$1590 only from the complainant herein, for selling this domain name to the complainant

As such it is clearly proves from the document as mentioned that the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance to the INDRP defined Policy and Rules, the sole arbitrator directs that the disputed domain name <*westernasset.in*> be transferred from the Registrant / Respondent restored Back to the Complainant herein with a request to NIXI to monitor the transfer of domain name in time bound manner.



A handwritten signature in black ink, appearing to be "Sanjeev" followed by a stylized surname.

**SANJEEV KUMAR CHASWAL
SOLE ARBITRATOR
INDRP ARBITRATION NIXI**

NEW DELHI

DATE 23rd of December 2023

**INDRP ARBITRATION
UNDER THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
ADMINISTRATIVE PANEL PROCEEDING
SOLE ARBITRATOR: SANJEEV KUMAR CHASWAL**

**In the matter of Arbitration Proceeding for the Domain name
<westernasset.in> and in the matter of INDRP Case no: 1788**