

**BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR
.IN REGISTRY
NATIONAL INTERNET EXCHANGE OF INDIA(NIXI)
INDRP ARBITRATION
INDRP Case No. 1804**

Disputed Domain Name: < MARSHALLHEADPHONES.IN>

ARBITRATION AWARD

Dated 13.2.2024

IN THE MATTER OF:

Marshall Amplification PLC
Denbigh Road,
Denbigh Industrial Estate, Bletchey
Milton Keynes MK1 1DQ
United kingdom

Complainant

Versus

Han Tiepu
Jiefang Rd.220,Xinyu
Jiangx,338000,China

Respondent

1. The Parties

1.1 The Complainant in this administrative proceeding is Marshall Amplification PLC, Denbigh Road, Denbigh Industrial Estate, Bletchey, Milton Keynes, MK1 1DQ, United Kingdom, holder of registered trade mark rights in the "MARSHALL" and "MARSHALL HEADPHONES" trade marks.

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Authorised representative of the complainant in these proceeding is:
Stobbs IP Ltd ,Building 1000 Cambridge Research Park Cambridge
,CB25 9PD United Kingdom ,Email:
martyna.sawicz@iamstobbs.com

1.2The Respondent in these proceedings is Han Tiepu Jiefang
Rd.220,Xinyu Jiangx,338000,China ,

2. Domain Name and Registrar:-

The disputed domain name <marshallheadphones.in>, was
registered on 2.9.2023. The registrar with which the domain name is
registered is: 1APi GmbH ,Talstraße 27, 66424 Homburg Germany
Registrar abuse contact email: abuse@1api.com

Procedure History

3.1. This arbitration proceeding is in accordance with the .IN
Domain Name Dispute Resolution Policy (the "Policy")
adopted by the National Internet Exchange of India ("NIXI")
and the INDRP Rules of Procedure (the "Rules") which were
approved in accordance with the Indian Arbitration and
Conciliation Act, 1996. By registering the Disputed Domain
Name with a NIXI accredited Registrar, the Respondent
agreed to the resolution of disputes pursuant to the said Policy
and the Rules.

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

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3.2. The Complaint was filed by the Complainant with NIXI against the Respondent . On 11.1.2024 I was appointed as Sole Arbitrator to decide the disputes between the parties. I submitted statement of Acceptance and Declaration of Impartiality and Independence as required by rules to ensure compliance with Paragraph 6 of the Rules. NIXI notified the Parties of my appointment as Arbitrator *via* email dated 11.1.2024 and served by email an electronic Copy of the Complainant with Annexures on the Respondent at the email addresses of the Respondent.

3.3. I issued notice to the parties vide email dated 11.1.2024 directing the Complainant to serve complete set of Complaint on the Respondent in soft copies as well as in physical via courier /Post. The Respondent was directed to file its response with in 10 days from the date of notice. No response was received from the Respondent within 10 days. On 23.1.24, I granted further time to respondent to file reply if any on or before 29.1.24.However no response was received from the Respondent till 6.2.24.Thereafter On 6.2.24 I intimated the parties that now the matter will be decided on its own merit. Accordingly now the complaint is being decided on merit. No personal hearing was requested by any parties.

3.4 A Complete set of Complaint was served by NIXI in electronic form by email to the Respondent on 11.1.2024 at

the email provided by the Respondent with WHOIS, while informing the parties about my appointment as Arbitrator. Thereafter notice was sent vide same trailing email. All communications were sent to Complainant, Respondent and NIXI by the Tribunal vide emails. None of the emails so sent have been returned so far. Therefore I hold that there is sufficient service on the Respondent through email as per INDRP rules. The Respondent has not filed any response to the Complaint.

- 3.5. Clause 8(b) of the INDRP Rules requires that the Arbitrator shall at all times treat the Parties with equality and provide each one of them with a fair opportunity to present their case.
- 3.6. Clause 12 of INDRP Rules provides that in event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance to law.
- 3.7 As stated above, the Respondent failed to file any Response to the Complaint despite opportunities and chose not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend itself.

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3.8 Further Clause 13(a) of the Rules provides that an Arbitrator shall decide a Complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the Arbitrator deems to be applicable, as amended from time to time.

In these circumstances the Tribunal proceeds to decide the complaint on merit in accordance with said Act, Policy and Rules on Respondent's failure to submit a response despite having been given sufficient opportunity and time to do so.

Discussions and findings:

The Complainant has invoked Clause 4 of the Policy to initiate the Arbitration Proceeding.

Clause 4 of the INDRP Policy provides as under:

4. Class of disputes:

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

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

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

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

Therefore in order to succeed in the Complaint, the Complainant has to satisfy inter alia all the three conditions provided in clauses 4(a),4(b) and 4(c) quoted above.

4.1 Condition 4(a): the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

The Complainant has averred in the complaint as under:

- I.** That the Complainant is an English company that is renowned for designing, amongst other products, music amplifiers, speaker cabinets, brands personal headphones and earphones, and, having acquired Natal Drums, drums and bongos.
- II.** The Complainant was founded in 1962 and initially incorporates (in 1964) as Jim Marshall (Products) Limited. In 1992, the Complainant changed its name to Marshall Amplification PLC. The Complainant's UK company information can be found at **Annex 3**.
- III.** The Complainant has gained a large customer and fan base due to their product lines. There is a vast amount of information through blogs, online articles, and music

forums where the technicalities of the MARSHALL amplifiers are discussed (**Annex 4**).

- IV.** The Complainant is the registered proprietor of trade marks and other intellectual property rights worldwide consisting of or containing 'MARSHALL'[word], 'MARSHALL' (stylised) and 'MARSHALL HEADPHONES' ("the **Marks**"). A non-exhaustive list of the Complainant's trade marks is given in **Annex 6**: The Complainant has also acquired domain names, which incorporate the Marks and which have been used as active websites promoting the Complainant's goods and services under the Marks for almost a decade before the registration of the Disputed Domain Name. Examples include <**marshall.com**>, <**marshallheadphones.com**> and <**marshallamps.com**> (the latter which redirects to <marshall.com> (**Annex 7**)). The Complainant sells their products in more than 100 countries, which can be accessed at <https://marshall.com/recommended-retailers>. These locations include China (where the Respondent appears to be based) and India (the geographical indicator of the corresponding TLD for the Disputed Domain Name) (**Annex 8**).
- V.** The Complainant has official suppliers and commercial presence in india. The Complainant's products are also seen to be advertised on popular e-commerce sites

catering to India, such as Amazon.in and Flipkart
(Annex 9).

VI. It is further averred that the Disputed Domain Name wholly incorporates the Mark “MARSHALL HEADPHONES” in its exact form.

It is seen from the table in Paragraph 6 and at Annex 6, the Complainant owns numerous trade mark registrations for the Marks, which include a registration in India from 2005. The Complainant has registered trade marks for the Mark “MARSHALL”, stemming back to 1984 and predating the registration of the Disputed Domain Name by the Respondent by almost 40 years. The Complainant also holds registrations for “MARSHALL HEADPHONES”, dating back to 2016, which also clearly much prior to the registration of the Disputed Domain Name by the Respondent in 2023. The Complainant has relied upon various Panel decisions regarding the validity of their rights to the Marshall Trade Marks as mentioned in the complaint.

A perusal of averments in the Complaint and the documents annexed with the complaint shows that the Complainant has sufficiently established its rights in the Marks “MARSHALL” as well as “MARSHALL HEADPHONES”.

A mere perusal of the disputed domain name ‘MARSHALLHEADPHONES.IN’ of the

Registrant/Respondent shows that the Respondent has used the Complainant's trading mark "MARSHALLHEADPHONES" in its entirety. The disputed domain name "MARSHALLHEADPHONES.IN" is identical to the 'MARSHALLHEADPHONES' trade marks of the Complainant. It is well established that the addition of a TLD such as ".in" is not significant in determining whether the disputed domain name is identical or confusingly similar to the mark.

It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*. Further, a TLD/ccTLD such as ".in" is an essential part of domain name. Therefore, it cannot be said to distinguish the Respondent's domain name < 'MARSHALLHEADPHONES.IN' > from the Complainant's trademark 'MARSHALLHEADPHONES' or the domain name 'MARSHALLHEADPHONES.COM.' This has been held by prior panels in numerous cases, for instance in *Dell Inc. v. Mani, Soniya INDRP/753*. 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 before 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 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 AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant.”

The Complainant has acquired rights in the trade mark **'MARSHALLHEADPHONES** by way of trademark registrations, and by virtue of use since much prior to the date on which the Respondent created the impugned domain **<MARSHALLHEADPHONES.IN** incorporating the Complainant's identical company name, trade mark and trade name **'MARSHALLHEADPHONES** in toto. Disputed domain name was registered on 2.9.2023.

The Respondent has not filed any response to the complaint as such all the averments of the complainant has

remained unrebutted.

In view of the above facts and submissions of the complainant, and on perusal of the documents annexed with the Complaint, I hold that the Disputed Domain Name < **MARSHALLHEADPHONES.IN**> of the Registrant is identical and or confusingly similar to the trademark '**MARSHALLHEADPHONES**' of the Complainant and domain name of the Complainant.

6.2 **Condition no.4 (b) the Registrant has no rights or legitimate Interest**

The Complainant submits that the Disputed Domain Name resolves to a website which contains links to goods and services with which the Complainant is inherently associated with ("speakers", "headphones", "audio", "sound systems") (**Annex 10**). These are products for which the Complainant is widely known and which are advertised on its official websites, including at www.marshallheadphones.com. **Annex 11** demonstrates the wide range of products available for in relation to audio products and headphones advertised and sold under the Mark with regards to the keywords utilized on the Website at the Disputed Domain Name, such as "headphones" and "speakers". The ads made available under these keywords at the Website redirect users to third-party services in competition with the Complainant (**Annex 12**). It is further

averred that it is clear that the Respondent was aware of the existence of the Complainant and their Mark and has more likely than not, set the Disputed Domain Name up to try and profit from the redirections through click-through revenue. Such use of a domain cannot in any way amount to a bona fide offering of goods and/or services.

The Complainant submits that to the best of their knowledge, the Respondent has never legitimately been known as “MARSHALL” or as “MARSHALL HEADPHONES” at any point in time. **Annex 12(2)** to the complaint is global trade mark search for the Respondent name “Han Tiepu”. No results are generated. These facts lead the Complainant to conclude that the only reason why the Respondent registered the Disputed Domain Name was to take advantage of the Complainant’s goodwill and valuable reputation and make a financial gain for themselves. The use of the Complainant’s Marks in the domain name which in an indicator of trade origin of the Complainant and the Complainant alone, further used to host a website featuring pay-per-click ads mentioning goods and services inherently associated with the Complainant’s business, leads the Complainant to conclude that the only reason why the Respondent registered the Disputed Domain Name was to take advantage of the Complainant’s goodwill and valuable reputation. No other logical or reasonable conclusion can be gleaned.

The Complainant states that nothing about the Disputed Domain Name suggests that the Respondent is making a legitimate non-commercial or fair use. As mentioned above, the Disputed Domain Name has been set up to feature click-ads at the domain, some of which direct unsuspecting Internet users to competing goods, which shows that the Respondent is attempting to capitalize on the brand value of the Complainant's brand and Mark. The use of the pay—per click advertisement creates monetization revenue for the Respondent from internet users' visits to content featured at the Disputed Domain Name. Furthermore, the Disputed Domain Name is also observed to be listed for sale for a significant amount (9,500 USD – see **Annex 13**), highly suggestive of the fact it was an opportunistic and highly targeted registration (as previously mentioned, the Complainant owns the corresponding <marhshallheadphones.com>). It is therefore more likely than not that the Disputed Domain name was registered with underlying aim of being sold to the Complainant for an inflated price. Therefore, the Respondent cannot come within Policy, Paragraph 6(c) of the INDRP Policy.

The Complainant has established its rights in the marks **MARSHALLHEADPHONES**. The Respondent has no reason to use Complainant's well known trade name/trading style and registered trade mark **MARSHALLHEADPHONES**. Respondent

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is not making any legitimate non commercial or fair use of the domain name in accordance with paragraph 6 of the .IN Policy. And the Respondent has failed to prove the circumstances referred to in Clause 6 .

The Complainant has established its rights in the trade mark '**MARSHALLHEADPHONES**'. The mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. In *Deutsche Telekom AG v. Phonotix Ltd.* (WIPO Case No. D2005-1000), it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*". Therefore, any use of the Disputed Domain Name by the Respondent is not a legitimate non commercial or fair use of, and it has no rights or legitimate interests in, the Disputed Domain Name.

The inclusion of the well-known mark '**MARSHALLHEADPHONES**' in the Disputed Domain Name reflects the malafide intention of the Respondent to use the Dispute Domain Name for earning profits. Such a conduct demonstrates anything but a legitimate interest in the domain name. **The Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516** wherein it was held "*It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii) when the holder of a domain name that*

is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark”.

The Respondent has not filed any response as such the facts stated in the complaint had remained unrebutted. Further the Respondent has failed to satisfy the conditions contained in clause 6(a),(b) and 6(c) of INDRP Policy.

On the contrary it is evident that the Registrant has no rights or legitimate interest in respect of the Disputed Domain Name and has never been identified with the Disputed Domain Name or any variation thereof. The Registrant's use of the Disputed Domain Name will inevitably create a false association and affiliation with Complainant and its well-known trade mark **MARSHALLHEADPHONES**.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the Respondent has no rights or legitimate interests in respect of the domain name;

Accordingly I hold that the Registrant has no rights or legitimate interests in respect of the Disputed Domain Name.

6.3 Condition 4(C): the Registrant's domain name has been registered or is being used in bad faith

Clause 7 of INDRP Policy provides as under:

Clause 7. Evidence of Registration and use of Domain Name
in Bad Faith

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(a) 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

(b) 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

(c) by using the domain name, the Registrant has intentionally attempted to attract 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 Complainant states that the Disputed Domain Names have been registered and used in bad faith in accordance with Policy, Paragraph 7. The Complainant stated that trade mark registrations for the Mark "MARSHALL" date back to 1984, and their registrations in "MARSHALL HEADPHONES" date back to 2016. As such, the Complainant's Marks pre-date the Disputed Domain Name, which was only secured by the Respondent in 2023. Aside from registered rights, the Complainant submits that they have an established customer following in the United Kingdom and across Europe (and in many other areas around the world), and that the business has established commercial links in India as well as China (where the Respondent appears to be based), through key supplier agreements. This, coupled with the use implemented by the Respondent at the Disputed Domain relating to pay-per-click links referencing goods and services inherently associated with the Complainant's business, strongly infers that the Respondent had knowledge of the Complainant's brand and Marks and that the Disputed Domain Name was registered with the Complainant in mind. The Complainant submits that the Respondent has registered the Disputed Domain Name in bad faith by intentionally attempted to attract Internet users to their 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 Respondent's website or location or of a product or service on the

Respondent's website or location. The Respondent had actual knowledge of the Complainant before and at the time of the registration, and that the Disputed Domain Name was registered with prior knowledge of the Complainant's brand and Marks. Moreover, it is submitted that the Disputed Domain Name was registered with the sole purpose of creating an association with the Complainant, which is highlighted by the Respondent's use of the Disputed Domain Name for the purposes of pay-per-click advertisements which refer to terms like "headphones, "audio" and "speakers", with which the business is synonymous with. Based on the above submissions, the Complainant maintains that the Respondent has registered and used the Disputed Domain Name in bad faith.

A perusal of the complaint and the documents annexed with the complaint shows that the Complainant is vested with worldwide statutory rights in its **MARSHALLHEADPHONES** Marks much prior to the registration of disputed domain. The Respondent's registration of a Disputed Domain Name wholly incorporating the Complainant's well-known house mark is of concern due to the grave likelihood of creating confusion in the minds of the public.

From perusal of documents annexed with the complaint and the averments made in the complaint it is clear that the Respondent

got the Disputed Domain Name registered in bad faith and in contravention of Paragraph 4(iii) of the Policy.

In this regard the decision of prior Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* can be referred wherein it was stated that:

“The choice of the domain name does not appear to be a mere coincidence, hut a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration. ”

The Respondent had no reason to adopt an identical name/ mark with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

In view of above facts, submissions of the Complainant and on perusal of the documents annexed with the Complaint , I find that the Complaint has proved the circumstances referred in Clause 7(a)(b) and (c) of INDRP policy and has established that the registration of disputed domain name is in bad faith.

Accordingly I hold that the Registrant's Domain Name has been registered in bad faith.

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Decision

In view of the foregoing, I hold that the Disputed Domain Name is identical and or confusingly similar to the Complainant's well-known **MARSHALLHEADPHONES** Trademarks and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith.

In accordance with the INDRP Policy and Rules, I direct that the Disputed Domain Name registration be transferred to the Complainant.

Delhi
Dated 13.2.2024

Alok Kumar Jain
Alok Kumar Jain
Sole Arbitrator