

1. The Parties

The Complainant, in these administrative proceedings, is Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043 United States of America. The Complainant is represented by Ms. Astha Negi, Ms. Shipra Shandilya, Ms. Taranjeet Kaur, Ms. Isha Tiwari, Fidus Law Chambers, F-12, Ground Floor, Sector 8, Noida-201301. (Email: google@fiduslawchambers.com, Phone: 91-120-4847550). The Respondent is Hom Kit, BK Picture, 63-B, Anita Colony, Sanganer, Jaipur, Rajasthan-302029 (Email: homkit.in@gmail.com, phone: (91).8619674002)

2. Domain Name and Registrar

- (i) The disputed domain name is <simstim.net.in>.
- (ii) The Registrar with whom the domain name is registered is GoDaddy.com, LLC, 14455, North Hayden Road, Suite 219 Scottsdale, AZ 85260, United States of America. (email: compliance@edtpl.com)

3. Procedural History

The arbitration proceedings is in accordance with the .IN Domain Name Dispute Resolution Policy (the policy) adopted by National Internet Exchange of India ("NIXI") and INDRP Rules of Procedure ("the Rules") which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering disputed domain name with a NIXI registrar, the respondent agreed to the resolution of disputes pursuant to the Policy and the Rules.

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

On January 31, 2024, I submitted the statement of my Acceptance and Declaration of Impartiality and independence, as required by NIXI to ensure compliance with Paragraph 6 of Rules. NIXI notified the parties of my appointment as Arbitrator via email on January 31, 2024 and served an electronic copy of the complaint on the Respondent. I informed the Parties about commencement of arbitration proceedings on February 01, 2024 and the Respondent was directed to submit his response to the arbitration notice within 7 (Seven) days. The Respondent failed to submit any response to the arbitration notice issued through email dated 01.02.2024 within the stipulated

time. The Respondent was given another 5 (Five) days, through email dated 09.02.2024, more time to submit his response to the arbitration notice. The Respondent failed to submit any response to the arbitration notice issued through email dated 01.02.2024 even within the extended timeline. The Respondent was given final opportunity through email dated 20.02.2024 and directed to submit his response within another period of five (5) days. The Respondent submitted through email dated 22.02.2024 that he has deleted the domain registration and also deleted all website data. For this, the Respondent also submitted his apology to the client of disputed domain.

4. Grounds for Administrative Proceedings

1. The disputed domain name is nearly and thus confusingly similar to trade mark or service mark in which Complainant has rights
2. The Respondent has no rights or legitimate interests in the disputed domain name.
3. The domain name was registered and is being used in bad faith.

5. Background of the Complainant

The Complainant Google LLC is a company duly registered under laws of Delaware in the United States of America. The Complainant submitted that ever since its formation in the year 1998, it has been carrying on business in internet related services and products, which include advertising technologies, internet search, cloud computing and software, and mobile and computer hardware. The Complainant further submitted that the Complainant is the operator of one of the most highly recognized, and widely used internet search engines in the world under the trademark GOOGLE and in addition to search technologies and related activities, the Complainant is well-known for a wide range of goods and services, including online advertising, web browser software, email services, mobile phones, laptops, and its accessories. The Complainant further submitted that in 2021, the Complainant acquired an e-commerce platform under the trademark SIMSIM (which was launched in 2018 by SZS Tech Private Limited) represented by the logos and (hereinafter 'SIMSIM trademarks'). The Complainant further submitted that the said platform was started with a mission to help Indian users shop online with ease while simultaneously allowing small-time sellers and brand owners to market their products through trusted influencers and the said platform was thereafter integrated into the Complainant's YouTube Shopping platform for influencers



and businesses to promote brands therefrom. The Complainant further submitted that the e-commerce platform under the trademark SIMSIM featured a wide product range of clothing, footwear, accessories, machines, fitness equipment, electronics etc. The Complainant further submitted that fashion influencers shared videos and reviews on the e-commerce platform, sporting the branded products to enrich consumers' shopping experience. The Complainant further submitted that the Complainant owns the domain www.simsim.in (which acts as an extension of the Complainant's rights in the SIMSIM trademarks) which earlier hosted information related to the Complainant's platform under the SIMSIM trademarks before its integration into YouTube Shopping. The Complainant further submitted that the Complainant owned a mobile app under the trademark SIMSIM and the said mobile app had over 10 million downloads on the Google Play Store. The Complainant further submitted that the Complainant is the honest proprietor of the SIMSIM trademarks. The Complainant further submitted that the SIMSIM trademarks are highly distinctive not only on account of their inherent distinctiveness but also equally on account of their acquired strength due to extensive use and popularity. The Complainant further submitted that the SIMSIM trademarks are strong marks having protection over a wide range of goods and services and in addition to the common law rights, the SIMSIM trademarks have also been granted statutory recognition in India. The Complainant further submitted that the said trademarks have been registered since as early as January 2019 with a user claim of September 2018. The Complainant further submitted that by virtue of the assignment agreement dated 5th May 2022, all the rights, title and interests in the SIMSIM trademarks were assigned from SZS Tech Private Limited to the Complainant. The Complainant further submitted that the SIMSIM trademarks act as source identifier for the Complainant. The Complainant further submitted that the SIMSIM trademarks have been extensively featured in third-party articles and popular blogs such as The Economic Times, The Financial Express, BW Businessworld, and TechCrunch, to name a few, owing to which the Complainant's trademarks have earned eminent reputation and goodwill globally and are thus exclusively associated with the Complainant. The Complainant further submitted that in addition to the above, the SIMSIM trademarks are featured on the Complainant's brand specific YouTube page <https://www.youtube.com/@simsimshopping/featured>.



About the Respondent

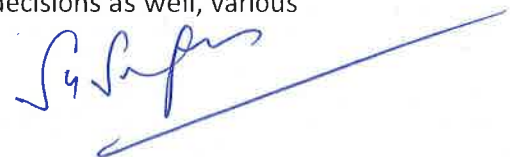
The Respondent is Hom Kit, BK Picture, 63-B, Anita Colony, Sanganer, Jaipur, Rajasthan-302029. The Respondent has registered the disputed domain name <www.simsim.net.in> on 27th March, 2023. The Complainant submitted that the Respondent is hosting an e-commerce platform, similar to the Complainant's, under the trademark SIMSIM. The Complainant further submitted that the Complainant sent a legal notice dated 23rd August 2023 calling upon the Respondent to take down the website content at the Disputed domain, cancel the domain registration, and cease all use of the SIMSIM trademarks. The Respondent stopped the operation for a brief period in response to legal notice sent by the Complainant but started again operating through website after sometime.

6. Legal Grounds

A. The domain name <simsim.net.in> is nearly identical and thus confusingly similar to trade mark or service mark in which the Complainant has rights.

Complainant's Contentions

The Complainant contended that the disputed domain <www.simsim.net.in> entirely subsumes the Complainant's registered trademark SIMSIM. The Complainant further contended that the inclusion of the generic top-level domain code (gTLD) '.net' and country-code second-level domain (ccSLD) '.in' in the Disputed domain is not sufficient to establish dissimilarity. The Complainant further submitted that the Complainant's SIMSIM trademarks have been registered since as early as January 2019 with a user claim of September 2018. The Complainant further submitted that the Complainant has used SIMSIM as a trademark and as a part of domain name, well prior to 27th March 2023, which is the registration date of the disputed domain. The Complainant further submitted that the Respondent has purposefully adopted the Complainant's registered trademark SIMSIM in an identical manner to create a likelihood of confusion among consumers and this coupled with the Respondent running an e-commerce platform at the Disputed domain and featuring the Complainant's registered trademark and closely similar variations, and on the website creates an undisputable scenario for confusion among consumers. The Complainant further submitted that consumers are well aware of the Complainant's SIMSIM trademarks such that unauthorized use of the Complainant's trademark SIMSIM, as in the present case, is likely to create an impression in the minds of consumers that the disputed domain is associated with, or is sponsored by the Complainant, which is not the case. The Complainant further submitted that in several UDRP decisions as well, various



panels have found that the fact that a domain name wholly incorporates a Complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy. The Complainant has relied on PepsiCo. Inc. v. PEPSI SRL,D2003-0696 (WIPO Oct. 28, 2003), Oki Data Americas, Inc. v. the ASD, Inc. (WIPO Case No. D2001-0903),Go Daddy.com, Inc. v. Shoney's Enterprise (WIPO Case No. D2007- 1090),Qalo, LLC v. Chen Jinjun and Magnum (WIPO Case No. D2018-2215) Piering Inc v. The Mudjackers (WIPO Case No. D2000-1525).The Complainant further submitted that similar findings were made by NIXI in various INDRP decisions against the domains www.googlemaps.in, www.googlepays.in, and www.googlemeet.co.in wherein inclusion of the Complainant's well-known trademark GOOGLE along with an additional term was still held to be confusingly similar.The Complainant further submitted that without prejudice, that irrespective of the inclusion of the generic top-level domain code (gTLD) '.net' and country-code second-level domain (ccSLD) '.in', the fact that the disputed domain comprises the Complaint's trademark SIMSIM in its entirety, has the potential to cause consumer confusion. The Complainant further submitted that consumer recall behind the Complainant's trademark SIMSIM is such that if any person comes across the disputed domain, they will automatically associate the same with the Complainant only and none other. The Complainant has relied upon Nike Inc. v. Nike Innovative CV Zhaxia (Case No. INDRP/804); Metropolitan Trading Company v. Chandan Chandan (Case No. INDRP/811); Lego Juris A/s v. Robert Martin (Case No. INDRP/125), where it was held that if a disputed domain name completely incorporates the trademark / service mark of the Complainant, then the mere addition of domain codes such as ".in" and/or ".co.in" will not distinguish the Respondent's disputed domain name.

Respondent's Contentions

The Respondent submitted that he has deleted the domain registration and has also deleted all data from the website.

The Respondent has no right or legitimate interest in the domain name Complainant's Contentions

The Complainant submitted that under paragraph 7 of the INDRP any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a Disputed domain:

- a) Before any notice to it of the dispute, the Respondent'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

- b) The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- c) The Respondent 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.

The Complainant contended that in the present case, the Respondent is not a part of or is related to the Complainant and the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use as a part of their trade name, as a part of a trademark or register domain name comprising its trademark SIMSIM. The Complainant further submitted that as already held in previous Panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name. The Complainant further submitted that in the present case, the Respondent is not commonly known by the disputed domain and the Complainant has not authorized or licensed the Respondent to use any of its trademarks in any way. The Complainant submitted that such unlicensed, unauthorized use of the disputed domain incorporating the Complainant's trademark SIMSIM is strong evidence that Respondent has no rights or legitimate interest in the disputed domain. The Complainant further submitted that the Respondent has registered the disputed domain solely to mislead consumers. The Complainant further submitted that the Complainant is the prior legitimate proprietor of the trademark SIMSIM and that the Respondent's act of including the same in the disputed domain to offer services in relation to an e-commerce marketplace is misleading and this evidences that the Respondent has deliberately attempted to pass off its domain name as that of the Complainant. The Complainant further submitted that the adoption and use by the Respondent of the disputed domain are significantly after the Complainant's rights in the trademark SIMSIM and thus, the question of the Respondent being known by the disputed domain does not arise in the first place. The Complainant has relied on Kraft Foods Global Brands, LLC v. Jet Stream Enterprises Limited, Jet Stream (Case No. D2009-0547) wherein "...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 also relied on Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110." The Complainant further submitted that that the said threshold has been satisfied in the present instance. The Complainant further submitted that the Respondent is not using the Disputed domain for bona fide offering of services and not making legitimate, non-commercial, and fair use of the Complainant's trademark as per the policy.

Respondent's Contentions

The Respondent submitted that he has deleted the domain registration and has also deleted all data from the website.

The domain name has been registered and used in bad faith.

The Complainant submitted that the disputed domain name has been registered in bad faith for the following reasons:

- a) At the outset, the Respondent is using the Complainant's trademark SIMSIM in the Disputed domain in which the Complainant has prior established rights.
- b) The Respondent has made no bona fide use of the disputed domain. The disputed domain is being used to offer services in relation to an e-commerce platform and the Respondent is featuring the Complainant's registered trademark and closely similar variations, and on the said website to advertise and promote the said services, which is an infringement of the Complainant's registered trademarks. It is apparent that the Respondent has registered the disputed domain for the sole purpose of misleading consumers. By doing so the Respondent has intentionally attempted to create a likelihood of confusion with the Complainant and consumers are likely to get confused as to the source, sponsorship, affiliation, or endorsement of the goods and services being offered through the disputed domain.
- c) On the website at the disputed domain, the email address of the Respondent is mentioned as simsim.net.in@gmail.com where the disputed domain is also being used as a part of an email address or as a mail server.
- d) Lastly, the Respondent's bad faith is established by the fact that the Respondent was willfully trying to mislead the Complainant. Upon gaining knowledge of the Respondent and the disputed domain, the Complainant had attempted to amicably settle the matter by giving the Respondent an opportunity to takedown the website content and cancel the domain registration for the disputed domain. As established above, the Respondent



had initially shown compliance by taking down their website. However, the same was done temporarily as the Respondent soon had resumed its operations which continue till date. The Complainant further submitted that even after explicitly gaining knowledge of the Complainant's rights in the SIMSIM trademarks, the Respondent is wrongfully misappropriating the SIMSIM trademarks. The Panel in Hike Limited v. Jamsheer Abdullah Case No. D2016-0459 observed that "the use of a trademark in a domain name that clearly belongs to another that is used in a manner that is purposefully confusingly similar to that mark and furthermore, if the website has misleading content with links to competing third-party sites, has been consistently found to be bad faith registration and use under the Policy".

Respondent's Contentions

The Respondent submitted that he has deleted the domain registration and has also deleted all data from the website.

DISCUSSION AND FINDINGS

The Complainant Google LLC, a US company formed in 1998, is in business of internet related services and products, including advertising technologies, internet search, cloud computing and software, and mobile and computer hardware. The Complainant is the operator of widely used internet search engines in the world under the trademark GOOGLE. The complainant's goods and services include online advertising, web browser software, email services, mobile phones, laptops, and its accessories. The Complainant, in 2021, acquired an e-commerce platform under the trademark SIMSIM from SZS Tech Private Limited and this platform was integrated into the Complainant's YouTube Shopping platform. The Complainant e-commerce platform featured a wide product range of clothing, footwear, accessories, machines, fitness equipment, electronics etc. The Complainant is owner of number of trademark "SIMSIM" which are registered in various categories in India. The Complainant is owner of the domain www.simsim.in which was registered earlier to the registration of disputed domain name by the Respondent. The Complainant is also the owner of mobile app under trademark SIMSIM. This mobile app had millions of downloads on the Google Play Store. The Complainant's marks are distinct and enjoys huge popularity. Due to popularity of these marks, they act as a source identifier of the Complainant. The Respondent Hom Kit BK Picture has registered the domain name <SIMSIMNET.IN> on March 27, 2023 which incorporates in its entirety the Complainant's mark SIMSIM. The Respondent is not authorized or licensed by the Complainant to use the popular marks of the Complainant. The Respondent is also hosting website on disputed domain which has business similar to those of the Complainant. The disputed is likely to create confusion in minds of ordinary internet user that the disputed



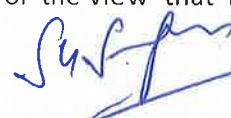
domain is affiliated to the Complainant. The intentions of Respondent are to profit from the popularity of Complainant's mark/domain. The Complainant had sought amicable settlement but the Respondent only temporarily closed the operation. The panel also takes notice of the fact that Respondent, after issue of arbitration notice by this panel, has submitted that he has deleted the disputed domain registration and also deleted the all data from website hosted on the disputed domain.

The domain name <SIMSIM.NET.IN> is identical and confusingly similar to trading style and trade name in which the Complainant has rights.

The Complainant has been able to prove that it has trademark rights and other rights in marks 'SIMSIM' by submitting substantial documents. The marks are widely used by the Complainant group in relation to their business. The disputed domain name <SIMSIM.NET.IN> contains popular mark 'SIMSIM' mark of Complainant's mark completely. Addition the generic top-level domain code (gTLD) '.net' and country-code second-level domain (ccSLD) '.in' are insignificant and does little to make it different. There can't be coincidence that the Respondent has chosen domain name similar to the marks of the Complainant. The domain <SIMSIM.IN> was registered by the Complainant years before registration of disputed domain <SIMSIM.NET.IN> by the Respondent in 2023. The disputed domain name <SIMSIM.NET.IN> is identical and confusingly similar to the mark/domain of the Complainant. The intent of the Respondent appears to commercially gain from the popularity of Complainant's mark and thereby also causing irreparable loss to the reputation of the Complainant. The panel takes notice of the fact that the Respondent has deleted the disputed domain registration and also deleted the contents hosted on the disputed domain. Based on the forgoing analysis, I am of the opinion that the disputed domain name is nearly identical and confusingly similar to the complainant's mark.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has been able to prove by submitting evidences that it has legitimate interest in trademark 'SIMSIM'. The Complainant has never granted, licensed or authorized the Respondent to use Complainant's mark. The Respondent is not known by the mark and can't have legitimate interest in the disputed domain. The Respondent should have come forward with evidence to show his legitimate interest by rebutting the contentions of the Complainant. The Respondent failed to submit his response to justify legitimate non commercial use of disputed domain name. This panel is of the view that mere



registration of domain name can't establish rights in disputed domain. According to the Policy that "once the Complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the burden shifts to the registrant to rebut it by providing evidence of its rights or legitimate interests in the domain name". The burden of proof to establish any legitimate interest falls on the Respondent. The Respondent could have invoked any of the circumstances set out in paragraph 6 of the Policy, in order to demonstrate rights or legitimate interests in the Disputed Domain Name but the Respondent has failed to justify the legitimate interests in the disputed domain name to rebut the contentions of the Complainant. The panel also takes notice of the fact that the Respondent has deleted the disputed domain registration and also deleted all data from website hosted on the disputed domain.

Therefore, in light of complaint and accompanying documents, I am therefore of the opinion that the Respondent has no rights or legitimate interest in the disputed domain name.

The Domain Name was registered or is being used in bad faith

This can't be a coincidence that the Respondent registered disputed domain name fully incorporating popular marks of the Complainant. The Complainant has been the using the marks since 2018 years before registration of the disputed domain name in 2023 by the Respondent. The panel finds that the Respondent has used the popular mark of the Complainant in disputed domain name giving impression that this domain is affiliated to the Complainant. The sole purpose of the Respondent is to create confusion to an ordinary internet user. The Respondent is hosting website on the disputed domain having business activities similar to those of the Complainant and his motive appears to profit from the popularity of the Complainant's mark. The intent of the Respondent to profit from the reputation of the Complainant's mark is definitely a bad faith registration use. The Respondent must have done dilly diligence to ensure that domain name registered does not infringe upon someone other's rights. The panel takes notice of the fact that the Respondent has deleted the disputed domain registration and also deleted all data from website hosted on the disputed domain.

In view of the above, In view of the above, I am of the opinion that registration of disputed domain name is bad faith.



Decision

Based on the of contentions of the complainant , the attached documents , cited decisions and in view of the above read with all the facts of the present case, the Complainant's contentions are tenable. The test of prudence demands fairness of actions by the Respondent. The Respondent has failed to rebut the Complainant's contentions. In view of the forgoing discussion, I am of the opinion that the disputed domain name is identical and confusingly similar to the Complainant's marks/domain. The Respondent does not have rights or legitimate interest in the disputed domain name and disputed domain name was registered in bad faith.

In accordance with the Policy and Rules I direct that the Disputed Domain name <SIMSIM.NET.IN> be transferred to the Complainant, with a request to NIXI to monitor the transfer.

The award is being passed within statutory deadline of 60 days from the date of commencement of arbitration proceedings.

No order to costs.

February 28, 2024


Sudhir Kumar Sengar

SOLE ARBITRATOR