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BEFORE THE SOLE ARBITRATOR, ANKUR RAHEJA MCA FCS LLB

.IN REGISTRY  
(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD – MASTERPAY.CO.IN

DATED: JUNE 18, 2018

IN THE MATTER OF:

MasterCard International Inc.

... Complainant

Versus

Champion Software Technologies Ltd.

... Respondent

*A. Rahj*

## ARBITRATION AWARD

**Disputed Domain Name: [www.masterpay.co.in](http://www.masterpay.co.in)**

### 1. The Parties:

**a. Complainant:** The Complainant in this arbitration proceedings is: **MasterCard International Incorporated** (hereinafter referred to as Mastercard) at 2000 Purchase Street, Purchase, New York, 10577, United States of America represented by Akhilesh Kumar Rai of AZB & Partners, having office at Plot No A8, Sector 4, Noida 201301, Uttar Pradesh, India.

**b. Respondent:** The Respondent in this arbitration proceedings is **Champion Software Technologies Limited Through Nirmal Patel** at 346, Iskon Mall, 150 feet Ring Road, Rajkot, Gujarat 360005, represented by Adv. Shantanu R. Phanse and Adv. Kamlesh Y. Mali having office at A/A, 203 2nd Floor, Regal Palace, Lokpuram Society, Opp. Hiranandani Meadows, Off. Pokharan Road No 2, Thane - 400610, India.

### 2. The Domain Name and the Registrar:

- a) The Disputed Domain Name is [www.masterpay.co.in](http://www.masterpay.co.in).
- b) Disputed Domain Name is registered with [Godaddy.com](http://Godaddy.com) LLC.

### 3. Procedural History [Arbitration Proceedings]

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed undersigned as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

In the matter, the Arbitration proceeding commenced on 28 April 2018 in terms of INDRP Rules. Relevant Dates are as follows:

<u>Sr. No.</u>	<u>Particulars</u>	<u>Date</u>
1.	Date of Handover of Complaint by NIXI & soft copy of Complaint served upon Respondent by NIXI	24 April 2018
2.	Hard Copy of Complaint received by Arbitrator	25 April 2018
3.	Notice of Arbitration issued to the Respondent, also referred as date of commencement of Proceedings	28 April 2018
4.	Response filed and taken on record	15 May 2018

5.	Rejoinder filed by the Complainant and taken on record	30 May 2018
6.	Written Submission filed by Complainant and Respondent	05 June 2018
7.	Award Passed	18 June 2018

In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 28th April 2018, with the instructions to file his reply / response by 11th May 2018.

That initial response was filed on 11 May 2018 but some deficiency was removed by 15 May 2018, therefore the response was taken on record. Thereafter, rejoinder by the Complainant and written submissions by both the parties were filed as well, before the order was reserved for decision. No personal hearing was requested / granted / held.

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

*According to the documentary evidence and contentions submitted:*

##### **The Complainant:**

A. The Complainant is a multinational corporation and is renowned for its financial services. The Complainant is a technology driven company and it

uses technology and data-driven insights to make electronic payments secure and efficient. The Complainant's core area of business is to provide services for processing payments. Additionally, the Complainant also provides allied goods and services, including but not limited to, providing technology driven solutions for secure payment gateways and against thefts, advisory and consultation services. It also provides online wallet services or mobile wallet services through collaboration with various banks. Currently, the Complainant provides its goods and services worldwide, in more than 210 countries and territories.

B. The roots of the Complainant can be traced back to 1966, when a group of bankers known as Interbank Card Association (ICA) came together to launch 'Master Charge: The Interbank Card'. In 1979, the 'Master Charge: The Interbank Card' was renamed as MasterCard. In the 1980s, the Complainant expanded their footprint to Asia and Latin America.

C. In 1980s, the Complainant introduced the first laser hologram on its cards. Around the same time, the Complainant also issued the first payment card in the People's Republic of China and brought out its first business card as well. In 1988, the first MasterCard card was issued in Soviet Union. In 1990s, the Complainant launched Maestro, the first online debit program, in partnership

with Europay International. Later in 2002, the Complainant merged with Europay International.

D. From 2009 to 2012, the Complainant made a series of strategic business acquisition. In 1985, the Cirrus System, LLC (Cirrus) was bought by the Complainant. Cirrus was a worldwide ATM network chain. Some of the other acquisitions of the Complainant include acquisition of Orbiscom, which became MasterCard Labs in 2010 and DataCash, which is a prepaid program management business of Travelex, now known as Access Prepaid.

E. That the Complainant also launched a contactless card under the name 'PayPass' in 2012. This card featured the technology of Near Field Communication, by virtue of which the details of the card are transmitted through antenna, without any contact with the machine. In India, the 'PayPass' card of the Complainant was launched in association with SBI.

F. Sometime in 2013, the Complainant launched digital wallet services under the mark 'MasterPass'. 'MasterPass' can be used for all digital payments, including recharge payments for mobiles, DTH operators, utility bills, travel booking, transfer of money, shopping, etc. Currently, services under MasterPass are available in 37 countries around the globe, including India through various banks. Since its launch in February 2013, 'MasterPass' has



increasingly made shopping easier for customers and merchants. In India, the 'MasterPass' digital wallet service was launched by the Complainant in association with Citibank. This is the first global wallet to enter India.

G. The Complainant has tied up with various state governments for promotion of 'MasterPass'. It recently signed a memorandum of understanding with the Gujarat Government for strategic cooperation to accelerate the adoption of electronic payment processes in government, businesses, and transit and tourism industry. In addition, the Complainant has also tied up with various banks, including YesBank, to integrated 'MasterPass' services with their respective mobile platforms.

H. Additionally, the Complainant also collaborates with other mobile wallet providers including PayTM and offers discounts on usage of 'Mastercard' powered cards.

I. The Complainant has various goods and services which are customized to the necessity and usage of the consuming public like, prepaid cards, food cards, gift cards, loyalty cards and travel cards. The Complainant has launched its travel card in participation with SBI bank, HDFC Bank and Yes Bank. The Complainant has also tied up with Thomas Cook for its traveling cards. It is pertinent to mention here that the Complainant has a long standing

association with Yes Bank and has launched debit cards and credit cards, virtual pre-paid cards on MasterCard Platform, MasterCard Secure Code Authentication service and Free Charge Go, virtual card.

J. The products and services of the Complainant are widely available in India. The Complainant, in association with Samsung India, has announced the launch of Samsung Pay, which will enable 'Mastercard' holders to use their supporting Samsung Galaxy mobile devices to pay in a safe and convenient manner. The Complainant also has tie ups with other digital payments platforms like Android pay, Apple pay, Fitbit pay, Garmin pay, Microsoft Wallet and 'Masterpass', to name a few.

K. In order to promote its business in India, the Complainant organizes or participates in various promotional events in India like the 'Cashless bano India' campaign with NDTV, to promote online or digital payments. In respect of the above campaign, the Complainant took a bus around the city of 'Kanpur', to impart financial and digital payment education or training. The Complainant has undertaken promotional campaigns like empowering 100,000 women artisans in partnership with Industree Foundation. The Complainant has also held workshops for girls known as Girl4tech, in 11 countries, including India.



L. The Complainant has a very strong internet presence with the website www.mastercard.com. The website can be accessed from anywhere in the world, including India and provides extensive information on the activities of the Complainant throughout the world. Additionally, the Complainant also has country specific domain names such as www.mastercard.co.in for India. In addition to the details of the Complainant, these websites also provide details of products and services offered by the Complainant.

M. In the course of the trade, the Complainant uses the word 'Mastercard' and various other 'Master' formative marks like, Mastercom, Masterbanking, Masterpass, Mastercard and other trademarks like Paypass. In addition, the Complainant also uses and applied for marks like 'Master Money', 'Master Wallet' and "Master Mobile Transactions' solutions, to name a few.

**The Respondent:**

N. The Respondent herein is a company incorporated under the Companies Act having its office at the address abovementioned. The Respondent Company is running its business under the name of Champion Software Technology Ltd., which is duly registered with the Registrar of Companies, Gujarat, Dadra & Nagar Havelli. The Company was incorporated on 10 December 2013. The Managing Director of the said Respondent Company is Mr. Nirmal Patel.

O. The Respondent herein is engaged in the business and providing of services with respect to mobile recharge, DTH recharge, utility bill payment, domestic money transfer through the retailer under the distinctive unique mark – MASTERPAY, in order to distinguish the services of the Respondent from that of others included in Class 36 of the Trademarks Act, 1999. It is submitted that in order to run the business and provide the services as above mentioned, the Respondent had applied for registration of the domain name - www.masterpay.in, before the Registrar of GoDaddy.com, LLC on 2.8.2014. It is further submitted that the said domain is still in existence and the registration of the said domain is renewed periodically. The Respondent is using the said trademark MasterPay since 2014 with respect to the services provided as abovementioned. Hence due to long and extensive use of the said mark, the Respondent has acquired distinctiveness in the market. The Respondent had also secured registration of the domain name www.masterpay.co.in.

P. The Respondent is also providing aforementioned services through the domain name www.champrecharges.com which is also registered, and the Respondent has also secured trademark registration bearing Registration No. 3543235 of the mark ChampRecharges under the Class 36 as per the Trademarks Act, 1999.

Q. The Respondent is also running the abovementioned business from the domain name www.cs.money.in registered in the name of the Respondent. It is further submitted that the domain name www.masterpay.in and www.masterpay.co.in is completely different from the domain name www.masterpass.com. The visual aspect with respect to the design and features shown on the domain www.masterpay.in is very much distinctive and is completely different from the Complainant's domain www.masterpass.com. It is also submitted that the domain www.masterpay.co.in has been secured and registered by the Respondent and the same is in existence at present, wherein the Respondent's clients are redirected from the domain www.masterpay.co.in to the domain www.masterpay.in by way of which the Respondent is providing the aforementioned services to its clients. Therefore, the Respondent is honestly and in bona fide manner using the domain www.masterpay.co.in and www.masterpay.in.

## **5. The Dispute**

- A. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- B. The Respondent has no rights or legitimate interests in respect of the disputed domain name.



- C. The disputed Domain Name has been registered or is being used in Bad Faith.

## **6. Parties Contentions**

### **Complainant contends as follows:**

- A. The Complainant has a long and extensive use of the various 'Master' formative marks and the mark 'Paypass'. By virtue of use of the said marks, they are associated only with the Complainant especially in the field of financial services and goods. The Complainant's Marks can be termed to be well-known trademarks. In order to protect its rights over the Complainant's Marks from third party adoption, the Complainant undertakes various periodical searches. Upon conducting one such search for cyber squatters, the Complainant became aware of the registration of a domain name - [www.masterpay.in](http://www.masterpay.in).
- B. The Whois lookup for the domain name [www.masterpay.in](http://www.masterpay.in) disclosed that the domain name was registered in the name of the Respondent herein, Mr. Nirmal Patel, of the address Jalaram Plot, Rajkot, Gujarat 360005 and the registrant organization was Champion Software Technologies Limited. The phone number provided was +91.2816588661.

- C. That the Complainant immediately conducted an investigation into the business activities of the Respondent and discovered that the website with the offending domain name mentioned two other addresses of the Respondent. One of the addresses mentioned was 346 Iskon Mall, 150 Feet Ring Road, Rajkot, Gujarat, which is the current address of the Respondent as per the investigation.
- D. The investigation disclosed that the mark 'MasterPay' is represented by the Respondent in a manner, where the initial letter of each word is in capitals, which is the manner similar in which Complainant represents its marks. Further, the Respondent offers services of mobile & DTH recharge, postpaid bill payments, domestic money transfer, bulk SMS, champ holidays, bus & air booking, online B2B store and entertainment.
- E. During the field investigation of the current address of the Respondent, the investigators were provided with certain brochures by the Respondent's representatives. One of the brochures mentions that the Respondent began its business in 2013 for online recharge portal. Further, it mentions that in the course of business the Respondent has registered various domain names:
- a) [www.csmoney.in](http://www.csmoney.in)

- b) [www.ChampRecharges.com](http://www.ChampRecharges.com)
  - c) [www.JaiHindRecharge.com](http://www.JaiHindRecharge.com)
  - d) [www.VrujTele.com](http://www.VrujTele.com)
  - e) [www.ExpressTopup.com](http://www.ExpressTopup.com)
  - f) [www.VrajTele.com](http://www.VrajTele.com)
- F. According to the said brochure, the Respondent claims to be using the offending domain name since May 2014. It is pertinent to mention here that the WHOIS record of the said domain name mentions that it was created on August 2014. According to the brochure, the Respondent has also added domestic money transfer services as on January 20, 2016. Further, the Respondent intends to launch a prepaid debit card with Yes Bank, the mock image of the card is similar to a MasterCard Credit Card. In addition, the Respondent is in the process of introducing its own Mobile Point of Sale system, which will accept payments from all domestic and international cards, including 'Mastercard' and 'Maestro' Card. The Respondent is also in the process of launching payment platform focused on travel booking.
- G. According to the brochure attached herewith, the Respondent claims to be using the domain name, [www.champrecharges.com](http://www.champrecharges.com), since October 2013. However, the WHOIS search reveals that the domain name was created



on October 15, 2015. Similarly, Respondent claims to have set up the domain name www.csmoney.in in October 2014, whereas the WHOIS search for www.csmoney.in reveals that the said domain name was created in June 2015.

H. Concerned by such an adoption, the Complainant through their counsel served a cease and desist notice on the Respondent dated March 16, 2017. In response, the Respondent forwarded two letters through two different counsels. In view of the confusion caused by two different attorneys, the counsel of the Complainant spoke with one of the counsels of the Respondent and asked him to confirm as to which attorney will be representing the Respondent. We were informed by the said counsel that he will be representing the Respondent and that we should reply to his letter. This letter was dated April 7, 2017 by Mr. Ravish D. Bhatt. In this letter, the counsel of the Respondent has attempted to differentiate between the goods and services of the Complainant from the services of the Respondent and the difference in the hits when the 'Masterpay' and 'Mastercard' are searched in the Google search engine. It was also mentioned that the word 'Master' is a commonly adopted word and only when 'card' or 'pass' is used in conjunction with 'Master', is when the mark is associated with the Complainant. The said letter also mentioned

that the Respondent is still looking to launch credit and debit cards and that the objection from the Complainant regarding the same is premature.

- I. After going through the above written communication, the counsel of the Complainant opened a dialogue with the Respondent's counsel and attempted to explain that the services offered by the Respondent include transferring of money and also offer payment platforms for recharges which come into direct conflict with the Complainant's services. The counsel of the Respondent reiterated that the word 'Master' is commonly adopted. To this the counsel of the Complainant explained that the word 'Master' is associated with the Complainant in the field of financial services and that the Respondent has no reason to adopt 'Master' for related and even similar/identical services/goods, other than to benefit from the reputation and goodwill created by the Complainant.
  
- J. The Complainant through its counsel kept the channel of communication open with the Respondent through its counsel, to try and settle the matter amicably; however the Respondent did not provide any definite response to any of the issues of the Complainant. On June 17, 2017, the Respondent through its counsel wrote to the counsel of the Complainant that the Respondent will not launch the credit or debit cards provided that the Complainant agrees on other aspects in the matter. The Respondent,



however, chose to stay completely silent on the use of MasterPay for Mobile Point of Sale systems, despite being specifically asked by the Complainant. Soon thereafter, the Complainant came across publications in trademarks journals for the mark MasterPay in classes 36 and 39. Upon checking the records pertaining to these applications, the Complainant found that these applications had been filed by the Respondent and in fact, the application that was filed in class 36 also included 'domestic money transfer'. Accordingly, the Complainant opposed these applications.

K. Realizing that the Respondent's conduct was not bona fide, the Complainant conducted another search online and came across two more domain names that consist of MasterPay, both of which had been registered by the Respondent – the subject matter of the present complaint, <masterpay.co.in>, and another <masterpay.pro> against which the Complainant is filing another complaint. As per the Whois records of the domains, <masterpay.co.in> was purchased on February 19, 2016. The domain name <masterpay.pro> was purchased on November 15, 2017. Accordingly, both these domains were purchased by the Respondent despite the Respondent being aware of the existence of the Complainant's deceptively similar marks. It is also pertinent to mention that <masterpay.co.in> does not host a website but is simply redirected to

www.masterpay.in. Thus, there is no actual utility of <masterpay.co.in>. As regards, <masterpay.pro>, the Respondent has hosted a new website on this domain which mentions several additional services that were not originally mentioned, including insurance services. In view of the aforementioned facts, it is evident that the conduct of the Respondent is not bonafide and it is simply trying to take advantage of the goodwill accrued by the Complainant over the years in its well-known trade marks. Thus, the Complainant has approached this forum.

- L. To reiterate, the Respondent provides/intends to provide goods and services associated with financial business, which include equipment/platforms used to facilitate transfer of money, which is the core area of business for the Complainant. Moreover, the Respondent has also adopted a deceptively similar mark to the Complainant's Mark. The Respondent has provided no reasons to adopt a 'Master' formative mark for the same services as that of the Complainant. This was done despite having prior knowledge of Complainant's reputation in the field of financial business and the use of Complainant's Marks for the same.
- M. The Complainant is the prior adopter of 'Master' formative marks in respect of the financial services. Over the course of decades, the Complainant has advertised and promoted Complainants' Marks for

various goods and services in the financial field. By virtue of such extensive use, 'Master' formative marks for financial services have come to be associated with the Complainant alone and the consuming public associates such marks with the trust and quality provided by the Complainant in its goods and services. The Complainant has built immense goodwill for Complainant's Marks over years of toil and labor.

N. That the Complainant's Marks have secured registration in various countries around the globe including India. Further, the Complainant is the prior adopter of 'Master' formative marks and is associated with the same in the field of financial goods and services. It is a settled principle of law that none should be allowed to take advantage of the labor of another, however the Respondent's use of the offending domain name is contrary to the said principle.

O. That the use of the offending domain name is an infringement of the rights of the Complainant to the Complainant's trademarks. In addition, the Respondent is passing off its goods and services as that of the Complainant's goods and services. The misrepresentation on the part of the Respondent is apparent on the face of it.

- P. By virtue of use of the offending domain name, the Respondent is causing confusion amongst the consuming public and is deriving profit from such confusion by riding on the goodwill of the Complainant.
- Q. The Respondent was aware of the Complainant's Marks, despite the same the Respondent has adopted a 'Master' formative mark for providing goods and services in the financial area of business. The Respondent has provided no reasoning for adoption of the 'Master' formative mark which is similar to 'Masterpass' of the Complainant, despite the knowledge of well-known use of 'Master' formative marks by Mastercard. The only reasoning behind adoption of such a mark is to benefit for the reputation and goodwill of the Complainant by causing confusion.
- R. The Respondent intends to launch mobile point of sale system, debit and credit cards, which are services offered by the Complainant as well. The Respondent has mentioned in their letter that the Complainant's apprehensions in this regard are premature. Whereas, the Respondent has already begun advertising the launch of such services.
- S. The Respondent provides service for transfer of money through digital wallets, banks and online platforms and such services are offered by the Complainant, thus it is evident that the consuming public will be confused. The offending domain name is similar to the trade mark 'Masterpass' of

the Complainant. The use of the offending domain is bound to create confusion in the minds of the consuming public, who will be led to believe that there exist some association between the Complainant and the Respondent, whereas no such association exists. The sole reason of adoption of a 'Master' formative mark by the Respondent is to cause confusion.

T. The Respondent is taking undue advantage of the innocent customers who may or may not inquire about the authenticity of the Respondent. Even if the Respondent informs a purchasing costumer that it is not related to the Complainant, the same does not bestow any right to use a 'Master' formative mark in the field of financial goods and services. The Complainant is a prior adopter and user of the 'Master' formative marks and 'Paypass'. It has also secured registration for the said marks, thus the Respondent has no legitimate right to use 'Master' formative marks for the same goods and services without any permission from the Complainant.

U. In addition, the Respondent is not making any use of the said domain name, and it is simply used to redirect customers to another domain name, against which the Complainant has filed a separate complaint. Bad faith is evident from the number of domain names registered by the Respondent and offering of the same services through each of the domain

- names. Moreover, in its brochure the Respondent has shown that the offending domain name was not registered/launched first in comparison to its other domain names, whereas the WHOIS records show that the offending domain name was the first domain name to be registered / launched by the Respondent.
- V. The dishonest intent can be seen from the fact that the Respondent has provided no reasoning for adoption of a 'Master' formative mark in the field of financial goods or services, even though the Respondent had prior knowledge of Complainant's 'Master' formative marks.
- W. The bad faith on the part of the Respondent is further demonstrated by the use of the trade mark of 'Mastercard' on the brochure indicating the launch of mobile point of sale. The adoption of the trademark of the Complainant without a license or other authority is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the Complainant. The use of the offending domain name by the Respondent is not for non-commercial and would not fall under the ambit of 'fair use'.
- X. It is submitted that the Respondent was aware of the trademark of the Complainant when it procured the registration of the Domain Name in August 2014.

Y. It is hereby requested that since the Respondent is duping the consuming public and eroding the distinctive character of the Complainant's Marks and also diluting the well-known mark of the Complainant, the balance of convenience rests entirely in favour of the Complainant. Accordingly, in the interest of justice and as measure of relief in equity, it is requested that the appropriate authorities be instructed by the Learned Tribunal to have the Domain Name in question transferred to the Complainant.

## **II. Respondent**

### **Respondent contends as follows:**

- A. It is pertinent to note that the averments laid down in the paragraph No. 1 to 16 of the complaint filed by the Complainant are with respect to the history of the establishment of the Complainant's Company and the background of the domain name [www.masterpass.com](http://www.masterpass.com).
- B. It is submitted that the Complainant in paragraph 17 of the complaint has stated the averments with respect to the trademark registration of its sub-brands under multi-classes. It is further submitted that in paragraph 18 of the complaint, the Complainant has stated that they have applied for marks like "Master Money", "Master Wallet" and "Master Mobile Transactions" solutions, here it is pertinent to note that the Complainant

has only applied for the registration of these marks with the registry but at present they haven't secured the registration of the same and for the same, the Complainant has not placed on record any such document.

C. It is pertinent to note that the Complainant in paragraph no. 21 to 24 of the complaint has stated the background of the Respondent's domain name www.masterpay.co.in. It is further submitted that the Complainant in paragraph no. 25 of the present complaint has stated the jurisdiction point with respect to the present complaint, here it is pertinent to note that the complaint filed by the Complainant is itself not tenable and bad in law, as it is beyond the scope of jurisdiction, hence the arbitration proceeding initiated in the present complaint is voidable as it is beyond its jurisdiction to entertain the present complaint and the reason for the same is that the alleged subject matter of the Complaint is the mark "Masterpay" and upon the same the Complainant has already filed the Complaint bearing No. INDRP case No. 972 before this Registry. Therefore, the act of Complainant by way of filing subsequent complaint with respect to similar subject matter is bad in law, hence the present complaint filed by Complainant is not maintainable.

D. It is submitted that the Complainant in paragraph no. 26 of the complaint has laid down the averment with respect to the well-knownness of its



marks, wherein the Complainant has not specified that the domain name www.masterpass.com or the trademark Masterpass is well known and to substantiate the said averment, the Complainant has not placed on record any such document with respect to the same. Hence, here it is extremely important to note that the Complainant is merely claiming the 'well-known' criteria without any such evidence in the said complaint.

E. It is pertinent to note that the Complainant in paragraph No. 27 and 28 has stated the registration of the Respondent's domain name www.masterpay.in and the addresses of the Respondent respectively, which is not disputed by the Respondent. It is further submitted that the Complainant in paragraph No. 29 has laid down the averment with respect to the manner of representation of Respondent's mark Masterpay and further claims that the Respondent's mark is mere resemblance of the Complainant's mark, here it is extremely important to note that the Respondent's mark Masterpay is completely distinctive and not identical with the Complainant's mark at all. It is submitted that while applying the criteria of deceptive similarity, one has to consider the manner of representation of the mark including the colour combination, shape, font, design. Hence after perusal of the graphical representation of Respondent's mark along with the Complainant's mark, such conclusion

cannot be derived that the Respondent's mark is similar to the Complainant's mark.

F. It is submitted that the Complainant has laid specific averment in paragraph 30 of the complaint with respect to the services provided by the Respondent, here it is important to note that the Respondent is only offering services of mobile and DTH recharge, postpaid bill payments, domestic money transfer, utility bill payment and will provide the service of bus booking through its domain [www.masterpay.in](http://www.masterpay.in), therefore after perusal of the screenshot of the Respondent's website, the alleged services such as bulk SMS, champ holidays, air booking, online B2B store and entertainment specified in the complaint by the Complainant are incorrect and misrepresented by the Complainant in the said complaint.

G. It is submitted that the Complainant in paragraph 31 of the complaint has stated the contents of the brochure of the Respondent with respect to the services offered and the averment with respect to the launch of prepaid debit card with collaboration of Yes Bank by the Respondent. At this point of time the Respondent would like to submit that the alleged averment with respect to launch of prepaid debit card, was only a proposed project that the Respondent had thought of initiating in the market, but the Respondent has neither launched such project of prepaid debit card till

date nor is he willing to undertake such project. Therefore, the intention of the Respondent with respect to the said proposed project was not malafide since inception and the said fact is reflected from the letter dated 17.6.2017 sent by Respondent's Counsel to the Complainant's Counsel with respect to the specific averment of non-willingness to launch credit or debit card. The Respondent craves leave to refer and rely upon the copy of letter dated 17.6.2017 as and when required. It is pertinent to note that the Respondent shall be at liberty to furnish the undertaking with respect to the non-willingness to launch the credit or debit card, which the Complainant alleges to be similar to that of their product, as averred by the Complainant in the complaint. In the same paragraph it is further averred by the Complainant that the Respondent is in process of introducing of its own Mobile Point of Sale system which all accept payments from all domestic and international cards including 'Mastercard' and 'Maestro' card. The Respondent with respect to the said averment states that it does not wish to undertake any such system which will accept payments from domestic and international card with respect to Mobile Point of Sale system.

- H. The Respondent states that as far as averments in paragraph No. 32 of the said complaint are concerned, it is in fact first two domain names that are functional and working and not three as stated by the Complainant.

Further the Respondent does not wish to do any business as far as the other domain names listed in paragraph No. 32 are concerned.

- I. It is submitted that the Complainant in paragraph No. 34 of the complaint has stated that the Complainant through their counsel served a cease and desist notice on the Respondent and thereafter the Respondent had replied the same. Therefore, the said averment with respect to service of notice is not disputed by Respondent. It is further stated that the Complainant has also averred the contents of the reply notice given by the Respondent in the complaint filed by the Complainant before the .IN registry. Hence it is submitted that the Respondent shall abide by the contentions raised in their reply and the same are reproduce herewith in the present reply to the complaint filed by the Complainant.
  
- J. It is pertinent to note that with respect to paragraph No. 35 of the complaint, the Respondent states that the services offered by the Respondent is running on Business To Business (B2B) module and the services offered by the Complainant using the mark Masterpass is running on Business To Customer (B2C) module, therefore the services offered by Respondent and Complainant are completely different and do not run on the same Business Module. It is submitted that the main difference between both the modules is that the payment gateway in the B2C module

only deals with bank customers and in B2B module there is a distribution network between the owner and the distributor, which runs only in India. It is further submitted that the Respondent is nowhere connected with the customer directly while providing the said services hence the B2C module is not applicable in the case of Respondent and this point is crystal clear from the client list of the Respondent which consists of the distributors only. It is pertinent to note that the Complainant offering services is with respect to open ended wallet services, wherein one can only transfer money from bank to wallet and vice versa, but in the case of Respondent, the services offered by the Respondent are close ended wallet services, wherein one can only posse wallet money which can be added only from the authorized distributor or retailer, hence the question of banking services doesn't arises in the case of Respondent. The Respondent further submits that at present he is providing services to the total number of 1645 distributors and therefore the Respondent is nowhere connected with the bank account of the customers nor is providing any such services with the help of any credit or debit card at the customer level. Hence, the business of the Respondent and that of Complainant are distinct and not similar to each other. The Respondent submits that they are not manufacturing/selling or promoting any tangible product or any such services with respect to any tangible product while providing the financial

services and is only engaged in the business of offering services which run completely on B2B module.

K. It is submitted that with regards to averments made in respect of paragraph No.36 the Respondent states that they are open for amicable settlement of the present dispute. It was further averred that the Respondents were silent on the use of Masterpay for Mobile Point of Sale System (MPOS) despite being specifically asked by the Complainant to which the Respondent has already stated that the said company does not wish to do any business in regards of Mobile Point of Sale System which may kindly be noted. That as far as the objection raised by the Complainant to the trademark application filed by the Respondent before the Registrar of Trademark, the same is pending on the file of the Ld. Registrar of Trademark Office. Therefore, it would be inappropriate to appreciate the fact that the trademark of the Respondent is similar or infringing the Complainant's trademark.

L. It is submitted that with regards to averments made in respect of paragraph No.37 the Respondent states that the domain name www.masterpay.co.in and www.masterpay.pro belongs to the Respondent and the same has been secured by the Respondent bonafidely for temporarily technical arrangement and to utilize the same in the course of

business, therefore the intention of the Respondent is not malafide and not affecting the Complainant in any manner in the course of business. It is further submitted that the domain www.masterpay.co.in is redirected to the domain www.masterpay.in and the said domain is registered in the Respondent's name.

M. It is submitted that with regards to averments made in respect of paragraph No.38 the Respondent states that the allegation made as against the Respondent is vague and is without any substance. The Respondent has already stated that they do not wish to deal with transfer of money relating to credit card or debit card which is the core business of the Complainant and the Respondent restricts itself to B2B module which is not in conflict with the services provided by the Complainant.

N. It is submitted that with regards to averments made in respect of paragraph No.39 the Respondent states that the Complainant mark Masterpass is not well-known trade mark since it is not declared by any competent authority. The Respondent further submits that the word MASTER is the generic word and lacks distinctiveness, therefore no one can claim exclusive monopoly over the said dictionary word 'Master'. It is stated that there are several Proprietors who are using the word Master as either prefix or suffix worldwide and are registered too in various classes

including Class 36, therefore the Complainant's mark MASTERPASS and the Respondent's mark MASTERPAY are entirely distinct and not similar and the services provided by the rival parties are entirely different. Hence the Respondent would like to submit that the registration provided to the Complainant's mark and the details regarding the promotion and publicity provided by the Complainant is not at all relevant with the present dispute between the Respondent. Therefore, the Complainant's contention raised in the complaint is devoid of any merits.

O. It is submitted that with regards to averments made in respect of paragraph No.40 the Respondent states that the word 'Master' itself lacks distinctiveness but the same is descriptive word. In any way the business run by the Respondents is restricted to India and does not deal in international market and hence there is no question of taking advantage of the labour of another or offending domain name. Therefore, by no stretch of imagination can it be inferred that using the word 'Master' would affect the business of the Complainant considering the fact that the services provided by the Complainant and Respondent are totally different and independent.

P. It is submitted that with regards to averments made in respect of paragraph No.41 and 42 the Respondent, at the cost of repetition states



that the business of the Complainant and Respondent are totally distinct and independent from one another and by no stretch of imagination can it be said that the Respondent is passing off its goods and services as that of the Complainant. The Respondent further states that the opening page of his website Masterpay itself says that “total solution of all recharges” and the same indicates that the office of the company is situated at Rajkot. The logo of Masterpay is in a specific design with clear use of words ‘Masterpay’ and ‘Save Your Time’ which is nowhere similar to the stylized logo of MASTERPASS. In such circumstances there is absolutely no confusion being caused on account of the domain name www.masterpay.in and www.masterpay.co.in. Here it is pertinent to note that it is a settled position in the Trademark Law and the principle laid down in various judgments passed by the Apex Court, the position is very clear that when two marks are to be compared they should be compared as whole and the single feature of a mark cannot be compared in isolation to decide whether it is identical and/or deceptively similar and will cause deception and confusion in the minds of consumers and traders, therefore while comparing the mark of the Complainant with that of the Respondent’s mark the conclusion can be derived that it is entirely distinct and not similar to each other. It is further submitted that the Respondent has not adopted the principle of bad faith while registering its domain name www.masterpay.in and www.masterpay.co.in, moreover the Respondent

in bonafide manner is offering its services with the help of B2B module marketing and therefore the services provided by the Respondent are completely distinct and not similar to that of the Complainant. The said fact is reflected in the reply to the examination report filed by the Complainant Company dated 28.9.2015 before the Registrar of Trademark, at the time of registration of MASTERPASS Trademark, wherein it is specifically stated by the Complainant in the said reply that a mark should be looked in isolation and its various integers should not be broken into segments and read but should be consider as a composite whole. Therefore, the contention now raised by the Complainant is totally baseless and against the stand taken by the Complainant in their Reply dated 28.9.2015.

Q. It is submitted that with regards to averments made in respect of paragraph No.43 the Respondent states that the consuming public and the distinctive character of the Complainant's mark are totally different with that of the Respondent's mark and the Complainant's mark MASTERPASS has not been declared as well known, hence the criteria of well-known ness doesn't apply in the case of Complainant's mark MASTERPASS, therefore the question of dilution of the Complainant's averred well known mark in the complaint doesn't arise, hence the balance of convenience doesn't rest towards the Complainant.

R. The Respondent therefore concludes by stating that if the prayer as sought by the Complainant is granted then the Respondent would face a huge loss considering the fact that he has incurred big expenses for software development and maintenance as well as for marketing and other promotional activities of www.masterpay.in. The Respondent has earned its own goodwill and transferring the domain as prayed by the Complainant in its name would cause irreparable financial loss to the Respondent and the same would not be in the interest of justice. The Respondent therefore prays that considering the facts and contentions as replied by the Respondent herein the complaint filed by the Complainant is devoid of any merit and the same is liable to be dismissed in the interest of justice.

### **III. III. Complainant Under Rejoinder**

#### **Complainant contends as follows:**

A. It is denied that the Respondent is engaged in the business of providing of services with respect to mobile recharge, DTH recharge, utility bill payment, domestic money transfer or that the mark Masterpay is distinctive of the Respondent's services. It is also denied that the Respondent has acquired distinctiveness in the market. The submission

regarding registration of the domain names www.masterpay.in and www.masterpay.co.in and their renewal are accepted; however, it is categorically denied that the said domain names/MasterPay trade mark is in use since 2014 or 2016, respectively. It is submitted that the registration of the domain name does not and cannot mean that the same was put to use.

B. However, it is pertinent to mention that the trade name of the Respondent is Champion Software Technologies Limited, which is same as its domain name, as mentioned in the paragraph under response, i.e. www.champrecharges.com. Moreover, the Respondent has also secured registration of the mark ChampRecharges. In view of the same, the reasons behind adoption of mark Masterpay, or domain name www.masterpay.co.in, are clear evidence of bad faith on the part of the Respondent, as there are no legitimate reasons behind adoption of the said mark/domain name.

C. It is denied that the domain name www.masterpay.in and www.masterpay.co.in differs from the domain name of the Complainant, i.e. www.masterpass.com or that the visual aspect with respect to design and features shown on the domain name www.masterpay.in is distinctive or different. It is accepted that the impugned domain name

www.masterpay.co.in re-directs users to the domain name www.masterpay.in. Therefore, it is evident that there is no website being hosted on www.masterpay.co.in and the Respondent has no legitimate use of the same domain name. The Respondent is only cybersquatting the impugned domain name www.masterpay.co.in.

- D. It is denied that the subject complaint is bad in law or is beyond the scope of jurisdiction or that the arbitration initiated by the Complainant is voidable. It is submitted that the Complainant has filed the complaints as per the rules and procedure of INDRP, under which, separate complaints have to be filed for different domain names. It is submitted that even if the Respondent is now not launching the credit/debit card or mobile point of sales system, the fact of the matter is that the Respondent intended to launch the same and would have done so, if the Complainant had not written to the Respondent to refrain from doing so. This also clearly indicates the malafide and bad intention of the Respondent in adoption of the impugned domain name which is similar to the trade mark 'MasterPass' and 'Paypass' of the Complainant.
- E. It is absolutely denied that the services, targeted public and trading channels of the Respondent and Complainant differ from each other. It is denied that the business module of the Respondent is B2B and that of the

Complainant is B2C or that the Respondent does not deal with customers or that it serves 1645 distributors or that it is not involved in providing services pertaining to finance. It is accepted that the services offered by the Respondent are closed ended wallet services. It is submitted that the services offered by the Respondent are wallet services and the consuming public is not technically trained to differentiate between open or close ended wallet services. Both the Respondent and the Complainant have wallet services being offered to the consuming public and there is great likelihood of confusion on part of the consuming public in the matter.

F. It is also denied that the mark MASTER is generic for financial services or that no one can claim monopoly over the same or that there are many entities that use MASTER or that the mark lacks distinctiveness or it is descriptive. It is denied that the Respondent will face any loss due to the transfer of the impugned domain name or that the Respondent has incurred huge expenditure in any promotion of the impugned domain name or that the complaint is devoid of any merits. It is submitted that there is no dispute about the law of comparison of trade marks, however the concept of deceptive similarity has to be borne in mind while comparing any two marks. It is pertinent to mention here that document submitted as Annexure, has no signature or any seal to support veracity of figures; therefore the same cannot be accepted.

G. It is pertinent to mention here that NIXI has passed an order in another domain name dispute for the domain name www.masterpay.in., wherein the arbitrator has specifically held that the domain name www.masterpay.in is deceptively similar to the trade mark Masterpass of the Complainant.

## **7. Discussion and Findings:**

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

**(i) Identical or confusingly similar with the Trade Mark, etc [Para 4(i) of INDRP Policy]**

- A. The Complainant is a well-known and renowned world over for its technology driven technology, operating in financial service sector in liaison with numerous Banks and Financial Institutions all around the globe. The registration of Trademark is recognized as prima-facie evidence of rights in a mark. Complainant has proved that it has rights in the Trade Mark 'MASTERCARD', 'MASTERPASS', 'PAYPASS', etc and has further secured the registration of Trademark in India under different classes. It was held in the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER [WIPO Case No. D2010-0858] that trademark registration constitutes prima facie evidence of the validity of trademark rights. [See: Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case No: D2001-0654.].
- B. In the matter of MasterCard International Incorporated, MasterCard Europe SPRL v. IT Manager/ Crosspath [Case No. D2009-1714] it was held that the dominant feature of Complainant's MASTERCARD mark (and other, similar marks) and the disputed domain name is the word MASTER. Given the fame of Complainant's MASTERCARD mark, which Respondent does not (and in good faith could not) deny, adding a common word that is an integral part of Complainant's business does not obviate confusing similarity.





- C. Further, the tests for comparison of the two word-marks were formulated by Lord Parker in Planotist Co. Ltd.'s application (1906) 23 RPC 774 as follows:  
"You must take the two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trademarks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be a confusion -- that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public which will lead to confusion in the goods -- then you may refuse the registration, or rather you must refuse the registration in that case." [INDRP/782 - HuntNews.in].
- D. Though the disputed Domain Name <masterpay.co.in> does not incorporate any of the said Trademark in it's entirely but is similar to the registered Trademarks of the Complainant. The same has been recently held in the matter of <masterpay.in> [INDRP/972] as well.
- E. Besides it is also well-established that the extensions such as '.CO.IN' in a disputed domain name do not affect a finding of similarity. In the INDRP



matter of The Hershey Company V. Rimi Sen, it has been held that the addition of the country top level domain “.co.in” in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant’s mark [INDRP/289 - Hersheys.co.in]. Also in the matter of Compagnie Générale des Etablissements Michelin Michelin Recherche et Technique S.A. V Artemio Garza Hernandez [WIPO Case No D2015-0257], the Panel observes that the extension “.com” is typically not taken into consideration when examining the identity or similarity between a complainant’s trademarks and a disputed domain name.

Thus, the Complainant has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

**(ii) Rights or Legitimate Interests in the Domain Name [Para 4(ii) of INDRP Policy]**

The circumstances have been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in at least one circumstance under this clause in order to prove legitimate interest:

*Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name*

*Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii):*

*(i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or*

*(ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

*(iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

A. The onus of proof is on the Complainant to prove that respondent has no legitimate interests in the Disputed Domain Name. While it is quite evident that the Respondent though not having an active website over the disputed domain name <masterpay.co.in> but has a legitimate active website over similar domain name <masterpay.in>.

B. The redirection of Disputed Domain Name to another company's legitimate website is use of the Disputed Domain in good faith because any person / company may register more than one Domain Name to secure its rights to particular keywords in various domain names but it may not be feasible to run a website on each and every domain name as it may cause confusion among visitors. To take an example of famous portal Amazon on Indian ccTLD, it owns both Amazon.IN and Amazon.co.in domain names but it redirects Amazon.co.in to Amazon.in. If Amazon starts providing services on both, it will only lead to confusion among Internet users and also for other reasons, it won't be feasible to run portal on both domain names. Above all, Complainant's own website <mastercard.in> redirects to <mastercard.co.in> and only one of them has been developed and is actively used for Indian users.

C. That further whether the services rendered by the Respondent through the <masterpay.in> website are bona-fide or not. The Respondent's lists upon the said website the services such as Mobile Recharge, DTH Recharge, Utility Bill Payments and Domestic Money Transfer and nothing upon the said other domain name <masterpay.in> where a user visiting the disputed domain name is redirected seem to be mala fide, prima-facie.

- D. That the Complainant mark – “MASTERPASS” & “PAYPASS” seems to have been introduced / promoted in India since 2015 in association with CITI & SBI respectively, though trademark application were made earlier but without providing “Used Since”, indicating a future use. While the Respondent started using the mark MasterPay in year 2014, the same is the domain registration date for <masterpay.in> domain name and also indicated in Trademark registry records as date of use - 02 August 2014.
- E. That though the Complainant alleges that the Respondent is also contemplating launching services of debit card with Yes Bank and of introducing its own Mobile Point of Sale system and a document provided mentions the cards of the Complainant as well, i.e. MasterCard and Maestro. Whereas the Respondent denies the same and nothing of sort has been indicated on the disputed domain name or the domain name to which it redirects. Therefore, legitimate use of the Domain Name is upheld.
- F. That the Respondent’s Trademark application in the mark MasterPay has been opposed by the Complainant and the same is pending before the Trademark Registry. Further, the Complainant tries to bring more evidence and arguments based upon its investigation locally at Respondent’s place and otherwise. But all this is beyond the scope of these domain dispute / arbitration proceedings as INDRP deals with purely a Cybersquatting /

Domain Dispute matters. Also time and again under many UDRP decisions it has been reiterated that “UDRP is not a Court”, the same applies to INDRP as well. But if the Complainant feels, still its Trademark is being violated, he needs to approach appropriate authorities.

G. That further on some online complaint websites, there have been indication that the disputed domain name <**masterpay.co.in**> till year 2010 was used in bad faith by some Madurai based company **Masterpay Inc.**, whereby money was collected from users and they were required to email to Complainant's MasterCard customers. And this was indeed typical bad faith / mala fide use through the disputed domain name <masterpay.co.in> and more appropriate time for the Complainant to have brought INDRP way back in the year 2010.

H. To quote **Mr Gerald M. Levine from 'Domain Name Arbitration' - UDRP is not a Trademark Court:** “The UDRP is a special purpose arbitral regime designed for trademark owners to challenge domain name registrants allegedly infringing their rights to exclusive use of their trademarks on the Internet. The Complainant does not have to prove Trademark Infringement, only that the domain name was registered and is being used in bad faith. This gives rise to an anomaly that a Complainant may fail to prove abusive registration of a domain name that would otherwise be condemned under trademark law” [**source: Domain Name Arbitration - Pg 75 by Mr Gerald M. Levine**]. In the matter of Ni Insan Kaynaklari Personel ve Danismanlik

Limited Sti v. Timothy Michael Bright [Case No. D2009-0315], it was held that an administrative proceeding under the Policy is not a proceeding in “equity” in which a panel seeks to generally determine whether one party or another has acted more or less fairly toward the other, thereafter fashioning a “just” remedy. A proceeding under the Policy is not an assessment of civil trademark infringement. It is possible for a respondent to be infringing the trademark rights of a complainant, yet be found not to have acted in bad faith.

- I. Similarly, in the matter of Audi AG v. Stratofex [WIPO Case No. D2012-1894] it has been held that **if the Complainant considers that the Respondent’s present (or future use) of the Domain Name infringes its trademark rights then it is free to commence proceedings against the Respondent in a court of competent jurisdiction.** This case illustrates the widely recognized principle that the Policy is designed to deal with clear cases of cybersquatting, Further in Clockwork IP LLC, One Hour Air Conditioning Franchising, LLC v. Elena Wallace, WIPO Case No. D2009-0485, it was laid down that **UDRP proceedings are for clear cases of cybersquatting, not for resolving trademark infringement and/or trademark dilution disputes or other matters more appropriately dealt with through the courts.**

In the circumstances, the Arbitrator concludes that the Complainant has not been able to establish the requirement of paragraph 4 (ii) of the Policy. More



specifically, the Respondent is protected under clause (i) of Para 7 of the Policy, which elaborates legitimate interests a Respondent may have.

**(iii) Registered and Used in Bad Faith [Para 4(iii) of INDRP Policy]**

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

*Paragraph 6 of the INDRP policy: Evidence of Registration and use of Domain Name in Bad Faith:*

*For the purposes of Paragraph 4(iii), 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:*

*(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*



*(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or*

*(iii) 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.*

A. In the matter of Inpact S.A. V Inpactme SpA DME 2016 - 001 (inpact.me), it was held that given that second condition has not been met the requirements of the Policy to order for the transfer of the Disputed Domain, it is not necessary to analyze third element in the policy in any case, given the facts and circumstances of the case.

B. In the UDRP matter of Saltworks, Inc. v. Gary Pedersen, Salt Works [Case No. D2013-0984], the Panel determines that Complainant has failed to establish that Respondent lacks rights or legitimate interests in the disputed domain name. Because Complainant has failed to establish an element necessary for a finding of abusive domain name registration and use, the

Panel need not address the element of bad faith registration and use.  
“Complainant’s request for relief is denied”.

Accordingly, the Arbitrator need not address the element of bad faith registration and use, as the Complainant has failed to prove the second / previous clause as to legitimate use by the Respondent.

**8. Decision:**

Complainant has failed to establish that the Respondent has no legitimate interest in the <masterpay.co.in> Domain Name. Accordingly, the Complainant’s request that the Domain Name be transferred is DENIED.

Accordingly, it is ordered that the <masterpay.co.in> Domain Name REMAINS WITH Respondent.



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Ankur Raheja, MCA FCS LLB  
Sole Arbitrator, NIXI, India  
Date: 18th June 2018  
Place: Agra