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P.S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L No B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104, (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: www.mgp.in

Maruti Suzuki India Limited
(Formerly Known as Maruti Udyog Ltd.,)
Plot No.1, Nelson Mandela Road,
Vasant Kunj
New Delhi 110 070, rep. by its Authorised
Representative Mr.S.Ravi Aiyar,
Kiransingh.thakur@maruti.co.in
lsdavar@ndf.vsnl.net.in
anju2010@gmail.co.in

Complainant

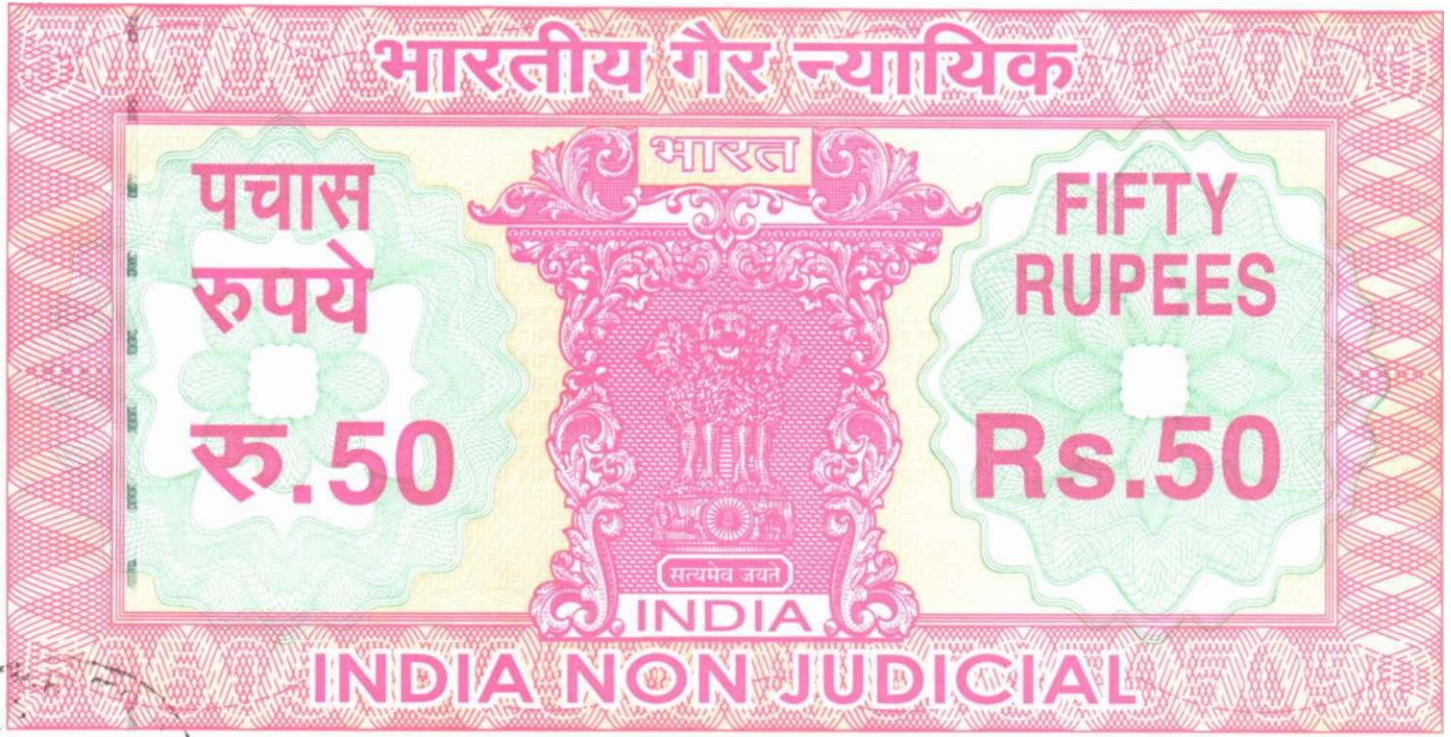
Vs.

Mr.Trevor Foltz
No.19, South Fayette Street
Shippensburg
Pennsylvania
17257, USA.
tefoltz@hotmail.com

Respondent

..2.





தமிழ்நாடு TAMILNADU

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R.S. SHANMUGA SUNDARAM,
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HIGH COURT CAMPUS,
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AWARD

1. The Parties:

The complainant is Maruti Suzuki India Limited (Formerly Known as Maruti Udyog Ltd.), having office at Plot No.1, Nelson Mandela Road, Vasant Kunj, New Delhi 110 070.

The respondent is Mr.Trevor Foltz, having address at No.19, South Fayette Street, Shippensburg, Pennsylvania, 17257, USA.

2. The Domain Name and Registrar:

The disputed domain name:

www.mgp.in



The domain name registered with .IN REGISTRY

3. Procedural History:

August 09,2011 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.

August 23,2011 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Claimant, Complainant's authorized representative, Respondent and .IN REGISTRY.

September 02,2011 : Respondent sent a reply email attaching with a soft copy of the written response and annexures.

September 03,2011 : Arbitrator forwarded the written response of the Respondent by email to the Complainant and it authorized representative directing them to file their Rejoinder, if any, within 7 days, however no rejoinder was filed.

: The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The complainant is Maruti Suzuki India Limited (Formerly Known as Maruti Udyog Ltd.), having office at Plot No.1, Nelson Mandela Road, Vasant Kunj, New Delhi 110 070. The complainant is represented by its Authorised representative Mr.S.Ravi Aiyar whose Power of Attorney is filed and marked as Annexure 2.

Complainant's Activities:

The Complainant states that the Complainant is a public limited company duly incorporated under the Companies Act, 1956 in India. The complainant is one of



India's leading automobile manufacturers and the market leader in the car segment, both in terms of volume of vehicles sold and revenue earned. Maruti Suzuki offers 13 brands and over 150 variants of cars ranging from entry level Maruti 800 & Alto to stylish hatchback Ritz, A star, Swift, Wagon R, Estilo and sedans DZire, SX4 and Sports Utility vehicle Grand Vitara including recently launched Eeco. The Complainant is also providing genuine parts of automobiles under the trademark MGP (Maruti Genuine parts) (L) in which component Maruti is derived from trading name of the Complainant. The company is a subsidiary of Suzuki Motor Corporation, Japan, which owns 54.2 per cent of Maruti Suzuki. The rest is owned by the public and financial institutions. It is listed on the Bombay Stock Exchange and National Stock Exchange in India. It is largely credited for having brought in an automobile revolution to India. It is the market leader in India and on 17 September 2007, Maruti Udyog Limited was renamed Maruti Suzuki India Limited. Copy of Certificate of Incorporation of Complainant Company is filed and marked as Annexure-3 (Collectively).

4.2 Complainant's Trading Name:

The Complainant states that the word/component 'mgp' is an integral/ prominent component of subject domain name is famous registered Trademark of the complainant adopted in 1989. The said Trademark is also registered vide registration no. 677876 dated 24.08.1995 and Complainant is using the said Trademark since 3.12.1989 in India. Copy of Registration Certificate along with cutting in Trademark Journal showing renewal for Trademark Registration No.677876 is filed and marked as Annexure-4 (collectively) and latest status showing in the website of Trademark Registry is filed and marked as Annexure 5 (Collectively). The Trademark 'MGP' is based on trading name of the Complainant in which M denotes Maruti which is well known trademark of the complainant and has about 21 trademarks registration only to the mark Maruti throughout the world including India. Copy of list filed and marked as Annexure 6 (Collectively), hence, it is clearly evident that the Complainant is the prior adopter and user of the word/component 'mgp' which is



derived from Complainant's trading name. The approximate sales of the goods of the Complainant bearing the Trade mark mgp (logo) for the past 5 years are as follows:

YEAR	Sales (in million Rupees)
2005 - 2006	11891
2006 - 2007	15620
2007 - 2008	17308
2008 - 2009	203583
2009 - 2010	289585

At all material times, the trade mark 'MGF along with wing device of Maruti logo when used on or in relation to the aforesaid goods has indicated and still indicates to purchasers and intending purchasers as goods of the Complainant and none other. Copies of some magazines and advertisement material are filed herewith along with list of documents and marked as Annexure-7 (Collectively). The goods sold and offered for sale by the Complainant under the trade mark Mgp(L) are of excellent quality and thus have acquired reputation and goodwill throughout the world, including India and intending purchasers identify and recognize goods of the Complainant by the trade mark Maruti. The Complaint is, therefore, the exclusive proprietor of trade mark 'MGP' along with wing device in respect of the aforesaid goods.

4.3 Respondent's Identity and activities:

The respondent is Mr.Trevor Foltz, No.19, South Fayette Street, Shippensburg, Pennsylvania, 17257, USA.

5. Parties contentions:

A. Complainant:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has rights;



The Complainant states that the provisions of Paragraph 3(b)(vi)(l) of the IN DOMAIN NAME RESOLUTION POLICY are invoked as the contested Domain Name "mgp.in" is identical to the registered Trade Mark mgp (L) of the Complainant.

(b) Respondent has no rights or legitimate interests in the domain name;

The Claimant states that by using the impugned domain name, the Registrant/Respondent has intentionally attempted to attract Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainants' trade name or trade 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. Print out of whois record showing subject domain name in the name of the Respondent is filed and marked as Annexure-8 (Collectively).

(c) Respondent has registered and is using the domain name in bad faith:

The Claimant states that the provisions of Paragraph 3(b) (VI) (2) of the IN DOMAIN NAME RESOLUTION POLICY are invoked as the Respondent has no right or legitimate interest in respect of the impugned domain name 'mgp' is not the personal or surname name, trade/ service mark, trading name, of the Respondent. Respondent has no reason whatsoever to adopt the domain name mgp.in, which is a registered trade mark of the Complainant.

(d) The Claimant states that the provisions of Paragraph 3(b) (VI) (3) of the IN DOMAIN NAME RESOLUTION POLICY are invoked as the Respondent, to the best of the knowledge of the Complainant, has adopted the impugned domain name with dishonesty and bad faith with the malafide intention to trade upon the goodwill and reputation associated with the trade mark 'mgp.in' of the Complainant, thereby earning undue profits. This is evident from the fact that the registrant has linked his domain name to that of the Complainant.



(e) The Claimant further states that it is apparent that the Respondent has registered the impugned domain name for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who is the proprietor of the Trademark MGP (L) or to a competitor of the Complainant, for a valuable consideration; and that the Respondent has registered the impugned domain name in order to prevent the Complainant - the proprietor of the trademark MGP (L) from reflecting the mark in a corresponding domain name.

B. Respondent:

(i) The Respondent states that he is a professional fine artist with a B.A. in Art from Shippensburg University. The Respondent is the owner of many domain names and websites associated with the fine arts and the promotion artists and their artwork. The Respondent is the owner of the website deviantgallery.com, created November 05, 2005. Copy of deviantgallery.com's Whois record attached and marked as Annexure-1. Deviantgallery.com functions as a non-profit organization for artists promoting their work via its website and has offered a collective for artists to sell their work on eBay under the username "deviantgallery" since November 08, 2005. It has been the goal of the Respondent and deviantgallery.com to aid artists in the promotion of their work as individuals and as a collective with the belief that the success of one is good for the success of all. Since the inception of deviantgallery.com, associated artists have sold over 4,500 pieces of art around the world. The domain 'mgp.in' was purchased as a website for deviantgallery.com artist Morgan Gabriel Price. Copy of deviantgallery.com homepage, online gallery page, and artist's gallery page attached and marked as Annexure-2. Morgan Gabriel Price's artwork is signed with, associated with, and promoted by the initials "MGP" on deviantgallery.com and on eBay. Copy of Morgan Gabriel Price's artwork attached and marked as Annexure-3. Copies of two eBay auctions for the artwork of Morgan Gabriel Price from August 11, 2011 attached and marked as Annexure-4. It is not uncommon for contemporary artists to promote and brand themselves with their initials or similar abbreviated name such as a tag in graffiti writing. For example, the Respondent is the owner of the website tefstudio.com, created January 04, 2004. Copy of tefstudio.com Whois record attached and marked as Annexure-5. The letters



"tef" in the domain tefstudio.com correspond to the initials of the Respondent's name "Trevor Eugene Foltz". The Respondent's artwork is signed with the initials "TEF" and associated with the initials TEF. The Respondent and deviatgallery.com have aided artists in acquiring and registering domains for websites other than the domain mgp.in for Morgan Gabriel Price. One example is deviantgallery.com artist Kurt Black. Copy of Kurt Black's deviantgallery.com gallery page attached and marked as Annexure-6. The domain kurtblack.com was created on January 04, 2004 and is registered in the name of the Respondent "Trevor Foltz". Copy of kurtblack.com Whois attached and marked as Annexure-7. The domain name mgp.in was specifically sought out for the following reasons. "MGP" are the initials of the artist Morgan Gabriel Price. "MGP" is the signature used to identify and sign artwork produced by the artist. "MGP" are the initials used to promote the artist. Also, much of the artist's past work has depicted Bollywood stars making the ".in" extension especially attractive and relevant. In 2008, an internet search led the Respondent to dnforum.com where the domain mgp.in was posted for sale by the previous owner. Copy of mgp.in's dnforum.com sale listing attached and marked as Annexure-8. The Respondent contacted the seller and purchased the domain mgp.in for \$110 on August 31, 2008. Although the design and development of a website was not immediately planned and the funds for development not immediately available, the domain was acquired on August 31, 2008 because that was the time it was being advertised for sale.

(ii) The response to the Complainant's grounds on which this complaint is made follows:

1. The Complainant has asked that paragraph 3(b) (VI) (1) of INDRP be invoked "as the contested domain name mgp.in is identical to the registered Trade Mark [mgp](http://mgp.in) (L) of the Complainant." However, in the Complainant's Annexure-5, the copy of the latest status showing on the website of the Trademark Registry, it is clearly shown that trademark No. 677876 is "Maruti G P". "Maruti G P" is not the disputed domain in this arbitration. The trademark "Maruti G P" as shown on the website of the Trademark Registry as trademark No. 677876 is not the same as "MGP". Furthermore, a search on the Trademark Registry website



(<https://ipindiaonline.gov.in/eregister/SearchByWM.aspx>) using the Word Mark: "Maruti G P", Proprietor Name: Maruti Udyog Limited, Class: 12, and Goods and Services : Parts of Motor Vehicles, returns the result of Trademark No. 677876 as shown in the Complainant's Annexure-5. Performing the exact same trademark search and substituting "MGP" in place of "Maruti G P" returns the result of "No Matching Registered Trade Marks". Copy of Trademark registry website search attached and marked as Annexure-9. The Complainant's own filing of Annexure-5 shows that Maruti Udyog Limited does not hold the trademark "MGP" and a search on the Trademark Registry website reveals no matching trademarks for "MGP" held by the Complainant.

2. The Complainant has asked to invoke INDRP paragraph 3(b) VI (3) stating that the Respondent has adopted the domain name mgp.in "with dishonesty and bad faith with the mala-fide intention to trade upon the goodwill and reputation associated with the trade mark mgp.in of the Complainant, thereby earning undue profits." As has been shown, the Complainant is not the owner of trademark "MGP". A search on the Trademark Registry website reveals no matching trademarks for "MGP" held by the Complainant. It must therefore be concluded that the Respondent could not have believed that his purchase of the domain 'mgp.in' infringed upon trademark rights of Maruti Udyog Limited. Furthermore, it is with all due respect to the Complainant that the Respondent can unequivocally state that he has never heard of "Maruti Genuine Products and/or the initials "MGP" being associated with "Maruti Genuine Products". The Respondent is not aware of the existence of any print or televised ads for "Maruti Genuine Products" in the United States and it is again with respect that the Respondent must honestly state that "Maruti Genuine Products" is not a known brand or product to the general public in the United States. The Complainant has stated that the Respondent has linked the domain name 'mgp.in' to that of the Complainant. The Respondent can state that at no time did he intentionally link the domain 'mgp.in' to the Complainant and to the best of the Respondent's knowledge, 'mgp.in' was not linked to the Complainant prior to his purchase of the domain on August 31, 2008. However, this claim is impossible to respond to as the Complainant offers no details or evidence for review and response.



3. In this arbitration the Complainant has stated, "that it is apparent that the Respondent has registered the impugned domain name for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who is the proprietor of the Trademark MGP (L) or to a competitor of the Complainant, for a valuable consideration." domain to Complainant for a valuable consideration." As it has been shown herein, the Complainant is not the owner of the trademark "MGP". Since the domain 'mgp.in' was purchased by the Respondent on August 31, 2008, it has never been offered for sale to the Complainant, a competitor of the Complainant, or anyone else. Furthermore, the Respondent has never been contacted by anyone inquiring to purchase the domain name mgp.in. This accusation is completely without merit.

4. The Complainant has stated, "that the Respondent has registered the impugned domain name to prevent the Complainant - the proprietor of the trademark MGP (L) from reflecting the mark in a corresponding domain name." Again it must be stated that the Complainant is not the proprietor of the trademark "MGP". Furthermore, 'mgp.in' was not an unregistered domain that the Respondent registered in an attempt to prevent registration by the Complainant. As it has been shown herein, the domain mgp.in was registered by an individual prior to the Respondent purchasing the domain on August 31, 2008. As seen in the Complainant's Annexure-8, the Whois record for mgp.in shows that registration of the domain was created on "05-May-2008 20:06:22 UTC" nearly four months before the Respondent purchased the domain. Obviously the domain was available for registration for some period before this creation dated and could be registered by the Complainant if the domain was of importance to the Complainant's organization.

5. If the Complainant believed that their organization held the trademark for "MGP", NIXI's Sunrise Policy offered owners of registered Indian trademarks the opportunity to apply for .in domain names before the general public from January 01 to January 21, 2005. Copy of NIXI Sunrise Policy attached and marked as Annexure-10.



6. It is therefore prayed to refuse the transfer of mgp.in to the Complainant. If the Tribunal finds in favor of the Respondent, the Respondent offers the following as a remedy to future misunderstandings in the registration of mgp.in: a. Within 72 hours of being granted access to modify the domain mgp.in, the Respondent will have a homepage message posted on the website with the text, "Website of deviatgallery.com artist MGP. Domain not for sale." And b. Within 90 days of being granted access to modify the domain mgp.in, the Respondent will obtain the funds and have a website designed and uploaded to replace the homepage message.

No Rejoinder has been filed by the Complainant.

6. Discussion and Findings:

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(a) Identical or confusing similarity:

(i) This Tribunal finds that the Complainant is one of India's leading Automobile manufacturers and the market leader in the Car segment. Further, this Tribunal finds that the complainant is also providing genuine parts of automobile under the registered Trade Mark Maruti GP (Maruti genuine parts) (L) in which component the letter 'M' is derived from their trading name of the complainant i.e., Maruti. The complainant is in the Car manufacturing business for more than two decades in India and has also registered the Trade Mark "Maruti" along with the wings symbol



resembling " M " in various countries since 1991. So also the complainant registered the Trade Mark "Maruti GP" including the wings symbol resembling " M " in India as early as on 24.08.2005 vide registration No. 677876 as proved under their Annexure-4 which has also been supported by the status shown in the web site of the Trade Mark Registry under Annexure-5. The Complainant has been using their Trade Mark "MGP" in various forms such as web site www.marutisuzuki.com/commercials.aspx and posters for marketing campaigns through various electronic communications as proved under their Annexure-7. According to the complainant, the respondent has no right or legitimate interest in respect of the disputed domain name which is not only identical but also confusingly similar to the Trade Mark of the Complainant and that the respondent has registered the domain name and using the same in various ways for commercial gains. The claimant has specifically emphasized their contention that the Registrant/Respondent has linked its domain name to that of the complainant. The respondent submits that he is a professional fine artist and holds many domain names and web site associated with the fine arts for the promotion of artists and their art work. The respondent further contends that the domain "mgp.in" was purchased as a web site for deviantgallery.com by artist Morgan Gabriel Price and as such Morgan Gabriel price's art work is signed with, associated with and promoted by the initials "MGP" on deviantgallery.com and on eBay. The respondent's further contention is that it is usual in their business that an artist's art work is signed and associated with the initials of the artist. Further, the respondent has stressed upon the point that the complainant has registered the Trade Mark as "Maruti G P" and not registered as "MGP" and as such in the official web site of Trade Mark Registry of India on searching "MGP" the result was "No Matching Registered Trade Marks".

(ii) Admittedly, the respondent has not registered the Trade Mark "mgp". However, the respondent has purchased the domain name "mgp.in" on 31.08.2008 when it was advertised for sale as web site for deviantgallery.com artist Morgan Gabriel Price. The disputed domain name stated to have been registered just 4 months prior to the date of purchase by the respondent. However, since 2008, there is no proof as to the genuine usage either by the seller or by the respondent. On the other hand, the Claimant states that the respondent linked its domain name to that of



the complainant. In fact, on 20.10.2011 when the award was dictated, this Tribunal had a look up on www.mgp.in through the internet and that the home page of the said web site exhibits the "related searches" that too, relating to automobiles such as Epa Ratings, Best Mpg Cars, Buick Cadillac, New Cars, Used Cars, Model Year, Mpg Car, Miles Per Gallon, Ford Mustang, High Gear, Gas Prices, Fuel Economy, Epa Ratings, Green Car, Toyota Plus, Electric Vehicle, Epa Ratings, Honda Civic, Fuel Consumption, Ford Motor Company, Hybrid Car, Chevrolet Silverado, General Motors, Honda Insight, Base Msrp, Mpg, Cadillac Chevrolet. Therefore, the fact is established that the registration of the disputed domain name is not in good faith.

(iii) In this context it is pertinent to rely upon the award dated 26.09.2011 in the case of similar dispute over www.mgp.co.in between the very same claimant and respondent i.e. Maruti Suzuki India Ltd. and Mrs. Divya Poduval. In the said case, the case of the respondent was that MGP Associates P.Ltd. was incorporated by forming the initials of its Managing Director and Founder Mr.M.G.Poduval and such company is known as MGP under the brand name and also registered under the domain name <mgp.co.in> on 05.09.2008 and such registration is substantially much after the registration of the Trade Mark by the Complainant.

That be so, Respondent's domain name, <mgp.in>, consists of entirely Complainant's trademark. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <mgp.in>, is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of



paragraph 4(ii) of the Policy. The Complainant has established a strong case of their right over "MGP" and has also established the lack of rights and legitimate interest the Respondent has over the disputed domain name <mgp.in>. Considering the above, and based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's 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 web site or location.

ii) Admittedly, the Respondent has purchased the domain name <mgp.in> from its previous owner who had listed the same for sale. It is ex-facie that the previous owner registered the disputed domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to trademarks and trade names of the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark and trade name by any entity, itself is sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal concludes that the purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no



legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose and or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <mgp.in>, be transferred to the Complainant.

Dated at Chennai (India) on this 20th day of October, 2011.



(D.SARAVANAN)
Sole Arbitrator