

INDIA NON JUDICIAL

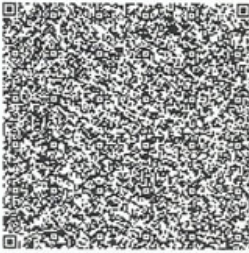
Government of National Capital Territory of Delhi



सत्यमेव जयते

e-Stamp

Certificate No. : IN-DL81024635881062P
Certificate Issued Date : 11-May-2017 12:16 PM
Account Reference : IMPACC (IV)/ dl835403/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL83540362756668210279P
Purchased by : ANKUR RAHEJA
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : ANKUR RAHEJA
Second Party : Not Applicable
Stamp Duty Paid By : ANKUR RAHEJA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line.....

INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB

A. Raheja
13-MAY-17

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

In the matter of:

**Momondo A/S
Løvstræde 1
1152 Copenhagen K
Denmark**

... Complainant

versus

**Ijorghe Ghenrimopuzulu
Gold Wave Corp.
Emerald office Park, P.O. Box MP 843,
Mt Pleasant, 30 The Chase, Emerald Hill
Harare, Zimbabwe 000**

... Respondent

ARBITRATION AWARD

Dispute Domain Name: momondo.co.in

1. The Parties:

a. Complainant: The Complainant in this arbitration proceedings is:
Momondo A/S having office at Løvstræde 1, 1152 Copenhagen K, Denmark
represented by BrandIT GmbH, having office at Bellerivestrasse 49, 8008 Zürich,
Switzerland.

b. Respondent: The Respondent in this arbitration proceedings is **Ijorghe Ghenrimopuzulu** of Gold Wave Corp., Emerald office Park, P.O. Box MP 843, Mt Pleasant, 30 The Chase, Emerald Hill, Harare, Zimbabwe 000.

2. The Domain Name and the Registrar:

- a. The Disputed Domain Name is www.momondo.co.in.
- b. Disputed Domain Name is registered with [PSI-USA, Inc. dba Domain Robot](#).

Further, details of the Disputed Domain Name are as follows, as per the publicly available WHOIS details.

Domain Name:MOMONDO.CO.IN

Created On:12-Mar-2016 04:34:37 UTC

Last Updated On:21-Feb-2017 04:55:09 UTC

Expiration Date:12-Mar-2017 04:34:37 UTC

Sponsoring Registrar:PSI-USA, Inc. dba Domain Robot (R43-AFIN)

Registrant ID:INX-15820002

Registrant Name:Ijorghe Ghenrimopuzulu

Registrant Organization:Gold Wave Corp.

Registrant Street1:Emerald office Park, P.O. Box MP 843, Mt Pleasant

Registrant Street2:30 The Chase, Emerald Hill

Registrant City:Harare

Registrant State/Province:ZW

Registrant Postal Code:000

Registrant Country:ZW

Registrant Phone:+263.4708981

Registrant FAX:+263.4708981

Registrant Email: rixadwokatnomer@googlemail.com

Name Server:NS1.PARKINGCREW.NET

Name Server:NS2.PARKINGCREW.NET

3. Procedural History [Arbitration Proceedings]

This is mandatory Arbitration proceedings in accordance with the .IN Domain Name Dispute Resolution Policy (“INDRP”), adopted by the National Internet Exchange of India (“NIXI”). The INDRP Rules of procedure (“the Rules”) were approved by NIXI on 28th June 2005 in accordance with Arbitration and Conciliation Act, 1996. By Registering the Disputed Domain Name with the NIXI Accredited Registrar, the Respondent has agreed to the resolution of the domain disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

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

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Advocate Ankur Raheja 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 this matter, the arbitration proceedings commenced on 29 April 2017 in terms of INDRP Rules. Relevant Dates are as follows:

Sr No	Particulars	Date
1.	Date of Handover of Complaint by NIXI	28 April 2017
2.	Soft Copy of Complaint served upon Respondent by Nixi	28 April 2017
3.	Hard Copy of Complaint received by Arbitrator	29 April 2017
4.	Notice of Arbitration issued to the parties, also referred as date of commencement of Proceedings	29 April 2017

5.	Second Notice to the Respondent	09 May 2017
6.	Award Passed	13 May 2017

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 29th April 2017, with the instructions to file his reply / response by 08th May 2017.
- That NIXI informed on 08 May 2017 that the Hard Copy sent to the Respondent through courier could not be delivered due to incomplete/incorrect address and the consignment was put on hold. The Respondent was asked to provide complete/correct address on the same day but no response was received. Therefore, the hard Copy could not be delivered to the Respondent.
- The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain was successfully delivered. But the hard Copy of the Complaint remained undelivered, therefore in terms of Rule 2(i)(B) of the Rules of procedure, another notice was issued on 09 May 2017, with the time till 12 April 2017 to respond or seek more time for Response, else the matter would be decided ex-parte.
- No personal hearing was requested / granted / held.

4. Factual Background

According to the documentary evidence and contentions submitted:

A. The Complainant is a company founded in the year 2006 in Denmark having its head office in Copenhagen, Denmark. The Complainant has reinforced its international presence by providing people with an un-manipulated listing of all flight prices in the entire world, and making it available to everyone.

B. The Complainant is a Danish company and the proprietor of the MOMONDO trademarks. With a truly internet based offer, Momondo has offered its products and services globally since it launched its award winning online flight comparison platform. India is an important market in the global travel industry, and the Complainant specifically targets this market by using local currency and travel preferences in the momondo.in site which is dedicated to Indian customers. In India, Complainant's uses its local official website www.momondo.in to connect to Indian customers. As previously noted, the company history dates back to 2006 when a small group of skilled and dedicated Danish developers united around a mission: to open the world. Challenging the dogmas of the flight industry, they created momondo: a free, independent online flight search offering full price transparency across the market.

C. The Complainant no later than May 2007 (see European Trademark Registration EU005944855) it coined, conceived and adopted the trademark/trade name “MOMONDO” and has been openly, continuously and extensively using the mark “MOMONDO” as its trade name, corporate name, business name, trading style, trademark worldwide since then. The Complainant’s products bearing the mark “MOMONDO” are well known and are used by consumers all over the world. The following link connects customers to the official websites of the Complainant: www.momondo.com.

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

I. Complainant contends as follows:

A. The Complainant submits that the Disputed Domain Name <www.momondo.co.in.> contains the Complainant's complete trademark/trade name registered in India and other countries. The Disputed Domain Name is visually and phonetically identical to the trademark and trade name of the Complainant. Such registration by the Respondent amounts to violation of Para 3 of the INDRP which states that a Registrant is solely responsible to ensure before the registration of the Disputed Domain Name that such domain name registration does not violate the rights of any proprietor/brand owner.

B. The Complainant reiterates that it is the owner of the trademark MOMONDO in various jurisdictions including in India, Europe, Asia and the US and has mostly used the trademark MOMONDO in respect to goods and services covered under classes 35, 39, 41 & 42.

C. The Complainant also reiterates that it is also the owner of several websites which are accessible world over and are available for use by users globally including those in India. The said websites contain extensive information about the Complainant and its products and services marketed and sold under the trademark and corporate name "MOMONDO".

D. The Complainant submits that it has painstakingly built up a good reputation worldwide and has invested substantial amounts of resources in

advertising its products under the trademark “MOMONDO” in various media, Internet, other print and visual media and also through fairs, exhibitions and events. Annexed are print screens of the Complainant’s 2016 promotional campaign “DNA Journey”, showing over 15,000,000 views on a single Youtube channel plus that an online promotion associated with the campaign attracted over 166,000 entries.

E. Further, the Complainant submits that upon perusal of the Respondent’s website www.momondo.co.in, the Disputed Domain Name is pointing to a parking page which is permissible - under WIPO rules - if the Respondent use the Disputed Domain Name for any lawful purpose. The Disputed Domain Name resolves to a website that provides links, of which some are directly referencing the Complainant. Complainant presumes Respondent receives pay-per-click (PPC) revenue for these links. The Respondent has made no claims to either having any relevant prior rights of its own, or to having become commonly known by the Disputed Domain Name. Clearly, the Respondent is not known by the Disputed Domain Name, nor does the Respondent claim to have made legitimate, non-commercial use of the Disputed Domain Name. In addition, Complainant’s core brand MOMONDO has an extensive and long-term use worldwide and significant amount was spent on establishing MOMONDO brand and goodwill. Therefore, the use of a parked webpage with related links to the MOMONDO brand causes confusion in the public.

F. The pay-per-click landing page associated with the Disputed Domain Name <momondo.co.in> contains links to advertisements that relate at least in part to a trademark. Those who register domain names in large numbers for targeted advertising through automated programs and processes must make reasonable good faith efforts to avoid registering and using domain names that are identical or confusingly similar to marks held by others. Although there is nothing illegitimate per se in using the domain name parking service, it has been previously established that linking a domain name to such service, with a trademark owner's name in mind, and in the hope and expectation that internet users searching for information about the business activities of the trademark owner will be directed to that parking service page, is a different matter and does not provide a legitimate interest in that domain name under the WIPO Policy (see, for example, *WIPO Case No. D2007-0267 Express Scripts, Inc. v. Windgather Investments Limited / Mr Cartwright*, and *WIPO Case No. D2007-1143, Owens Corning v. NA*). The current page displays PPC links and are related to Complainant's trademark and it is in the direct control of the Respondent to disable the PPC service. In the current case, the use of PPC leads to the conclusion that the Respondent has intentionally attempted to attract internet users to its websites with the only intent of commercial gain, therefore to mislead consumers and to tarnish the trademark of the Complainant.

G. The Complainant refers to and relies on the case of NIKE, Inc. and Nike Innovate C.V. v. Zhaxia and Pfister Hotel <nike.co.in>, INDRP Case No. 804 where the Complainant argued that the county code co.in is insufficient to render the domain name dissimilar, the Arbitrator stated the identical character of the domain name. Based on the above, the Disputed Domain Name is regarded to be identical to Complainant's registered trademark.

H. The Complainant submits that it has legitimate interest in the "MOMONDO" trademark in India as it had registered the said mark on 22/02/2012 and has been openly, continuously and extensively using it in India for close to five years. By virtue of long and extensive use and advertising, the "MOMONDO" trademark has become a well-known mark.

I. Further, the Complainant submits that it has registered the domain name www.momondo.com on December 9, 2004 whereas the Disputed Domain Name <www.momondo.co.in> was registered by the Respondent on 12/03/2016. Hence, such subsequent adoption and registration of the Disputed Domain Name shows that the Respondent has no right or legitimate interest in the Disputed Domain Name <www.momondo.co.in>.

J. The Complainant submits that the Respondent is neither commonly / popularly known in the public nor has applied for any registration of the mark

“MOMONDO” or any similar mark or has registered his business under the said name with the Ministry of Corporate Affairs, India. The WHOIS information is the only evidence in the WHOIS Lookup record which relates the Respondent to the Disputed Domain Name. It identifies the registrant as “Ijorghe Ghenrimopuzulu” from the organisation “Gold Wave Corp.” which is not in the slightest way similar to the Disputed Domain Name.

K. The Complainant submits that the Disputed Domain Name was intentionally created by the Respondent for commercial gain to misleadingly divert the consumers or traders of the Complainant to the Disputed Domain Name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant. The Disputed Domain Name would be perceived by internet users as descriptive of a website where they could find information about Complainant’s well-recognized products. The Disputed Domain Name also contains a reference to the country name India where the Complainant has a significant business presence. There is no evidence that the Respondent has a history of using, or preparing to use, the Disputed Domain Name in connection with a bona fide offering of goods and services. It is clear that the Complainant has become a distinctive identifier associated with the term “MOMONDO” and that the intention of the Disputed Domain Name is to take advantage of an association with the business of Complainant.

L. The Complainant states that the Respondent was aware of the Complainant's registrations as the same were put on the email sent to the Respondent on 17/01/2017 and hence the use of the Disputed Domain Name by the Respondent is in bad faith.

M. The Complainant submits that by using the Disputed Domain Name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark as to the source or sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered/available on the Respondent's website thereby violating Para 6 of INDRP.

N. Further, the Complainant submits that the Respondent has deliberately registered the Disputed Domain Name with the intention of preventing the Complainant who is the owner of the trademark "MOMONDO" from reflecting the said trademark in its domain name in India.

O. Since the registration of the Disputed Domain Name, it resolves to a parked website. The fact that the Respondent is using the Disputed Domain Name to divert users to a parking page thereby generating material benefits by "pay per click" domain parking solution.

P. It has to be highlighted that the Respondent via its official email address rixadwokatnomer@googlemail.com, indicated in WHOIS Lookup record, registered various domain names including well-known brands. Based on this information and on the lack of reaction of the Respondent to the cease and desist letter, there is no question that Respondent's intention is not a legitimate one. Such pattern of abusive conduct constitutes evidence of bad faith according to Paragraph (6) (ii) of the Policy. It might be important to point out that this behaviour was declared as bad faith registration according to WIPO case No. D2015-1932 Bayer AG of Leverkusen v. huang cheng of Shanghai where the Panel stated that "The Respondent is engaged in registering domain names containing famous marks... This is evidence of a pattern in the misappropriation of well-known marks which cannot be regarded as registration and use in good faith."

Q. In the Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No. D2000-0003 the Panel established that the registration and passive holding of a domain name which has no other legitimate use and clearly references the Complainant's trademark may constitute registration and use in bad faith. In the current case it is clear that the Respondent has registered the Disputed Domain Name in bad faith by intentionally adopting Complainant's widely known marks in violation of Complainant's rights. Panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without

any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith, but all circumstances of the case must be examined to determine whether the Respondent is acting in bad faith. In the current case, examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trademark, no response to the cease and desist letter has been sent.

R. To summarize, the identical nature of the Disputed Domain Name to the Complainant's trademarks, the lack of any explanation from the Respondent as to why he registered the Disputed Domain Name of a well-known brand all over the world including in India, indicates bad faith registration. Moreover, Respondent registered the Disputed Domain Name in March 2016 and has had ample time to activate the Disputed Domain Name to demonstrate that the use would not constitute bad faith use. Such has not occurred and a contrario, the Respondent used a pay-per-link website and failed to respond to the cease and desist letter which further proves that the Disputed Domain Name is registered in bad faith. Finally, Complainant's international, Indian and other trademark registrations predate Respondent's Disputed Domain Name registration and it is highly unlikely that the Respondent was not aware of the rights Complainant has in the trademarks and the value of said trademarks, at the point of the registration. Consequently, the Respondent should be considered to have registered and to be using the Disputed Domain Name in bad faith.

II. Respondent

A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 29 April 2017 and 09 May 2017 respectively.

B. However, Respondent has failed and/or neglected to file any response to the Complaint filed by the Complainant despite being given an adequate notification and various opportunities by the Arbitrator.

C. The Arbitrator, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

7. Discussion and Findings:

I. Procedural Aspects

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 .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

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

C. Undoubtedly, the Complainant has statutory and common law rights in the word '**MOMONDO**'. The same have been protected by registration as Trademark all across the globe in different countries, including, the copy of various Indian registration certificates have been provided to the Complaint and as to Indian Trademark Registration under class 39, it has been verified at Intellectual Property India's website.

D. Further, prima-facie the Respondent does not have any relationship with the business of the Complainants or any legitimate interest in the trademarks or trade name. Moreover, the Complainant has neither given any licence nor authorized the Respondent to use the Complainant's mark. The Respondent has never been commonly known by the domain name in question, of late, registered the Domain Name on 12 March 2016 and no legitimate use of the Domain has been made.

E. Rather the Domain has been parked at Domain Name Parking service and the resulting webpage at the disputed Domain Name displays PPC (pay per click) links related to Trave Industry only, thereby is causing confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website.

II. Respondent's Default

A. Several UDRP decisions have established that once a complainant has made a prima facie case that a Respondent lacks legitimate interest or right, the burden shifts to the Respondent to prove its right or legitimate interest in the domain name (F. Hoffman-La Roche AG v. Steven Pratt, WIPO Case No. D2009-0589 and Canadian Tire Corporation Limited v. Swallowlane Holdings Ltd., WIPO Case No. D2009-0828). That is, it is well established principle that

once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the Domain Name to rebut this presumption. But the Respondent has failed to come forward with a Response and therefore, in light of Complainant's unrebutted assertion that Respondent has no rights or legitimate interests in the disputed domain name, the Arbitrator may presume that no such rights or interests exist. [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221].

- B. The INDRP Rules of Procedure requires under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice twice of this administrative proceedings in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.
- C. The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or

contentions in any manner. The averments made in the complaint remain un rebutted and unchallenged. There is no dispute raised to the documents relied upon by the Complainant.

D. In the matter of Taco Bell Corporation V. Webmasters Casinos Ltd [INDRP/067], it was held that the Respondent registered the disputed domain name maliciously and he shows his depraved intention, in the arbitration proceedings by his act because two notices were sent by the arbitrator but he has submitted no reply of anyone. [INDRP/067 - tacobell.co.in - May 29, 2008]. Also in the matter of Talk City, Inc. v. Robertson, WIPO Case No D2000-0009, it has been held that because Respondent failed to submit a Response, the Panel may accept all of Complainant's reasonable assertions as true.

E. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's

decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:

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 has shown that it has rights in the Trade Mark 'MOMONDO'. The trademark was adopted in India in 2012, though it was first adopted internationally in 2007 and it provides services worldwide through www.momondo.com by providing people with an un-manipulated listing of all flight prices in the entire world. It also has local presence with ccTLDs domains like www.momondo.in for India to connect Indian customers. The mark 'MOMONDO' is a coined word, first use by the Complainant as its trade name, corporate name, business name, trading style, trademark worldwide

since 2006. It has also spent substantial amounts of resources in advertising its products under the trademark “MOMONDO” in various media, Internet, other print and visual media and also through fairs, exhibitions and events. Due to the said reasons, ‘**MOMONDO**’ has acquired tremendous reputation throughout the world, and consumers and the trade worldwide associates the expression ‘**MOMONDO**’ with quality products originating from the Complainant.

- B. It was held in the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER [WIPO Case No. D2010-0858] 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.]

- C. While the disputed Domain Name MOMONDO.co.in incorporates the said Trademark in its entirety. The paragraph 3 of the INDRP policy clearly states that it is the responsibility of the Respondent to find out before registration that the domain name that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party.

- D. The complainant asserts that Respondent has registered the Disputed Domain Name MOMONDO.co.in on 12 March, 2016, it entirely comprised of

Complainant's mark. Further, complainant already has several top level and country level domains that incorporate the said style and marks. Complainant has been successful in the similar matters like Momondo A/S v. Green Eye Evolvement Pty Ltd. for the domain name <momondo.com.au> [Case No. DAU2013-0035]. And it is apparent that the Respondent's Domain Name entirely contains the Complainant's trade mark.

E. Indeed, numerous courts and UDRP panels have recognized that "if a well known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark." [ITC Limited V Travel India (INDRP Case No. 065); Boehringer Ingelheim Pharma GmbH & Co. KG v Philana Dhimkana (WIPO Case No. D2006-1594); Allied DOMEQ Spirits and Wine Limited v Roberto Ferrari, (INDRP Case No. 071); Philip Morris USA Inc. v Doug Nedwin/SRSPlus Private Registration (WIPO Case No. D2014-0339)]. Further, it has been held in the matter of Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol [WIPO Case No. D2001-0489] that "domain names that incorporate well-known trademarks can be readily confused with those marks".

F. Therefore, based on Complainant's clear rights in the Marks, along with the widespread popularity of Complainant's mark '**MOMONDO**', it is quite

obviously as Complainant contends that an Internet User would likely mistakenly believe that a website accessible by the URL: www.MOMONDO.co.in is managed or endorsed by Complainant, or enjoys the benefit of Complainant's news and information resources. And no doubt, Respondent's Infringing Domain Names are confusingly similar to Complainant's Marks.

G. Besides it is also well-established that the extensions such as '.co.in' in a disputed domain name does 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 UDRP matters, it has been held that it is technically required for the operation of a domain name, and thus it is without legal significance in an inquiry of similarity. [Tumblr, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd., Host Master, WIPO Case No D2013-0213]. Same also held in the matter of Compagnie Générale des Etablissements Michelin Michelin Recherche et Technique S.A. V Artemio Garza Hernandez [WIPO Case No D2015-0257].

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 has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in atleast 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 trademark '**MOMONDO**' is a coined term and has no meaning other than to identify Complainant's products and there is no indication that Respondent is commonly known by a name or carrying on business under a name, corresponding to the disputed domain name. Further, Complainant denies of having assigned, granted, licenced, sold, transferred or in any way authorized the Respondent to use the distinctive mark '**MOMONDO**' or to register the disputed domain name.

B. It is well established that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and then the burden shifts to the Respondent to come forward with concrete evidence of such rights or legitimate interests. The Arbitrator finds that the Complainant has made such showing in this case but no information has been submitted by the Respondent on what rights or legitimate interests he may have in the disputed domain name. [Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270]. Also Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the domain

names [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221].

C. There is no showing that 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. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but leads to a parking page displaying advertising links. It has been held that merely registering the domain name is not sufficient to establish right or legitimate interests. [Vestel Elecktronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244].

D. Therefore, the use of a parked webpage with related links to the MOMONDO brand causes confusion in the public. Similar to the Case No. INDRP/670 Teradata Corporation v/s Virginia Cross <teradata.in>, as in the present case, the Respondent has listed the Disputed Domain Name for sale on the auction site. The Panel in the case INDRP/670 stated that "The Respondent's website is not bona fide since the Respondent is riding over the reputation of the Complainant's trademark "Teradata". Thus, the Respondent is not using, nor demonstrated any preparation to use, the Disputed Domain Name or a name

corresponding to the Disputed Domain Name in connection with bona fide offering of goods and services”.

E. In the WIPO matter of American Home Products Corporation vs. Ben Malgioglio, [WIPO Case No. D2000-1602], it was held that the Respondent's website is not operational and the Panel infers that it never has been. The Panel simply does not see such passive use to constitute a legitimate non-commercial or fair use without any intent to misleadingly divert consumers or tarnish the trademark or service mark at issue. Further in the WIPO matter of Paris Hilton v. Deepak Kumar, [WIPO Case No. D2010-1364], if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill.”

F. The disputed domain name directs towards a parking page displaying sponsored links does not constitute a bona fide offering of goods. Therefore, it is an indication that Respondent lacks of rights or legitimate interests

(National Bedding Company L.L.C. v. Back To Bed, Inc., WIPO Case No. D2010-0106 and LEGO Juris A/S v. J.h.Ryu, WIPO Case No. D2010-1156).

- G. Further, there is no evidence that the Respondent is commonly known by the disputed domain name or a corresponding name or uses a corresponding name in a business. Obviously, the WHOIS does not indicate that Respondent has ever been or is commonly known by the '**MOMONDO**' trade mark.
- H. In the matter of Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum February 10, 2003) it was held: "nothing in Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as one factor in determining that Policy paragraph 4(c)(ii) does not apply. Also in the matter of Gallup Inc. v. Amish Country Store, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) "finding that the respondent does not have rights in a domain name when the respondent is not known by the mark. Therefore, the Arbitrator finds that Respondent is not commonly known by the disputed domain name under Policy paragraph".
- I. Lastly, it is quite evident from the parked webpage at the disputed domain name that neither any legitimate, non-commercial or fair use of the disputed domain name being made, but the Respondent seems to have intentionally

registered the disputed domain name, which reproduces Complainant's well-known trademark '**MOMONDO**', in order to capitalize / profit from the goodwill associated with the famous mark.

J. Given the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO Case No. D2005-0321 – mtvbase.com].

K. The Complainant has adopted and used the MOMONDO trademark for several years prior to the registration of the disputed domain name and it has invested substantial amounts for publicizing its mark. Under these circumstances it can be inferred that the similarity of the disputed domain name to the Complainant's trademark MOMONDO is not a coincidence. The Respondent has intentionally acquired the disputed domain name for

exploiting its value as a phonetically similar variant and as a misspelling of the Complainant's trademark. [Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER, WIPO Case No. D2010-0858]

In the circumstances, the Arbitrator concludes that the Complainant has established the requirement of paragraph 4 (ii) of the Policy.

(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. Complainant's mark '**MOMONDO**' is distinctive, unique and well-known all over the world, and '**MOMONDO**' services are widely advertised for past several years. Respondent was obviously well aware of the '**MOMONDO**' brand name, when **Momomdo.in** is already in use and the Complainant also emailed the facts to the Respondent in January 2017.

B. Since the registration of the Disputed Domain Name resolves to a parked website. The fact that the Respondent is using the Disputed Domain Name to divert users to a parking page thereby generating material benefits by "pay

per click” domain parking solution, it should constitute bad faith as found by the Panel in the similar case AB Electrolux v Liheng <aeg.co.in>, INDRP Case No. 700.

C. Registration of Domain Name that is identical to a trademark, with actual knowledge of the trademark holder’s rights, is strong evidence that the domain name was registered in bad faith [ITC Limited v Travel India, INDRP Case No 065; American International Group, Inc. v Walter Busby d/b/a AIG Mergers and Acquisitions, NAF Claim No FA030400156251]. In the matter of PepsiCo, Inc. v. “null”, aka Alexander Zhavoronkov, WIPO Case No. D2002-0562, it has been held that registration of a well-known trademark as a domain name may be an indication of bad faith in itself, even without considering other elements of the Policy.

D. Under the Policy, it is evidence of bad faith registration and use that by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement or your web site or location of a product or service on your web-site or location.

- E. It was held in the matter of L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, [WIPO Case No. D2005-0623], exploitation of the reputation of trademarks to obtain click-through commissions from the diversion of internet users is a common example of use in bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous decisions: see e.g Future Brands LLC v. Mario Dolzer, WIPO Case No. D2004-0718; ACCOR v. Mr. Young Gyoon Nah, WIPO Case No. D2004-0681 and Deloitte Touche Tohmatsu v. Henry Chan, WIPO Case No. D2003-0584.
- F. In the matter of Educational Testing Service v. Atak Teknoloji Ltd. Sti. [WIPO Case No. D2010-0479] it was held "the Respondent must have known of the Complainant's trademark TOEFL when registering the disputed domain names. This is particularly likely as an English language education service was offered under the disputed domain names. It appears that the Respondent has registered the disputed domain names solely for the purpose of creating an association with the Complainant's well known TOEFL tests. The Panel believes that the Respondent has intentionally registered the disputed domain names for use with educational English language services in order to mislead users who may search for official TOEFL test related information provided by the Complainant. The Panel is convinced that the Respondent was aware that a legitimate use of the domain names would not have been possible without infringing the Complainant's trademark rights,

Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. This assessment is supported by the fact that the Respondent must have known the Complainant's TOEFL trademarks at the time of registration of the disputed domain names, in particular as both disputed domain names have been registered well after the Complainant's TOEFL trademark has become widely known in the world.”

G. Complainant also highlights in the Complaint that the Respondent via its official email address rixadwokatnomer@googlemail.com, indicated in WHOIS Lookup record, registered various domain names including well-known brands with protected trademarks. Based on this information and on the lack of reaction of the Respondent to the cease and desist letter, there is no question that Respondent’s intention is not a legitimate one. Such pattern of abusive conduct constitutes evidence of bad faith according to Paragraph (6) (ii) of the Policy. It might be important to point out that this behaviour was declared as bad faith registration according to WIPO case No. D2015-1932 Bayer AG of Leverkusen v. huang cheng of Shanghai where the Panel stated that “The Respondent is engaged in registering domain names containing famous marks... This is evidence of a pattern in the misappropriation of well-known marks which cannot be regarded as registration and use in good faith.”

- H. Obviously, Respondent registered the disputed domain name on 12 March, 2016, long after Complainant's Marks became well known, and long after Complainant registered as a mark globally. And it is impossible that the Respondent was not aware of the Complainant's rights to the trademarks as the Complainant's trademarks are famous and registered globally further they have active and official websites on various other extensions including MOMONDO.COM, which was registered in December 2004. Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark '**MOMONDO**', in order to capitalize / profit from the goodwill associated with the famous mark. Only a person who is familiar with Complainant's mark could have registered a domain name that is confusingly similar [Barney's Inc. v B N Y Bulletin Board: WIPO Case No D2000-0059]
- I. Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. Where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration. [LEGO Juris AS V. Robert Martin - INDRP/125 - 14 February 2010].

- J. In the matter of HSBC Holdings plc v Hooman Esmail Zadeh, [INDRP Case No 032], it was held that non-use and passive holding are evidence of bad-faith registration. The evidence furnished by the Respondent does not give a plausible explanation as to why there was no use of the domain name for more than two years. [Bayer Aktiengesellschaft v. Henrik Monssen, Wipo Case No D2003-0275 and Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No D2000-0003]
- K. Also in terms of INDRP Rules of procedure, the Registrant represents that the registration of the Domain Name will not infringe upon or otherwise violate the rights of any third party. Moreover when the trademark holder already has an active websites at momondo.com and momondo.in and the mark is a coined word not having any generic meaning. And the Respondent has parked the domain with BUY THIS DOMAIN option, this all points to the Bad Faith. And given the above facts, Respondent is thus guilty of wilful misrepresentation and also providing inaccurate / incorrect information to the Registry as well.
- L. In the UDRP matter of Giorgio Armani S.p.A. Milan Swiss Branch Mendrisio v. Lizhen Ye [WIPO Case No. D2013-0808] as relied upon by the Complainant, the Panel found that there is beyond all doubt that the Respondent has registered the disputed domain names in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain names and

that the Respondent has engaged in a pattern of such conduct. The Panel accepts the Complainant's arguments that the worldwide fame of the trademarks leaves no question of the Respondent's awareness of those at the time of the registration of the disputed domain names which wholly incorporate the Complainant's trademarks, as even recognized by numerous previous UDRP panels (Ga Modefine, Giorgio Armani S.p.A. v. Kim Hontage, WIPO Case No. D2007-0851, etc).

In the circumstances, the Arbitrator concludes that the Complainant has established the final requirement of paragraph 4 (iii) of the Policy also as to both registration and use of the Domain Name in bad faith.

8. Decision:

In the lights of the circumstances and facts discussed above, Arbitrator decides, "The disputed domain name is identical and confusingly similar to the registered trademarks and also the trade name of the Complainant in which Complainant has rights and the Respondent has no right or legitimate interests in respect of the Domain Name and the Respondent's Domain Name has been registered and is being used in Bad Faith".

Consequently the Arbitrator orders that **the Domain Name <“MOMONDO.co.in”> be transferred from the Respondent to the Complainant** with the following order as to costs.

Costs:

In the facts and circumstances as discussed above, the Respondent is also ordered to pay to the Complainant, the documented costs of these proceedings and relevant expenses. Further for any delays, it shall be accompanied with interest @ 12% p.a. (Twelve percent per annum) from the date of implementation of the decision till the date of payment.



Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 13th May 2017

Place: New Delhi