

मुद्राधिकारि तमिलनाडु TAMILNADU
20 MAR 2017

D. SARAVANAN
Advocate & Arbitrator
"Orient Chambers", 4th & 5th Floor
No. 90/73, Armenian Street,
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BG 916831
P.S. SHANMUGA SUNDARAM
STAMP VENDOR
L. No: B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600104. (TAMILNADU)

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

Disputed Domain Name: www.fabercustomercare.in

Faber Industrie S.P.A.
Via XIII Luglio, 160,
1-60044 Fabriano
ITALY

.. Complainant

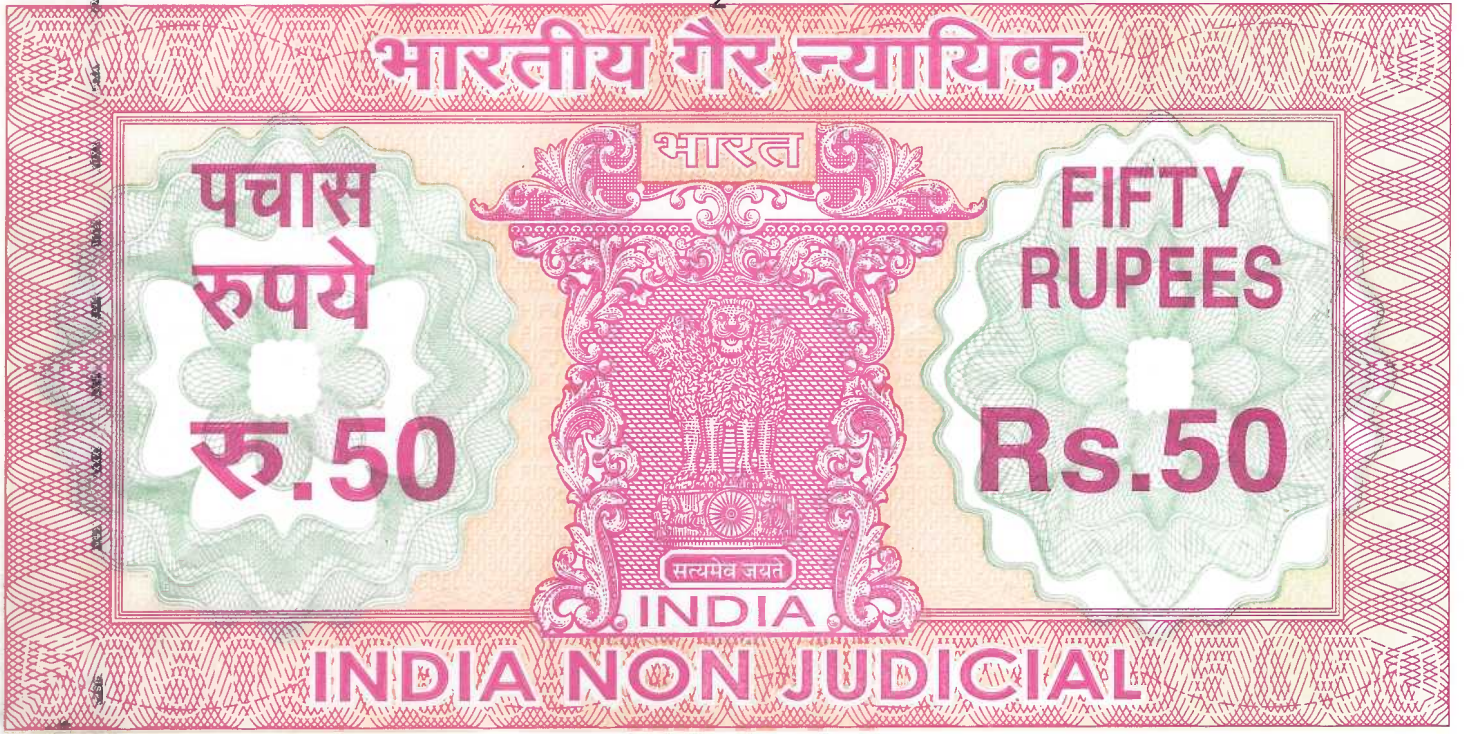
Vs.

Aditya Narayan
F1 no6 bld- 6 b wing
Mayur Nagar
Mumbai
Maharashtra
400065
INDIA

.. Respondent

..2.





தமிழ்நாடு தமில்நாடு TAMILNADU

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20 MAR 2017

D. SARAVANAN

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CHENNAI-600104.

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1. The Parties:

The Complainant is Faber Industrie S.P.A. of Via XIII Luglio, 160, 1-60044 Fabriano, Italy, represented by BrandIT GmbH.

The Respondent is Aditya Narayan, F1 no6 bld-6 b wing, Mayur Nagar, Mumbai, Maharashtra, 400065, INDIA. Neither the Respondent represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name is www.fabercustomer care.in. The domain name has been registered through GoDaddy.com, LLC.

..3.



3. Procedural History:

December 14, 2017	:	Date of Complaint.
January 03, 2018	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
January 03, 2018	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
January 05, 2018	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator and also sent the copy of Complaint and Annexure electronically.
January 11, 2018	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
January 21, 2018	:	Due date for filing response.
February 02, 2018	:	Notice of default was sent to the Respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background:

4.1 The Complainant:

The Complainant is Faber Industrie S.P.A. of Via XIII Luglio, 160, 1-60044 Fabriano, Italy, represented by BrandIT GmbH. A copy of the Power of Attorney authorizing BrandIT to act for the Complainant in this matter is marked as **Annexure B.**



4.2 Complainant's Activities:

(i) The Complainant states *inter-alia* that it is a company founded in the year 1955 and having its Administrative headquarters in Italy. The Complainant has reinforced its International presence by being the first company to make kitchen hoods, and still the number one in terms of both, quality and quantity. The history of the company traces back to 1955, when one Mr. Abramo Galassi established Faber Plast srl. He wanted to invent something new and grow. He along with three partners and a single worker had turned plastic into objects for the house. His business pioneered a whole new world when it invented the kitchen hood in 1963. Since then, Faber has transformed the hood from a humble furnishing accessory into an essential item of kitchen equipment- safe, stylish, and functional. In August 2004, the Swiss Franke Group became the main shareholder of Faber SPA and confirmed the common vision and strong synergies between the two groups. Later in 2005, Faber was fully integrated into Franke group, where it plays an important role as Business Unit. Today, the Franke Group of industries operate in 8 countries and on 3 continents with a global leadership and outlook.

(ii) Even with regard to India, FABER is India's No.1 Hoods and Hobs brand. In total, over 250 employees produce more than 300 products in the Pune plant with current production capacity of 150,000 hoods, 100,000 hobs and 50,000 other kitchen appliances per annum. The Complainant recognizing the importance of an extensive network towards scripting a long-term success story, has over 2000 retail counters for sales and service across India. The Complainant further states that, a crucial element of Complainant's strategy is to establish a long-term presence in India and further states that the company made an initial investment of Rs. 50 crore in its manufacturing plant in Sanaswadi, Pune which has been operational since 2012. The said investment also had represented the biggest investment, the group had made outside Europe at that time. The Complainant further states that the new plant meets the global standards of FABER on productivity, throughput, quality, finishes and safety. The plant uses futuristically designed state-of-the-art equipment



and will be the export hub for Asia Pacific and Middle East regions. FABER also relocated its one of the R & D bases from Europe to India in 2012. The Complainant reiterated that it is the owner of the trademark FABER in various jurisdictions including in India, Europe, Asia and the US and has mostly used the trademark FABER in respect of goods and services covered under classes 6, 11 and 21. The Complainant 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 "FABER".

(iii) The Complainant states that it is the registered proprietor of trademark and domain name FABER as a word and figure mark in numerous countries all over the world including India. The Complainant has been using these trademarks in connection with its on-going business. The trademark registrations pertaining to the Company predates the registration of the Disputed Domain name. Due to extensive use, advertising and revenue associated with its trademark worldwide, complainant enjoys a high degree of renown around the world, including India where the Respondent is domiciled.

4.3 Complainant's Trading Name:

(i) The Complainant states *inter-alia* that the links namely, www.faber.com, www.faberindia.com and <faberindia.co.in> connect their customers to the official website of the Complainant. The details of the Complainant's trademark registrations are as under:

Trademark	Appl.No	Class	Type	Date of Application and status
FABER	1470366	6	IN	July 14, 2006/ registered
FABER(LOGO)	723816	11	IN	June 17, 2006/ registered



FABER	1684284	11,21	IN	June 5, 2008/registered
FABER(FIGURATIVE)	35037	21	IN	November 30, 2016/ registered

(ii) The Complainant is also the registered proprietor of the trademark "FABER" internationally. **Annexure D** are the photocopies of the online status in respect of selected international registrations of the mark FABER and the Indian trademark database entries.

(iii) The Complainant further states that the Complainant through its parent company Franke Technology and Trademark Ltd has registered a number of domain names under generic Top-level Domains ("gTLD") and country-code Top-Level domains ("ccTLD") containing the term "FABER", for example, <faberonline>(created on August 19, 2015), <faberindia.co.in> (created on September 18, 2007), faberonline.net (created on December 15, 1999) and <faberspa.com> (created on December 14, 1999). The Complainant uses these domain names to connect to websites through which it informs potential customers about its FABER mark and its products and services.

4.4 Respondent's Identity and activities:

The Complainant states that the Respondent is Aditya Narayan. A printout of the WHOIS record associated with the disputed domain name is marked as **Annexure C**. As per the WHOIS record, the Respondent is based in India.

5. Dispute:

The dispute arose when the Complainant became aware in and around November 2017 that the Respondent is using the disputed domain name namely, www.fabercustomercaare.in. The Complainant contacted the Respondent on November 14, 2017 through a cease and desist letter. The letter was sent to the email address



listed in the WHOIS lookup record. The Complainant advised the Respondent that the unauthorized use of its trademarks within the Disputed domain name violated their trademark rights and also requested a voluntary transfer of the Disputed Domain name since the said domain name was a identical domain name incorporating the Complainant's well-known, prior used mark 'FABER' in totality and is identical to previously registered domain names. Further, the Complainant had also sent a cease and desist letter on November 14, 2017 followed by reminders on November 16, November 20 and November 24 of 2017, but no response was received from the Respondent which is reflected in **Annexure G**. Since, all efforts of the Complainant to solve the matter amicably were unsuccessful, the Complainant filed a complaint according to the INDRP process. The Complaint is submitted for the present arbitration in accordance with the .IN Domain Name Dispute Resolution Policy (Policy) and the INDRP Rules of Procedure (Rules) framed there under, copies of which are marked as **Annexure A**.

6. Parties contentions:

A. Complainant:

(i) The domain name www.fabercustomercare.in is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :

a) The Complainant states that they had painstakingly built up a good reputation worldwide and has invested substantial amounts of resources in advertising their products under the trademark "FABER" in various media, internet, other print and visual media and also through fairs, exhibitions and events. The link, <http://www.faberindia.com/media-home> provides for television appearances and commercials in India. The Complainant further submits that upon perusal of the Respondent's website namely, www.fabercustomercare.in, the disputed Domain name is pointing to an active site promoting services relating to kitchen appliances and hoods by using "FABER" trademark. At the time of filing the complaint, Respondent was using the disputed domain name to attract internet users to its website where the Respondent prominently uses the Complainant's trademark with the phrases "Faber Electric Chimney, Cooker Hoods Cleaning Service, repair Centre in



Mumbai". A visitor to the site would have the impression that the Respondent's site is an official site of the Complainant. A common misunderstanding with authorized or non-authorized repair centers is that they also believe that they can freely register domain names incorporating the trademark name of the product they are offering services on. However in the present case, Respondent is not an authorized repairing center. The use of the trademark FABER prominently on the website and in the domain name by the Respondent, strongly suggests that there is a connection in that regard with the Complainant. Moreover, the use of the word FABER (i) in the Domain name and (ii) also in the website text further created the impression that there is some official or authorized link with the v in relation to repairs and services, especially in the Indian market. **Annexure I** reflects, the copy of the Respondent's website. As noted earlier, the trademark FABER is well-known trademark in India and given the references to this mark on the website, it is clear that the Respondent knows about its existence.

b) The Complainant also 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 country code ".co.in" is insufficient to render the domain name dissimilar. **Annexure J** provides for the copy of the Resolution. Based on the above, the Complainant states that the disputed domain name is identical to their registered trademark.

(ii) The Respondent has no rights or legitimate interest in the domain name www.fabercustomercaare.in [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of INDRP] :

a) The Complainant submits that it has legitimate interest in the "FABER" trademark in India as it had registered the said mark in 2006 and has been openly, continuously and extensively using it in India for close to about 5 years. By virtue of such long and extensive use and advertising, the FABER trademark has become a well-known mark. Further, the Complainant submits that it had registered the domain name www.faberindia.com on December 14, 2010 and <faberindia.co.in> on September 18, 2007 whereas the disputed domain name <www.fabercustomercaare.in> was registered by the Respondent on September 4,



2007. 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.fabercustomercaare.in>. The Complainant further states that the Respondent is neither commonly/ popularly known in the public nor has applied for any registration of the mark "FABER" 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 "Aditya Narayan" with no organization name provided, which is also not in a slightest way similar to the disputed domain name. 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 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 "Customer Care" which is very relevant to Complainant's business of manufacturing, selling and servicing kitchen appliances. There is no evidence that the Respondent has a history of using, or preparing to use, the domain name in connection with a bona fide offering of goods and services. It is also therefore clear that the Complainant has become a distinctive identifier associated with the team "FABER" and that the intention of the disputed domain name is to take advantage of an association with the business of the Complainant.

b) From the above circumstances, it is apparently clear that the Respondent has failed to comply with Para 7 of INDRP wherein the onus is on the Registrant to prove that he has a right and legitimate interest in the Disputed Domain Name.

(iii) The domain name was registered and is being used by the Respondent in bad faith[Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of INDRP:



a) The Complainant states that the Respondent was aware of the Complainant's registrations as the same were put on the cease and desist letter sent to the Respondent on 14.11.2017 and hence the use of the Disputed Domain Name by the Respondent is in bad faith. The Complainant further 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. 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 "FABER" from reflecting the said trademark in its domain name in India. Since the registration of the Disputed Domain Name, it resolves to an active website – as shown by a copy of the home page and website provided in **Annexure I**. The fact that the Respondent is using the Disputed Domain Name to divert users to a domain improperly using Complainant's business name and trademark without authorization, it should constitute bad faith as found by the Panel in the similar case *DELL Inc v sVarun Kumar Laptop Service Center*, <dellservicescenterghaziabad.in> INDRP Case No.920, see **Annexure K**.

b) It has to be highlighted that the Respondent via its official email address adityacreativi@gmail.com and the name Aaditya narayan, indicated in WHOIS Lookup record, registered various domain names including well-known brands with protected trademarks such as <lgservicecenters.in> and <whirlpoolservicecenters.in>, see **Annexure L**. The Complainant states that 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 behavior 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."The Complainant summarizes their case as follows. The confusingly similar nature of the Disputed Domain Name to the Complainant's trademarks, the lack of any explanation from the Respondent as to why s/he registered the Disputed Domain Name of a well-known brand all over the world including in India, indicates bad faith registration. Further the Respondent is using the Domain Name to attract internet users by creating a likelihood of confusion with Complainant's mark, and also has shown a pattern of abusive conduct in doing the same with other well-known trademarks. The 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. The Complainant therefore state that consequently, the Respondent should be considered to have registered and to be using the Disputed Domain Name in bad faith.

B. Respondent:

The Respondent, in spite of notice dated January 11, 2018 and default notice dated February 02, 2018 did not submit any response.

6. Discussion and Findings:

- a) It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

- b) Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the response by the Respondent had also been notified to the Respondent on February 02, 2018.



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

(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 are being used in bad faith.

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark "FABER" around the world, including in India from **Annexure D**. The disputed domain name, www.fabercustomercare.in, in toto, incorporates the complainant's mark, namely FABER.

ii) In *Kenneth Cole Productions V. ViswasInfomedia* INDRP/093, it has been held that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trademark. Similarly, the domain name www.fabercustomercare.in is confusingly similar to the disputed domain name and also wholly incorporates the Complainant's mark, FABER. Thus, this Arbitral Tribunal finds that the disputed domain name www.fabercustomercare.in is identical or confusingly similar to the Complainant's mark.

iii) 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:

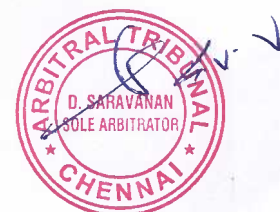


i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the mark "FABER". The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) It is seen from **Annexure D**, the Trademark search report, the Complainant had registered the trademark FABER as early as 2006 whereas the disputed domain name www.fabercustomer-care.in is registered only on September 4, 2017, **Annexure C**, the WHOIS record of the Respondent.

iii) It is further seen that WHOIS lookup, relates the Respondent to the Disputed Domain name. However, it identifies the registrant as 'Aditya Narayan', with no organization name provided, which also not in the slightest way similar to the Disputed Domain name.

iv) 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. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.



v) 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) It is seen from **Annexure G** that the Complainant had sent a cease and desist letter to the Respondent on 14.11.2017 followed by e-mail reminders on 16.11.2017, 20.11.2017 and 24.11.2017 for which the Complainants received no response.

ii) From **Annexure I**, it is established that since the registration of the disputed domain name, it resolves to an active website which diverts users to a domain that improperly uses Complainant's business name and trademark. The fact that the Respondent is using the dispute domain name to divert users to a domain improperly using Complainant's business name and without authorization constitutes bad faith as laid down in *DELL Inc V. Varun Kumar*, see **Annexure K**.

iii) It is also noteworthy to mention that from **Annexure L**, the Domain names owned by the Respondent, the respondent has engaged himself in a pattern of registering various domain names including that of well-known brands with protected trademarks such as <lgservicecenters.in>, <whirlpoolservicecenters.in>, <ifbservicecenters.in>. The Respondent had also, as already stated, failed to respond to the cease and desist letter dated 14.11.2017, followed by e-mail reminders on 16.11.2017, 20.11.2017 and 24.11.2017 sent by the Complainant. Further in *Marks and Spencer PLC v. Deborah R. Heacock, U.S.A.*, see: **Annexure H**, it has been held that the failure to respond to a cease and desist letter has been considered as amounting to bad faith. The Panel had held that, "*the complete address of the Registrant/ respondent could not be found. Further, there is no response on the email mentioned in the WHOIS record. The foregoing circumstances lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith*"



iv) The above pattern of abusive conduct by the Respondent constitutes evidence of bad faith according to paragraph 6(ii) of the INDRP Policy. In WIPO Case No.D2015-1932 *Bayer AG of Leverkusen V. Huang Cheng of Shanghai* the Panel has laid down 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,*" and this squarely applies to that of this case

v) In these specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's 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 a mala fide intent 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 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.

vi) 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 Respondent shall cease to use the mark FABER and the disputed domain name www.fabercustomer care.in and the same shall be transferred to the Complainant.


D.SARAVANAN

Sole Arbitrator

February 14, 2018
 Chennai, INDIA.