



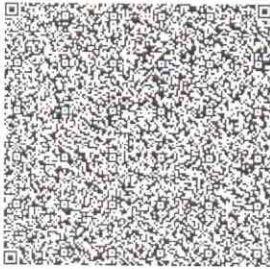
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL51103591714886N
Certificate Issued Date	: 01-Sep-2015 04:19 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130399843477380914N
Purchased by	: ASHOK KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ASHOK KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: ASHOK KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE THE SOLE ARBITRATOR UNDER THE
.In DOMAIN NAME DISPUTE RESOLUTION POLICY
IN THE MATTER OF:**

Google Inc.,
1600 Amphitheatre
Parkway Mountain View, CA94043
United States of America

Complainant

Versus

Pablo Rigo,
Bolivar Cordoba 5000
Argentina

Respondent

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.

The Parties

The complainant in this proceeding is: Google Inc., a Delaware corporation, having its principal place of business in 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America.

The respondent in the proceeding is: Pablo Rigo, Bolivar, Cordoba 5000, Argentina. Email id: pablohugorigo@gmail.com

The Domain Name & Registrant

The disputed domain name is GMAILLOGINSIGNIN.IN is registered with Name.com LLC (R65-AFIN).

Procedural History

I was appointed as the Arbitrator by .IN Registry , to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name GMAILLOGINSIGNIN.IN.

.IN registry had supplied the copy of the Complaint and Annexures to me.

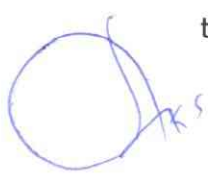
On 10.07.2015, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexures to the Respondent and to provide me with the details of the service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 10.07.2015 with the instructions to file his say within 15 days from the receipt of notice of Arbitration or the receipt of the copy of Complaint, whichever is later.

The Respondent on 11.07.2015, made his submissions to the notice of Arbitration showing willingness to transfer the disputed domain name to Google.Inc.

NIXI through an email dated 13.07.2015 provided the proof of sending the copy of the complaint to the Respondent by blue dart courier and also



stated in the same email that the Tribunal will be informed about the status of the courier once they receive it from the courier agency.

On 15.07.2015, the parties had been informed that the Tribunal was in receipt of the email of the Respondent dated 11.07.2015 whereby the Respondent had made submissions in respect of the Complaint of the Complainant.

The Complainant was thereby directed to give its comments on the same in the following 7 days.

On 22.07.2015 the Complainant files its Rejoinder to the submissions of the Respondent.

Further on receipt of the Rejoinder sent by the Complainant vide its email dated 22.07.2015, since, the Respondent had not filed a detailed Reply but had shown the willingness to transfer the Domain name on November 30, 2015, the Respondent was thereby given a chance by the Tribunal to file the Surrejoinder, in the following 3 days.

Vide email dated 27.07.2015, NIXI informed the Tribunal that the consignment had been delivered and received by the Respondent.

Also, on 05.08.2015, the Respondent once again made submissions clarifying its stance in view of the Rejoinder filed by the Complainant.

Thereafter, vide email dated 08.08.2015, the Respondent made a query regarding transfer procedure of the disputed domain name.

The Tribunal making note of the all the correspondences, on 11.08.2015 informed the parties that the Tribunal will pass an award in due course of time based on the submissions on record and the Respondent's willingness to transfer the domain name as represented vide its email dated August 8, 2015.

On 11.08.2015, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal.

Also, the Tribunal had been thereby informed that since the Respondent had already written to Complainant vide its email dated 8th August, 2015



seeking transfer of the domain name **GMAILLOGINSIGNIN.IN**, the Complainant was taking the necessary steps to effectuate the same.

However, an official order in this matter to conclude the arbitration proceedings was thereby sought by the Complainant.

The Respondent vide its email dated 11.08.2015 asked the Tribunal and the Complainant to stop sending emails.

Apropos of the submissions of both the parties this award is passed.

I have perused the entire record and all the annexures / documents.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

COMPLAINANT:

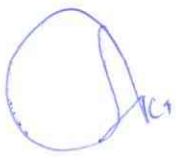
1. The Complainant is a Delaware Corporation, located in Mountain View, California.
2. It is submitted that since its foundation in 1997 the '*Google search engine*' has become one of the most highly recognized and widely used Internet search services in the world.
3. The Complainant submits that it has been found to be one of the top 5 most valuable global brands since 2001 with Brand Finance Global 500 ranking the 'GOOGLE' mark as the world's most valuable brand in 2011 valued at USD 44.3 Billion.
4. The Complainant has used the trademark **GMAIL** in United States commercially since 1998, in connection with the provision of email and electronic messaging services. On March 31, 2004 the Complainant publicly launched its '**GMAIL**' electronic mail and messaging services and the official launch date was April 1, 2004. Since then, the **GMAIL** service has emerged as one of the premier free, web-based email services in the world, with over 900 million

active users worldwide as of May 2015.

5. The primary GMAIL website is located at <http://gmail.com>. The Complainant's **GMAIL** services currently provide more than 15GB of free storage per user and are available in 71 different languages. Like the *Google search engine*, the GMAIL email service integrates with various other products and services of the Complainant.
6. The trademark **GMAIL** thus as per the submissions of the Complainant identifies the Complainant's award-winning web-based email service. It has been widely promoted among the members of the general consuming public since well before the service's launch, and has exclusively been identified with the Complainant. As a result, the GMAIL Mark and name symbolize the substantial goodwill associated with the Complainant and are of incalculable value. Due to widespread and substantial international use, the GMAIL Mark and name have become tremendously famous all over the world.
7. The Complainant also offers the "Gmail Help Center" in connection with its Gmail email service. The Gmail Help Center provides support and information regarding, among other topics, Gmail accounts, messages, contacts and technical issue troubleshooting. A screenshot of the Gmail Help Center as available at support.google.com.
8. The Complaint is based on the trademark **GMAIL** in which Complainant has rights, used in connection with the provision of email and electronic messaging services.
9. The Complainant owns numerous United States and foreign registrations for the trademark **GMAIL** dating back to as early as April 1, 2004 and claiming use in the U.S. commercially dating back to 1998. Each registration remains valid and in full force and effect.
10. The Complainant has also registered its trademark "**GMAIL**" in India in Classes 9 and 38.



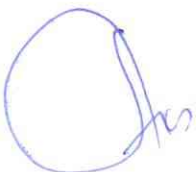
11. The Complainant has conceived, adopted and used the trademark "**GMAIL**" in connection with its email and electronic messaging services since 1998 in its home country USA and the same has been in use continuously till now. By virtue of its adoption seventeen years ago, and extensive worldwide use thereof, the trademark GMAIL has become exclusively associated with the Complainant in the eyes of the consumers. The GMAIL mark, due to its extensive use, advertisement, publicity and awareness throughout the world, has acquired the status of a '*Well Known Trademark*' in India under Section 2 (1) (zg) of the Trade Marks Act, 1999. Use of this mark by any third party will lead to confusion and deception among the consumer and general public.
12. The primary **GMAIL** website located at <http://gmail.com> is accessible around the world and the Complainant has held and operated the same since August 13, 1995.
13. The Complainant has successfully pursued domain name complaints before the WIPO and National Arbitration Forum and obtained favourable decisions in respect of numerous domain names such as '*gmail.com.mx, gmaill.com, gmailtechsupport.us, inboxgmail.com, gmailtechnical.com*' etc. All these decisions acknowledge the Complainant's proprietorship over the **GMAIL** trademark.
14. Regarding the Respondent, the complainant submits that around the month of May 2015, the Complainant was made aware of the existence of the domain name <http://GMAILLOGINSIGNIN.in/>.
15. The disputed domain name was registered on February 23, 2015, many years after the Complainant established rights in the famous GMAIL Mark.
16. It is alleged by the complainant that the [<http://GMAILLOGINSIGNIN.in/>](http://GMAILLOGINSIGNIN.in/) domain name resolves to a website virtually identical to the "**Sign in**" page that the Complainant uses for its Gmail service.



17. It is further alleged that by imitating and advertising the various features and facilities associated with the Complainant's Gmail service, the Respondent is engaged in a *phishing scheme* with the *malafide* intent to defraud consumers into revealing personal and proprietary information in this case, users' name, phone number, date of birth, confidential Gmail passwords, etc.

Respondent

1. The respondent in the proceeding is: Pablo Rigo, Bolivar, Cordoba 5000, Argentina. Telephone: +54.3515199063, E-mail: pablohugorigo@gmail.com
2. The Respondent at the outset has stated that he is not a proficient English speaker, therefore, what could be deduced from the words used by him has been taken into consideration for passing of this award.
3. The Respondent submits that its sites are not in bad faith.
4. The Respondent further asks the Complainant to demonstrate where in his sites does he steal any passwords or other information such as phone number, address, etc. of the users who visit its website.
5. He further submits that its sites help users to learn about gmail. The Respondent pleads that he only explains step by step how to have a gmail account and runs a blog for those who would like to see a detailed tutorial on the same.
6. The Respondent submits that the gmaillogin.in site teaches 2-step verification to users to secure their Gmail accounts. It allows users to associate their phone number with their Gmail account and then place their username and password, to safely enter their gmail account. Therefore, the system is private to the user, where only he can enter. The Respondent further submits that if he had wanted to make some kind of fraud on the site, he would not have taught this.



7. The respondent reiterates that the site is informative, it contains official gmail.com links and tutorials that help users to register properly the mail and keep their Gmail account secure. In other words, the Respondent only tries to help Google.
8. Further, the Respondent submits that he is very respectful towards the GMAIL trademark and therefore he is willing to give the disputed domain name GMAILLOGINSIGNIN.IN to Google Inc., which is the concerned domain name for the purpose of this award amongst certain others specified by the Respondent for which it has sought some time to transfer in its submissions.

REJOINDER BY THE COMPLAINANT

1. The Complainant contends that the Reply of the Respondent which is in the form of a generic email, containing consolidated submissions in respect of all the offending domains contains the following key admissions:
 - i. A. Knowledge and awareness of the complainant's trademark and its associated reputation;
 - ii. B. An attempt to create an affiliation with the Complainant's Google/Gmail trademark and associated services;
 - iii. C. Commercial benefit being derived from the domain as a result of (B)
- iv.
2. The complainant further submits that under the pretext of opening an informative site/blog to help Gmail users, the Respondent has created a webpage that is similar in its general look and feel to that of Complainant's GMAIL and associated logos and text, to create the impression that Respondent's website originates with Complainant.
3. The claimant submits that the Respondent despite acknowledging the Complainant's ownership of the Gmail trademark has expressed an unwillingness to transfer the disputed domain name to the

Complainant.

RESPONDENT'S REPLY TO REJOINDER

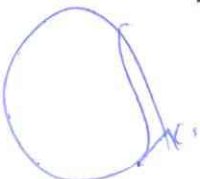
1. The Respondent submits that he has not committed any acts of phishing, as on his site there are only tutorials for the people browsing the site having knowledge of Gmail accounts for maintaining security and for the benefits of having a Google account.
2. The respondent further states that he provides information on the precautions to be taken to create an email account correctly and helps to protect, just that.
3. The Respondent submits there is no unwillingness to deliver the domains on his part and that he has in fact volunteered to transfer the domains except the domain name **GMAILCOM.IN** for which he has sought time till 30 November 2015.
4. Furthermore the Respondent submits that he has never mislead the users and has only helped them to create an email account with necessary precautions. The Respondent offers the immediate transfer of all the domain names except GMAILCOM.IN, which he has requested time for as the revenue generated from this site pays for his studies. He further submits that he has acted only in good faith.

1. Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical and confusingly similar to the Complainant's Trade Mark(s).
2. The Respondent has no rights or legitimate interest in respect of the domain name.



3. The Domain Name was registered and used in bad faith.

(b) Respondent

The Respondent contends that the site he runs is neither in bad faith nor amounts to phishing. The respondent shows willingness to transfer the disputed domain name to the Complainant.

Discussions and Findings:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the act.

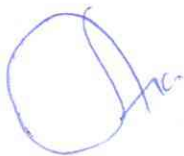
Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the submissions of both the parties.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "GMAILLOGINSIGNIN.IN".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;



(iii) the Registrant's domain name has been registered or is being used in bad faith.

i) **The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.**

It has been stated by the Complainant that the disputed domain name with the url <http://gmailloginsignin.in> registered and used by the Respondent incorporates the famous GMAIL Mark in its entirety, and is confusingly similar to the Complainant's registered website. The disputed domain differs from the Complainant's registered website by mere addition of the generic top-level domains ("gTLD") "**com,**" and "**.in**" and the descriptive term 'login' which are insufficient to distinguish the Respondent's domain from the Complainant's registered trademark. It is submitted without prejudice that regardless of the reason for the inclusion of the gTLDs and a descriptive term in the disputed domain name, the fame of the distinctive **GMAIL** Mark and the non-distinctiveness of the added terms will cause users encountering the disputed domain name to mistakenly believe that it originates from, is associated with, or is sponsored by the Complainant.

The Complainant states it has used the **GMAIL** Mark well prior to February 23, 2015 which is the registration date of the disputed domain and so it owns rights in the **GMAIL** Mark that predates the registration date of the disputed domain name.

The Complainant relies on the following decisions:

- i. In *Google Inc. v. Dyndns*, FA1108001405326 (National Arbitration Forum Oct. 6, 2011), wherein an arbitral Panel held that- "*Due to Complainant's longstanding use of its GMAIL Mark, the Panel concludes that Complainant has established common law rights in its GMAIL Mark under Policy 4(a)(i), dating back to January 20, 1998.*"



its GMAIL Mark under Policy 4(a)(i), dating back to January 20,1998."

- ii. The Sole Arbitrator appointed in the matter of *Google Inc. v. Mr. Gulshan Khatri* (Case No. INDRP-189 May 06, 2011), in relation to the domain *googlee.in*, held that the act of registering a domain name similar to or identical with or famous trademark is an act of unfair competition whereby the domain name registrant takes unfair advantage of the fame of the Trademark to either increase traffic to the domain, or to seize a potential asset of the trademark owner in the hope that the trademark owner will pay the requirement to relinquish the domain name. As such, the same principle is applicable here as well, since the disputed domain name is nearly identical and confusingly similar to the GMAIL Mark.

The Complainant states that the very fact that the disputed domain name directs to a page that is similar in general look and feel to that of Complainant's **GMAIL** and associated logos and text, establishes the fact that the Respondent is attempting to use the disputed domain name to create the impression that Respondent's website originates with Complainant, is affiliated with the Complainant, endorsed by the Complainant, or sponsored by the Complainant.

Further, the Sole Arbitrator appointed in the matter of *Google Inc. v. Edmunds Gaidis* (CaseNo. INDRP-110 September 8, 2009), in relation to the domain *igoogle.com*, held, that the sole purpose as to why the impugned domain name had been registered was *to take advantage of the goodwill and reputation enjoyed by the complainant*. As such, the same principle is applicable here as well, since the disputed domain name is nearly identical and confusingly similar to the **GMAIL** Mark.

The above submission of the Complainant has not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him.

Even otherwise, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of

the Complainant.

ii) **The Respondent has no rights or legitimate interest in the domain name:**

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose 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;*
- 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.*

It is submitted by the Complainant that the Respondent is not commonly known by the disputed domain name or any name containing the Complainant's **GMAIL** mark. The Respondent's Who is information in connection with the disputed domain name makes no mention of the Domain Name or the **GMAIL** mark. As already held by previous Panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name.

The Complainant has not authorized or licensed the Respondent to use any of its trademarks in any way. Such unlicensed and unauthorized use of domain incorporating the complainant's trademark is strong evidence

that Respondent has no rights or legitimate interest in the disputed domain name.

The Respondent, as per the complainant therefore, cannot make a legitimate claim that it is offering bona fide services by redirecting users who are seeking information regarding the Complainant's email services to a website that purports to offer services identical and/or similar to ones provided by the Complainant under the **GMAIL** Mark.

In all likelihood, as stated by the Complainant the Respondent sells the personal information collected from the Complainant's misdirected users—including users' confidential information—as part of a phishing scheme, thereby deriving substantial profits. As such, Respondent is improperly capitalizing on the **GMAIL** Mark, which does not amount to legitimate non commercial or fair use of the Domain Name.

The Complainant places reliance on *Homer TLC, Inc. v. Privacy Ltd. Disclosed Agent for YOLAPT*, FA 1110001410944 (National Arbitration Forum Nov. 21, 2011), wherein the Panel held that— "*Respondent's disputed domain name resolves to a website requesting personal information from the Internet users arriving there, which the Panel finds to be a classic 'phishing' scheme. Therefore, the Panel finds that Respondent is not engaging in a bona-fide offering of goods or services under Policy 4(c) (i) or making a legitimate noncommercial or fair use of the disputed domain name under Policy 4(c)(iii).*"

The above submission of the Complainant has not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts annexures attached with the Complaint establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

iii) **The Registrant domain name has been registered or is being used in bad faith**

The Complainant states that the disputed domain name of the

Respondent displays the Complainant's **GMAIL** Mark and logo, thereby mirroring the overall look and feel of Complainant's **GMAIL** login webpage. The Respondent has thus attempted to pass itself off as the Complainant, and to "phish" for personal login information from Internet users.

The Complainant relies on *Wells Fargo & Co. v. Michael*, FA605221 (National Arbitration Forum Jan.16, 2006) where the panel held that—"The respondent had demonstrated bad faith under Policy 4(a) (iii) where the resolving website was a "doppelganger" site which closely resembled the complainant's legitimate site, the purpose of which was to deceive the complainant's customers into providing their login identification as well as other personal information;

The complainant stated that the evidence overwhelmingly supports the conclusion that Respondent registered and is using the disputed domain name in bad faith. The fame and unique qualities of the **GMAIL** Mark, which was adopted and applied for by the Complainant well prior to the registration of the disputed domain name, make it extremely unlikely that Respondent created the disputed domain name independently without any knowledge of Complainant's mark.

Even constructive knowledge of a famous trademark like **GMAIL** is sufficient to establish registration in bad faith.

Given the Respondent's registration of the disputed domain name, which consists of the Complainant's famous **GMAIL** Mark, it is impossible to conceive of any potential legitimate use of the said domain name. As such, the Domain Name is being used in bad faith.

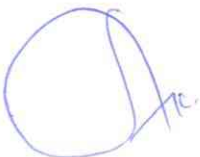
It was held by the panel in *Google Inc. v. Akhil Mishra Rajeev Latika Sharma Satyendra Kumar Pandey / Satendra Kumar Jameel Sayni Rana*, FA \ 504001617405 (National Arbitration Forum June 9, 2015) that:

*"The Respondent acted in bad faith in registering and using each of the domain names pursuant to paragraph 4(a)(iii) of the Policy. Respondent's display of the **GMAIL** mark on webpages addressed by the confusingly similar domain names is designed to lead Internet users to believe that*

such webpages are sponsored by or affiliated with Complainant. Respondent is likely intent on profiting through such use and use of the domain names in this manner demonstrates the Respondent's bad faith pursuant to Policy 4(b) (iv). Moreover, to the extent that Respondent may actually be conducting some kind of support business at the addressed webpages such business is in competition with Complainant's own support services. Using the trademark laden domain names to compete with Complainant demonstrates Respondent's bad faith under Policy 4(b)(iv). Next, the content displayed on the webpages addressed by the at-issue domain names reveals Respondent's plan to pass itself off as Complainant to obtain visitors' personal information including confidential passwords. Respondent's bad faith is shown by this phishing scheme. This scheme, which is disruptive to Complainant's business, demonstrates bad faith registration and use of the at-issue domain names under Policy 4(a)(iii). Finally, Respondent registered each of the

<gmailcustomerservices.com>, <gmailphonenumbers.com>, <gmailhelpsupport.com>, <gmail-password-recovery.com>, <gmailservicehelp.com>, <gmailnotworking.com>, and <forgotmygmailpassword.com> domain names knowing that Complainant had trademark rights in the GMAIL mark. Respondent's prior knowledge is evident from the notoriety of Complainant's trademark and from Respondent's multiple registrations of domain names containing Complainant's GMAIL mark. Given the forgoing, it is clear that Respondent intentionally registered the at-issue domain names precisely to improperly exploit their trademark value, rather than for some benign reason. Respondent's prior knowledge of Complainant's trademark further indicates that Respondent registered and used the

<gmailcustomerservices.com>, <gmailphonenumbers.com>, <gmailhelpsupport.com>, <gmail-password-recovery.com>, <gmailservicehelp.com>, <gmailnotworking.com>, and <forgotmygmailpassword.com> domain names in bad faith pursuant to Policy 4(a)(iii)."



The Complainant further places reliance on *Google Inc. v. Sunil K, Support Solution Aditi Sawant, Support Solution Rohit Sharma/ Vineet Sharma Deep Sunil K, FA1501001599162* (National Arbitration Forum February 19, 2015) where the Panel held that—*"Respondent's use of the contested domain names is an attempt to capitalize on the likelihood that Internet users will be confused as to the possibility of Complainant's association with the domain names and their resolving websites. Under Policy 4(b) (iv), this stands as evidence of Respondent's badfaith in the registration and use of the domain names. Further, the Respondent uses the domain names in a phishing scam through which it seeks to retrieve personal and financial information from Internet users is independent proof of its bad faith in the registration and use of the domain names. It is also clear from the record that Respondent knew of Complainant and its rights in its GMAIL trademark when it registered each of the disputed domain names. This too stands as proof of Respondent's bad faith in the registration of the domain names."*

The Complainant further places reliance on *Google Inc. v. SunilK, Support Solution, FA1502001605032* (National Arbitration Forum March 19, 2015) and *Google Inc. v. Domain Admin Whois Privacy Corp., FA1501001600801* (National Arbitration Forum March 6, 2015) where the Panel held that—*"The Respondent had engaged in bad faith registration and use of the disputed domain name since it had actual knowledge of Complainant's rights in the mark prior to registering the disputed domain name and that actual knowledge is adequate evidence of bad faith under Policy 4(a)(iii)".*

The Sole Arbitrator appointed in the matter of *Google Inc. v. Chen Zhaoyang* (Case No. INDRP-23 April 25, 2007), in relation to the domain *Gmail.co.in*, held, that the Respondent had taken deliberate steps to ensure to take benefit of identity and reputation of the Complainant. The Respondent also provided web services which were similar to those of the Complainant. All these factors indicated that the disputed domain name was registered and used by Respondent in *bad faith* in respect of the general commercial business activities. As such, the same principle is

applicable here as well, since the disputed domain name is nearly identical and confusingly similar to the GMAIL Mark.

The complainant submits that the Respondent's domain name appears to be part of a phishing scheme in which Respondent purports to offer numerous services under the Complainant's **GMAIL** mark but instead collects personal information including passwords from users seeking such services. Use of a domain name as part of a phishing scheme constitutes bad faith use.

The Complainant submits that if a well-known trademark is incorporated in its entirety in a domain name then that fact is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. This principle was upheld in *ITC Limited v. Travel India*, Case No. L-2/5/R4 April 15, 2008 (citing *Boehringer Ingelheim Pharma GmbH & Co. KG v. Philana Dhimkana*, WIPOCaseNo,2006-1594); *HSBC Holdings pie. v. Hooman Es mail Zedeh*, Case No.L-2/5/R2, March 24,2007.

Based on the foregoing, it is submitted by the Complainant that the Respondent has registered and is using the disputed domain name in bad faith.

The Tribunal is of the view that the Respondent has failed to specifically respond and provided evidence to show that the Respondent is engaged in offering any bona fide goods or services in the name of the disputed domain name.

The above submission of the Complainant has not been rebutted specifically by Respondent, as such they are deemed to be admitted by him. Even otherwise, the above facts, annexures and cases referred establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).



DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

The Respondent has registered and used the disputed domain name in bad faith. NIXI is hereby directed to transfer the domain name of the Respondent i.e. <GMAILLOGINSIGNIN.IN> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 10th day of September, 2015.



Ashok Kumar Singh

(Senior Advocate)

Sole Arbitrator

Date: 10th September, 2015