



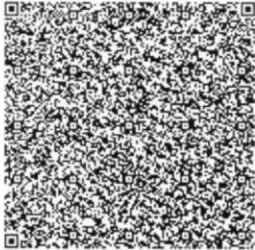
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL60488951966884M
Certificate Issued Date : 27-May-2014 11:08 AM
Account Reference : SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDDL-SHCIL17830565807972M
Purchased by : AMARJIT SINGH
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : AMARJIT SINGH
Second Party : NA
Stamp Duty Paid By : AMARJIT SINGH
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure

IN THE MATTER OF:

Vanguard Trademark Holdings USA LLC ...Complainant
VERSUS

Tomes Alicesaaw ...Respondent
Disputed Domain Name: <www.nationalcarental.in>

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <nationalcarental.in> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Directi Web Services Pvt. Ltd.

3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Tomes Alicesaaw 33, rue Fourcroy, Paris 75017, France. The NIXI verified that the Complaint and the annexures to the Complaint and was satisfied that the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules") were complied with.

3.1 The Panel submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).

3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **16th January, 2014**. By e-mail dated 27th January, 2014, The Centre intimated the panel that the document (s) pertaining to the



disputed domain name have not been delivered to the Respondent and submitted the non-delivery report for the same.

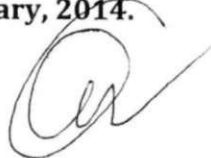
The Complainant was notified about the non-delivery of documents by my email dated 30th January, 2014 with the direction to the complainant to forward the complaint along with all the Annexures to the Respondent in Electronic Form on the registered email ID as mentioned in WHOIS's record of the disputed domain name.

The complainant forwarded the complaint along with Annexures to the respondent electronically on 30th January, 2014.

The panel notified the parties about the appointment of the panel and delivery of complaint along with all the annexures. It was intimated to the Respondent to file its response, if any, within 10 days of the communication dated 04th February, 2014.

3.3 In accordance with the rules, paragraph 5(c), the Respondent was notified by me about the commencement of arbitration proceedings on 04th February, 2014 and the due date for filing his response. The Respondent did not file any response to the Complaint filed by the Complainant

3.4 The Respondent failed and/or neglected and/or omitted to file formal response to the Complaint within time as was granted to him by notice dated **04th February, 2014.**

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Therefore, the Panel has no other option but to proceed with the matter on the basis of the pleadings, documents and material on record.

- 3.5 The Panel by its email dated 10th March, 2014 sought copies of certificates of registration relied upon in Annexure-B to the complaint or in the alternative to file an affidavit providing name & address of the Registered Proprietor of each of the trade mark cited in Annexure-B, Renewal certificates of Indian Trademark Registration No. 681325 filed as Annexure-D, WHOIS record of the Domain Name(s) Nationalcarrental.com, Nationalcar.com & Nationalcarrental.in from the complainant within 5 days from the date of communication.
- 3.6 The Complainant by its email dated 11.03.2014 complied with the directions and provided the response to the email sent by this Panel stating that Annexure-B contains almost 300 international registrations of the Complainant and it will not be possible to provide photocopies of all the registration certificates within a period of 5 days
- 3.7 The Panel by its email dated 14.03.2014 once again sought the information/details of the registered proprietor of the trademark as filed by the complainant as Annexure-B to the complaint within one week of the directions. Alternatively, the Complainant was directed to file an affidavit of the complainant indicating the name of the registered proprietor of registered trademarks mentioned in



Annexure-B if it would like to rely upon the same in support of the present complaint. The Complainant was further informed that in case the reliance was placed only on the marks cited in the email of 11th March, 2014, a confirmation in this regard may be sent, without filing an affidavit.

- 3.8 The Respondent, by its email dated 21.03.2014, responded and provided copies of few documents and sought time to file the affidavit of Complainant. However, no such affidavit was filed.

4. **FACTUAL BACKGROUND**

- 4.1 The Complainant in these administrative proceedings is Vanguard Trademark Holdings USA LLC, 600 Corporate Park Drive, St. Louis, Missouri 63105 USA.
- 4.2 The Complainant is a Limited Liability Company organized and existing under the laws of the State of Delaware, United States of America of the address 600 Corporate Park Drive, St. Louis, Missouri 63105 USA.
- 4.3 The Complainant submits that he is the owner of the NATIONAL and NATIONAL CAR RENTAL marks which it licensed to the National Car Rental operating companies. Started in 1948, National Car Rental is a premium, internationally recognized brand serving the daily rental needs of the frequent airport business traveler throughout the United States, Canada, Mexico, the Caribbean, Latin America,

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Asia and the Pacific Rim. Complainant's licensee operates an on-line car rental site at **nationalcarrental.com**.

- 4.4 The Complainant submits that mark NATIONAL and NATIONAL CAR RENTAL are registered in more than 150 jurisdictions in the world.
- 4.5 The Complainant further submits that the trademark and/or trade name NATIONAL and NATIONAL CAR RENTAL are well established and/or well known amongst the general public around the globe. The Complainant has been continuously providing its services under the marks NATIONAL and NATIONAL CAR RENTAL since the year 1949.
- 4.6 The Complainant further claim to be the registered proprietor of the trade mark NATIONAL and NATIONAL CAR RENTAL in classes 16 and 39 in relation to various goods and services in different countries in the world.
- 4.7 The Complainant also claims to be the owner of domain name(s) www.nationalcarrental.com created on 26.10.1998 in addition to domain names www.nationalcar.com and www.nationalcarrental.in.
- 4.8 The complainant objects to the registration of disputed domain name **<nationalcaarental.in>** in the name of the respondent and seek the relief of transfer thereof.

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4.9 The present dispute fall within the scope of INDRP and the Constituted Panel appointed by INDRP has the jurisdiction to decide the same. The Registrar of the disputed Domain Name has adopted the INDRP Rules, as per its Registrar Accreditation Agreement.

5. PARTIES CONTENTIONS

5A COMPLAINANT

5A(1) The Complainant submits that he is the registered proprietor of the trademark NATIONAL and NATIONAL CAR RENTAL since the year 1949 in more than 150 jurisdictions of the world.

5A(2) The Complainant further submits that in India, the trademark NATIONAL and NATIONAL CAR RENTAL are registered/pending application under Nos. 681325 in class 16, 1291185 in class 39, 1291186 in class 39, 1915471 in class 39, 1915472 in class 39 and 1918325 in class 39.

5A(3) The Complainant submits that the said registrations have been renewed from time to time and are valid and subsisting. By virtue of the afore-mentioned registrations and the well-known character of its trade-mark, the Complainant has the exclusive right to use the trade mark NATIONAL and NATIONAL CAR RENTAL in India and world-wide.

5A(4) The Complainant submits that it is the original, honest and prior adopter, user and registered proprietor of the trademark NATIONAL and NATIONAL CAR RENTAL has continuously being



used by the Complainant since the year 1949. The world-wide revenue figures for the Complainant for each year between 2002-2012 were in the tens of millions of U.S. dollars.

- 5A(5) The Complainant has filed list of complaint Worldwide registration for the mark NATIONAL, NATIONAL CAR RENTAL as Annexure-B while filing the present complaint.

The Complainant also filed copies of Indian Registration Certificate for the mark NATIONAL (label) in class 16 under no. 681325 registered in the name of National Car Rental System Inc. (A Corporation duly organized under the laws of the state of Delaware USA) 7700 France Avenue South, Minneapolis, Minnesota 55435, United State of America as Annexure-B to the complaint.

The Complaint also filed status of pending Indian Trade Mark Application No. 1291185 in class 39, 1291186 in class 39, 1915471 in class 39, 1915472 in class 39 and 1918325 in class 39 in the name of the complaint as Annexure-D to the complaint.

- 5A(6) The Panel by its e-mail dated 10.03.2014 directed the complaint to provide additional information and documents.

- 5A(7) The Complainant submitted the following documents:-



- (a) CTM Registration No. 190439 issued 12 March 2003 and renewed 08 May 2006 for NATIONAL CAR RENTAL
- (b) CTM Registration No. 190504 issued 24 August 2000 and renewed 08 May 2006 for NATIONAL CAR RENTAL (Figurative)
- (c) CTM Registration No. 788455 issued 25 February 2000 and renewed 08 May 2006 for NATIONAL CAR RENTAL & Design.

5A(8) The Panel further desired the information/details of the Registered Proprietor of the Trade Marks as listed in Annexure-B to the complaint in order to satisfy itself as the registration of trademark no. 681325 in class 16 in India was found to be in the name of the complainant. The Complainant was therefore directed to file an affidavit indicating the name of the registered proprietor against each registered trademarks mentioned in Annexure-B. In case the reliance was placed only on the marks cited in the email of 11th March, 2014 a confirmation in this regard was sought, without filing an affidavit.

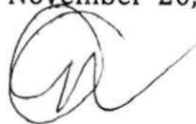
5A(9) The complainant submitted its response and stated that the India Trade Mark Registration Number 681325 was initially filed in the name of NATIONAL CAR RENTAL SYSTEM INC. which underwent a constitutional change on October 09, 2003 to NATIONAL CAR RENTAL SYSTEM LLC. Thereafter by virtue of Deed of Assignment dated October 14, 2003 NATIONAL CAR RENTAL SYSTEM LLC assigned Trade Mark no. 681325 to VANGUARD TRADE MARKS HOLDING S.a.r.l. Further by virtue of a Deed



of Assignment dated May 24, 2006 VANGUARD TRADE MARKS HOLDING S.a.r.l. assigned the Trade Mark to VANGUARD TRADEMARK HOLDING U.S.A. LLC.

A duly executed and notarized affidavit dated October 22, 2012 had already been filed before the Trade Marks Registry intimating the above mentioned changes. The Complainant had also filed requests before the Trademark Registry for taking the above said changes on record with relevant forms. The details of which were provided hereinbelow:

1. TM-33 dated September 16, 2010 for taking on record NATIONAL CAR RENTAL SYSTEM LLC as the proprietor of the mark. A copy of the form TM-33 as filed is attached alongwith this email as Attachment 1
2. TM-24 dated November 20, 2012 for taking on record VANGUARD TRADEMARK HOLDING S.a.r.l. as proprietor of the mark. A copy of the form TM-24 as filed is attached alongwith this email as Attachment 2.
3. TM-24 dated November 20, 2012 for taking on record VANGUARD TRADEMARK HOLDING U.S.A. LLC as proprietor of the mark. A copy of the form TM-24 as filed is attached alongwith this email as Attachment-3.
4. TM-34 dated November 20, 2012 for change of

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address of the proprietor VANGUARD TRADEMARK HOLDING U.S.A. LLC. A copy of form TM-34 as filed is attached alongwith this email as Attachment 4.

In light of the above, it was humbly submitted that the trade mark registration no. 681325 in India was owned by the Complainant.

5A(10) The Complainant operates a website at www.nationalcar.com (to which nationalcarrental.com also resolves). The website www.nationalcarrental.com was created on 26.10.1998 and is equally popular among the viewers all over the world including India. The complainant contends that trademark NATIONAL and NATIONAL CAR RENTAL has also been used extensively over the internet to identify the Complainant and to associate the said mark exclusively with the Complainant.

5A(11) The Complainant became aware of the website www.nationalcarrental.in recently. Prior to filing of Complaint, the said website as per complainant submissions appears to be a parking page following a "pay-per-click" format and listing various websites and/or businesses under titles such as "wamba.com", "glenindia.com" and others, which continue to change periodically. The website also goes further by providing links to other websites upon clicking on any of the links. The complainant further submits that it is clear that the website is attempting to create confusion in the minds of consumers by associating itself with the



Complainant and thereby generating revenue by directing the said users, to other websites and other businesses providing other goods and services.

B. RESPONDENT

5B(1) The Respondent was given an opportunity to file his/her response to the Complaint by the panel by its notices dated 04th February, 2014. However, the respondent has failed to file any response within the prescribed time or to seek any extension of time. The case of the complainant, therefore, remained un rebutted.

6. DISCUSSIONS AND FINDINGS

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed there under in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the Policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case



is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 In accordance with the principles laid down under Order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.
- 6.5 The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.
- 6.6 The Respondent has not filed its reply or any documentary evidence in response to the averments made in the

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complaint. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the authenticity of the documents filed by the Complainant.

- 6.7 The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <**nationalcarental.in**> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.
- 6.8 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.9 The decision of Hon'ble Supreme Court of India in the matter of **JahuriSah Vs. Dwarika Prasad** - AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).
- 6.10 The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.



6.11 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

6.12 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

A. IDENTICAL OR CONFUSINGLY SIMILAR

6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

6A.2 The Respondent registered the Disputed Domain Name on 19th November, 2012.

6A.3 The Complainant submit that the Disputed Domain Name is identical to the Complainant's trademarks, trade name and domain name. The dominated and distinctive feature of the Disputed Domain Name is the incorporation of the Complainant's trademark, trade name and domain name as it is.

6A.4 On the date the Respondent registered the Disputed Domain Name <www.nationalcarrental.in>, the Complainant had already been using NATIONAL and NATIONAL CAR RENTAL as a trademark and part of the trade name and domain name and had firmly established rights in such a mark. The said fact is established by the documents placed on record as

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filed as Annexure-B, D and further submission/documents as filed by complainant by his email(s) dated 11.03.2014 and 19.03.2014. Furthermore, at the time the Respondent registered the Disputed Domain Name, the Complainant's NATIONAL and NATIONAL CAR RENTAL trademark and other formative trademarks and the trade name had become a famous mark as is established from Annexure H, I and J. The Respondent has failed to show any right to the Disputed Domain Name which are superior to the Complainant's rights in its NATIONAL and NATIONAL CAR RENTAL marks, as evidenced by the Complainant's prior and well-known use of the mark and registration thereof. Nor the Respondent could demonstrate that it was unaware of the Complainant's trademark/ trade name at the time the Disputed Domain Name was registered on account of his failure to respond to the averments made in the complaint. Since the Complainant's trademark/ trade name has been proved to be well-known and the Respondent has failed to show any prior rights in this mark, the only reason the Respondent could have registered a domain name which incorporates the Complainant's NATIONAL and NATIONAL CAR RENTAL marks was with the intention to trade upon the fame of the Complainant's trademark/ trade name by selling the Disputed Domain Name for substantial commercial gain, in violation of Section 4(b) of the INDRP.

6A.5 The Complainant is the proprietor of the trademark NATIONAL and NATIONAL CAR RENTAL worldwide, including registrations/pending application for



registration of NATIONAL and NATIONAL CAR RENTAL in India, which has been in continuous, extensive and uninterrupted use since 1949.

6A.6 The Respondent's domain name www.nationalcarrental.in is identical to the Complainant's NATIONAL and NATIONAL CAR RENTAL mark, as it incorporates Complainant's mark in its entirety. In addition to the identical nature of the marks, the impugned website of the Respondent also appears to be a parking page following a "pay-per-click" format and listing various websites and/or businesses under titles such as "wamba.com", "glenindia.com" and others. The website also goes further by providing links to the other websites upon clicking on any of the links. The said links all refer to other website and is bound to cause confusion amongst users wrongfully directed to the website into believing that the same are either endorsed by or in any manner affiliated with the Complainant. The said fact is established by the document as has been filed as Annexure F to the complaint.

6A.7 The Respondent has made use of the entire trademark and domain name of the Complainant as part of its domain name while leaving only one alphabet 'r' and is not sufficient to distinguish the impugned domain name from the Complainant's trade mark and domain name, thereby giving the impression that the domain name is that of the Complainant, referring to the Indian affiliate or Indian business of the Complainant.



- 6A.8 In case of Rediff.com India Limited V. Mr. Abhishek Varma & Anr. Case No. INDRP/1 (Decided on 03.04.2006) where the Complainant's trade mark and the corporate name was "Rediff" and the Respondent had the registration of the Domain Name <www.rediff.in>. It was observed that "By registering the Domain Name www.rediff.in the Registrant has intentionally attempted to attract internet users to the Registrant's proposed website by creating a likelihood of confusion with the Complainant's name or mark."
- 6A.9 In Kingston Technology Co. v. Web Master, Skype Network Limited, Case No. INDRP/033 wherein the domain name www.kingston.co.in was held to be identical to the Complainant's mark KINGSTON and the domain name www.kingston.com. The panel also noted that, "The Respondent's domain name www.kingston.co.in consists entirely of their trademark, except for .co and .in, i.e., ccTLD, thereby the cyber privacy is in apparent form; the Respondent's registration and use of Domain Name is a clear case of cyber squatting whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the internet in order to confuse the public to the detriment of the Complainant."
- 6A.10 In Hindustan Petroleum Corporation Limited v. M. Ram Swamy, Case No. INDRP/059 wherein it was held, "That the domain name 'www.hindustanpetroleum.co.in' is seemingly



similar and near to the domain name 'www.hindustanpetroleum.com' and bound to create confusion among users as to its relatedness with www.hindustanpetroleum.com."

- 6A.11 In Kentucky Fried Chicken (KFC) Corporation v. Webmaster Casinos Ltd. Case no. INDRP/066, wherein it was stated that, "The Arbitral Tribunal finds that the Complainant has provided evidences that it possess registered trademark and logo being KFC. The Respondent's domain name, www.kfc.co.in, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name www.kfc.co.in is confusingly similar or identical to the Complainant's marks."
- 6A.12 In Boehringer Ingelheim Pharma GmbH & Co. KG v. Philana Dhimkana WIPO Case No. D2006-1594, where it was held that, if a well-known trade mark was incorporated in its entirety into a domain name, that is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered trade mark.
- 6A.13 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name **<nationalcairental.in>** is identical and/or deceptively similar to the earlier registered trademarks and Domain names of the Complainant. The whole of Complainant's trade mark /domain name has been incorporated in the disputed domain



name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name <**nationalcarrental.in**> is identical and/or confusingly similar to the Trademark of the Complainant.

- 6A.14 For all the above cited reasons, it is established that the Complainant has trademark rights in the NATIONAL and NATIONAL CAR RENTAL trademark and that the disputed domain name is identical or confusingly similar to this trademark. Therefore, the condition of Paragraph 4(a)(i) of the IN Policy is fulfilled.

B. RESPONDENT HAS NO RIGHT OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME

- 6B.1 The Respondents could not demonstrate any legitimate interest in the Disputed Domain Name. The Respondent registered the Disputed Domain Name after the Complainant's rights in the NATIONAL/NATIONAL CAR RENTAL mark were already established through use and registrations.

In a case where the Complainant's trademarks are in existence prior in time and are well known and recognized, there can be no legitimate interest of the Respondent in identical or deceptively similar mark.

- 6B.2. In *Veuve Clicquot Ponsardin v. The Polygenix Group Co.*, WIPO Case No. D2000-0163 it was held that bad



faith is found where a domain name *"is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith"*.

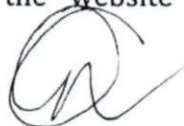
In Charles Jourdan Holding AG v. AAIM, WIPO Case No. D2000-0403 it was held that *"...given the relative notoriety of the Complainant's mark as well as the ease for any user of the Internet to assess on its own whether or not the registration and use of a domain is likely to encroach on another's rights, the Panel is of the opinion that the Respondent acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of his out-of-pocket costs directly related to the Domain Name, an act which constitutes bad faith pursuant to paragraph 6(i) of the Policy"*.

- 6B.3 The Respondent bears no relationship to the business of Complainant and is neither a licensee nor has obtained authorization of any kind whatsoever to use the Complainant's mark.
- 6B.4 The Respondent has neither been using the said domain name or any name corresponding to the same in relation to any goods or services, to the best of the Complainant's knowledge, nor has he been commonly known by the domain name, which in fact, corresponds and is associated exclusively with the Complainant.



6B.5 The Complainant's domain name www.nationalcarrental.com was created on 26.10.1998, and the use of the marks NATIONAL and NATIONAL CAR RENTAL on-line had commenced as early as 1999. However, the Respondent's website www.nationalcarental.in was created on 19.11.2012 which is almost one and half decades after the Complainant had registered its domain name. The Complainant being the prior user of the registered and well-known trademark NATIONAL and/or NATIONAL CAR RENTAL is the lawful owner of the aforesaid trade marks and the Respondent does not have any legitimate interest in the domain name which copies in entirety the trade mark/domain name of the Complainant.

6B.6 The Respondent is making an illegitimate and commercial use of the domain name www.nationalcarental.in and deliberately misleading the internet users and diverting Complainant's consumers to the other websites in order to tarnish the well-known trademark and corporate name of the Complainant. It is apparent that the use of a domain name identical to that of the Complainant's domain name and trade marks along with the hosting of websites and search options is clearly an attempt to create confusion and illegally profit from the resulting association between the Complainant and the Respondent. Further, the website is following a "pay-per-click" format and the said manner of use of the website is clearly commercial.



- 6B.7 In Societe Des Prodi Its Nestle SA, Switzerland v. Nescafe Limited, Case No. INDRP/100, wherein it was held that, "the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of diverting Internet traffic, which is neither fair use nor non-commercial use. Such facts and circumstances create a rebuttable presumption that the Respondent has no rights in the domain name and is not using it for any legitimate purpose.
- 6B.8 In Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO Case No. D2003-0455 whereby it was observed that the "Use of a domain name that is identical or confusingly similar to a trademark that applies to goods sold by a Respondent is not a bona fide use, if the Domain Name serves as a "bait" to attract customers to Respondent's website, rather than merely as a descriptor of the Respondent's products.
- 6B.9 In Kangaroo Kids Education Ltd. v. Anupam Devi, Case No. INDRP/146, regarding the domain name www.kangarookids.in wherein the Panel found that given the prior use and registrations of the distinctive KANGAROO KIDS mark by Complainant, the Respondent should be held to have actual or at a minimum constructive knowledge of such uses which would also lead to the inference that the same was registered in order to capitalize on the fame and reputation of the Complainant's KANGAROO KIDS family of marks. It stated, "The Respondent has no rights or the legitimate interest in the domain name.



Further it is apparent that the sole purpose of registering the domain name is to misappropriate the reputation associated with the Complainant's trademarks."

- 6B.10 In *Owens Corning v. NA*, WIPO Case No. D2007-1143, that where the Respondent wants to argue that it has a legitimate interest in a domain name in relation to genuine products, it is incumbent upon that entity to bring evidence before the panel to the effect that the Domain Name has been, or will be, used in a manner that satisfies the conditions of use laid down on *Oki Data, Oki Data Americas Inc v ASD Inc* WIPO Case No. D2001-0903.
- 6B.11 In *Luxottica Holdings Corp. v. Lokesh Morade*, case no. INDRP/139, it was held that, "Once the Complainant makes a prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name."
- 6B.12 In *Television Food Network, G.P. v. Arif Siddiqui*, Case No. INDRP/138 wherein, holding in favour of the Complainant, the panel noted that, "the Respondent has registered the disputed domain name on June 02, 2005, which is much subsequent to the Complainant's adoption and use of the mark FOOD NETWORK in respect of similar products/services since the year 1996. There is no evidence to suggest that the Complainant had

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authorized or licensed the Respondent's registration or use of the Domain Name."

6B.13 The respondent has not rebutted the claims of the complainant.

6B.14 Therefore, this panel is satisfied that the respondent has no rights or legitimate interest in respect of the disputed domain name.

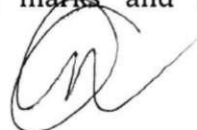
C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

6C.3 The bad faith in registering the impugned domain name by the respondent is apparent from the fact that the same has been registered for the sole purpose of sale as stated in the preceding complaint on his website the respondent has openly called for bids for sale of impugned domain name. Numerous decisions support these propositions are in favour of the complainant.

6C.4 The Respondent has registered and is using the Domain Name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's NATIONAL and/or NATIONAL CAR RENTAL marks and from the



likelihood that internet users will mistakenly believe that the impugned domain name and its associated websites are connected to the Complainant and its goods/services.

- 6C.5 The Respondent has registered and is using the impugned domain name primarily for the purpose of disrupting the business of the Complainant and has no prior right in and no authorization to use given by the Complainant concerning the NATIONAL and/or NATIONAL CAR RENTAL trademark.
- 6C.6 The offering of other products/services on the impugned website manifests Respondent's clear intention to attract, for commercial gain, interest users to Respondent's website by creating a likelihood of confusion with that of the Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's products. The use and registration of an identical domain name by the Respondent in an effort to gain commercial benefits is evidence of bad faith.
- 6C.7 Respondent's bad faith registration of the domain name is established by the fact that the domain name deceptively similar and almost identical Complainant's NATIONAL and NATIONAL CAR RENTAL mark and was acquired long after the Complainant started using the said marks.
- 6C.8 In Television Food Network, G.P. v. Arif Siddiqui, Case No. INDRP/138 wherein the panel noted the circumstances that the Respondent's Domain Name



currently resolves to a webpage featuring services/products. By use of the Complainant's mark FOOD NETWORK, it appears that the Respondent has deliberately tried to attract internet users to his website. The Arbitrator finds that "there is a likelihood that Internet users will be confused as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the services advertised on it considering the Complainant's prior use and adoption of an identical mark/ domain name." The panel stated that, "The aforesaid circumstances suggest bad faith registration and use of the Domain."

6C.9 In Microsoft Corporation v. Chun Man Kam, Case No. INDRP/119, wherein it was held 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 no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to the Complainant itself 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 and the registration has intentionally attempted to attract Internet users to its website for commercial gain, by intentionally creating a likelihood of confusion with



the Complainant's mark, thus misleading consumers."

6C.10 In *Compagnie Gervais Danone v. yunengdonglishangmao(Beijing)youxiangongsi* Case No. D2007-1918 in which the panel had accepted that "Given this finding, the Panel also infers and accepts the Complainant's undisputed contention that the Respondent registered the Domain Name with a view to diverting Internet users with an interest in Danone food products to its website for its own commercial gain...6.23 Given that the Respondent has failed to show (for the reasons set out under the heading of legitimate interests above) that it was using the Domain Name exclusively to deal in genuine Danone products and has also failed to disclose on the site the true relationship between it and the Complainant, the Panel concludes that the Respondent in this case did intentionally attract for commercial gain users to its website by creating a likelihood of confusion with the Complainant's mark. The activities of the Respondent, therefore, fall within the scope of paragraph 4(b)(iv) of the Policy."

6C.11 In *Societe Naitonale des Chemins de Fer Francais v. ostrid co.*, D2008-0627, (WIPO Jun. 24, 2008) wherein it was held that "the Respondent's use of confusingly similar *voyage-scnf-blog.com* domain name for pay-per-click website deemed bad faith registration and use"; *Busy Body, Inc. v. Fitness, Outlet Inc.*, D2000-012, (WIPO Apr. 22, 2000) finding bad faith where Respondent attempted to attract customers to its website and created confusion by offering similar products for sale as Complainant.



