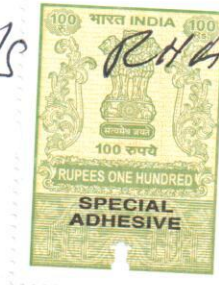


3219
10001

M/S



Vatija Tower Sees4

NEERAJ SHARMA

- 9 OCT 2014

STAMP VENDOR, GURGAON

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Sidhartha Mallya
UB Tower, UB City, No. 24,
Vithal Mallya Road,
Bangalore-560001, India

.....Complainant

Puneet Agarwal
B-2, Anand Vihar, Railway Colony,
Alwar, Rajasthan,
Postal Code- 301001
India

..... Respondent

Disputed Domain Name: www.sidmallya.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Mr. Sidhartha Mallya of UB Tower, UB City, No. 24, Vithal Mallya Road, Bangalore-560001, India. The Complainant is represented by its authorized representatives M/s. Prakash & Associates, Unit No.13 & 14, 1st floor, SNS Plaza, Shivananda Circle,

Kumarakrupa Road, Bangalore-560001, Karnataka, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Puneet Agarwal of B-2, Anand Vihar, Railway Colony, Alwar-301001, Rajasthan, India as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.sidmallya.in. The Registrar is GoDaddy.com, LLC (R101-AFIN)

The Registrant is Puneet Agarwal, B-2, Anand Vihar, Railway Colony, Alwar-301001, Rajasthan, India.

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on August 05, 2014 and the notice was issued to the Respondent on August 07, 2014 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent submitted its response on August 27, 2014 through their representative Mr. Ankur Raheja. On August 30, 2014 the Arbitrator called upon the Complainant to file its Rejoinder in response to the Respondent's response within deadline period of 10 days. Based on extension request made by the Complainant, the deadline to file rejoinder was extended till September 03, 2014. The Complainant filed their rejoinder on September 03, 2014. The Arbitrator then directed both the parties to file brief written arguments by September 10, 2014 which were submitted by them within the stipulated time.



The Complainant filed additional documents with the petition dated September 18, 2014 explaining the reason for delay in furnishing the said documents vide their email dated September 18, 2014. At the request of the parties, oral hearing was appointed. The matter for listed for hearing before the Arbitrator on October 01, 2014 for arguments. In view of the above, the complaint is being decided based on materials and evidence submitted by both the parties and contentions put forth by them. Also in view of extensive evidence adduced by both parties and oral hearing being appointed, the complaint could not be decided within 60 days and additional 30 days as per INDRP Rules were needed due to exceptional circumstances.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the domain name;
- C. The domain name has been registered or is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of his case has made the following submissions

- The Complainant, Siddhartha Mallya, popularly known as 'Sid Mallya', is an entrepreneur, TV host, fitness icon, youth icon, fashion icon and opinion leader. He is:
 - a) Member of the Board of Directors of United Breweries (Holding) Limited;
 - b) Director, Royal Challengers Sports Private Limited, which owns the Indian Premier League Franchisee cricket team "Royal Challengers", Bangalore;
 - c) Host of a popular reality TV Series hurt for the Kingfisher calendar girl which airs on the lifestyle channel NDTV Good Times and host of popular cricket chat show "No boundaries" broadcast exclusively on www.youtube.com
 - d) Named the "the second most searched person" in the field of business on <google.com> in 2012 at the age of 23 and various other appearances.
- The Complainant is the son of Dr. Vijay Mallya, Industrialist and two time Member of Parliament of India. Dr. Mallya is the chairman of the UB Group – one of India's largest conglomerates with a market capitalization of approximately \$ 12 billion and diverse interests in brewing, distilling, aviation, pharmaceuticals, real estate, engineering, fertilizers, biotechnology and information technology. The U.B Group owns the world's largest liquor company United Spirits Limited apart from United Breweries Limited. He is the first Indian to own a F1 team and is the Team Principal and Managing Director of the "Sahara Force India" F1 team.



- The Complainant has a profusion of people, numbering upwards of 336,849, who follow him on the popular social networking website www.twitter.com where his 'user name' is the popular shorter variant of his name, 'Sid Mallya' and is regularly operated and updated by him. His chat show "No boundaries" has received total of 349,467 lifetime hits. The Complainant features in newspapers, tabloids, entertainment dailies and other like media, named as both Sidhartha Mallya and Sid Mallya with recurring regularity to public at large and his group of companies associated with.
- A cursory search on the internet with the words "Siddhartha Mallya" and its shorter variant "Sid Mallya" resolves to pages and information directed towards and about the Complainant who is a celebrity of sorts since 2006 onwards. The Complainant was the owner of no. of domain names like sidharthamallya.biz, sidharthamallya.in, sidharthamallya.net, sidharthamallya.org, etc. The Complainant has also provided list of internet domain names obtained by the Respondent using the words "Sid Mallya".
- The use of the said common law service mark, Siddhartha Mallya, along with its shorter and popular variant, Sid Mallya, have become the distinctive identifying feature of the various services provided by him, namely professional TV host, model, columnist and entrepreneur, and have come to be recognized by the General Public as indicating an association with the Complainant and the goodwill associated with his name.
- In the rejoinder, the Complainant explains that the genesis of the short form or abbreviated form of the name is as old as civilization. The short form, abbreviated name, etc. is developed on principle called etymology or pseudonym. The name "Sid Mallya" is used by the Complainant in social, educational, educational fields, etc. substantiated with evidence.
- The Complainant wanted to register a domain name in his name to develop a forum to interact with his fan base, seeker's of allied information etc., and followers therein. Users could thereby follow the day to day activities of the Complainant and stay updated on the same. Upon commencement of the search to identify a possible Domain Name, the Complainant discovered that the Domain name www.sidmallya.in was already registered. A consequent WHOIS search demonstrated that the same was registered in the name of the Respondent; this is a clear infringement of the Complainant's service mark rights.
- Relying on Julia Roberts case, the Complainant submits that it is apparent from a mere perusal of the disputed Domain Name that the Respondent has registered it as identical and similar to the name in which the Complainant has a service mark and reputation. Therefore, any person who wanted to access upon the disputed Domain Name is bound to get confused as to its origin and affiliation, inasmuch as the arrangement of letters and spelling is absolutely identical to the Complainant's service mark. There is no difference whatsoever between the arrangement of letters in the service mark and the domain name, inasmuch it is



bereft of any punctuation or other marks or letters which may create even a slight differentia in the mind of user between the Domain Name and the Complainant's service mark.

- The Complainant contends that the disputed domain name is identical to the Complainant's existing name, brand. There is strong likelihood that a web browser looking for "Sid Mallya" products/services in India would mistake the offending website www.sidmallya.in for the Complainant's India and once there would be directed to other links on this website unrelated to the Complainant's products or services.
- The complainant contends that the disputed domain name was registered after the domain www.sidmallya.com was offered for sale by the Respondent asking for Rs. 11.00 crores/2 million US \$ approx.
- The Complainant contends that the Respondent has made no use of the domain name obtained by him in connection with his bonafide offering of goods or services since inception. The Respondent is holding on to the domain name for dishonest purposes.
- The Respondent does not use any mark/name and/or any domain names registered by him as his business name/corporate name or otherwise in its course of trade and fails to demonstrate any use in connection with a bonafide offering of goods or services or otherwise in media or otherwise. The Respondent did not independently arrive at the term "sid" "sidmallya" etc., for its domain name, it is slavish imitation by Respondent and passive holding of the domain name as sid-mallya.in & sidmallya.in.
- The Complainant submits that the Respondent has no right or legitimate interests in the disputed domain name, as he has no relationship whatsoever with the Complainant and the Complainant has never authorized him to use the disputed Domain Name or any other Domain Name either as an agent, a licensee or otherwise. The Respondent does not disclose its relation, or acquaintance etc. thereof, on the disputed Domain Name.
- The Complainant submits that bad faith in the Respondent's conduct is evidenced, primarily, by the fact that no information or content has been hosted on the Domain Name. The Respondent has merely parked the Domain Name on the registrar's website "godaddy.com" without any bonafide offering of goods or services, or any demonstrable preparations for the same. The Complainant contends that the Respondent registered sidmallya.in as late as 2013 though it was claimed by the Respondent that he was doing business from the year 2006, 2008 onwards.
- The Complainant further contends that paragraph 6 of the INDRP Policy without limitation circumstances that "shall be evidence of the registration and use of the domain name in bad faith", for the purposes of para 6(i) and (iii). Only one of those circumstances, by necessity, involves a positive action post registration



undertaken in relation to the domain name. The other three circumstances contemplate either a positive action or inaction in relation to the domain name. Thus the circumstances identified in para 6(i) and (iii) are in conformity with INDRP policy and can be found in the situation involving a passive holding of domain name registration. Thus, the Respondent by his conduct in the instant case satisfies the above conditions evidencing bad faith. It has been held that registering the disputed domain name for no apparent purpose and passive holding, is evidence of bad faith registration

- The Complainant's trade name and image "sid" "mallya" and "sidhartha mallya" is distinctive and is well known around the world; the fact that the Respondent has registered a domain name that is identical and similar to it, indicates that the Respondent had knowledge of the value of the Complainant's image and reputation per se at the time of registration of the disputed domain name. The Respondent's intention, by knowingly choosing a domain name consisting of the Complainant's name and his family surname was clearly to take advantage of the reputation, name and fame of the Complainant. It is clear that the Respondent has acquired the domain name in question to attract internet users for commercial gain, hoping for substantial compensation from the Complainant for release of subject domain name in his favour, and speaks volume as deceit fullness and maldives.
- The Complainant states that an extensive enquiry was made to ascertain the respondents nature of business activities etc., it emerged that the Respondent does not have any business and other activities to suggest usage of the popular word such as "sid" and "Sidmallya" etc. either directly or indirectly. The Respondent has failed to establish that the word SidMallya was used in any form, context, text, etc., either directly or indirectly with their alleged business and the respondent has not produced any form of acceptable evidence, such as letters, invoices, advertising materials, bills, vouchers, etc. The Respondent has even failed to produce any statutory permission / registration of SidMallya relating to his chemical business at all.
- The registration of the disputed domain name by the Respondent is thus a typical example of "cyber squatting". It has been established that the Respondent has registered the domain name sidmallya.in in order to sell, resell or rent the same to the true and lawful owner of the subject trade name / image/ brand, the Complainant herein, or to a competitor of the Complainant.

5) Summary of the Respondent's contentions:

The Respondent in support of his case has made the following submissions

- The Respondent contends that the complete and official name of Complainant is Sidhartha Vijay Mallya only, which has been used in the Form 32 submitted with Registrar of Companies.



- The Respondent claims that the disputed domain name was registered on Oct 24, 2013 in relation to Respondent's family business since he was already holding www.sidmallya.com since July 02, 2012 for legitimate purposes. He claims that Complainant has concealed relevant facts in his complainant as to Change of his name from Sidhartha Vijay Mallya to Sid Mallya in Dec 2013 or later, which appears in various news articles so that it may help in future acting career in USA.
- The Respondent stresses that WIPO Consensus view suggests that "the UDRP does not specifically protect personal names as such, in situations where a personal name unregistered as a trademark is being used for trade or commerce, the Complainant may be able to establish common law or unregistered trademark rights in that name. In order to do so, proof of use of the person's name as a distinctive identifier of goods or services offered under that name would normally be required." And no such evidence has been rendered as to use of Complainant's name commercially in relation to any goods/services, particularly a third party use. In the singhania.net.in, it has been very clearly laid down that "To establish common law rights, the Complainant has to file evidence of use of the mark in course of trade or commerce, such as statements or figures showing turnover or revenue generated under the mark, media and third party recognition of the mark and the proof of the mark having become a distinctive identifier of the services offered by the Complainant." Various relevant decisions annexed by the Respondent include decisions related to personal names especially those of sons and daughters of famous Indian businessmen very clearly upheld the above view.
- That it was denied that the disputed domain name is identical to the Complainant's existing name, brand, or as per any pending trademark application. It is submitted by the respondent that no trademark application similar to the disputed domain name has ever been submitted.
- That the Respondent had registered the Domain Name as abbreviation for the keywords used in his family business i.e. Sintered Dolomite Minerals and Alloys, Alwar (Si-Sintered, D-Dolomite, M-Minerals, Ally- Alloys and A-Alwar) which relates to Minerals & Alloys for a legitimate purpose. The Respondent further goes on to add that being religious, the stating and last part of the domain has been rhymed as SID (derived from Siddhivinayak) and ALLYA (based on Morya).
- That the Disputed Domain Name nowhere is based upon any Trade or Service mark of the Complainant and never acquired any secondary meaning but is just an abbreviated form of Respondent's family business as provided above. Further, there are many other persons with the same or similar name, whose public profiles have been provided as annexures.
- That no duty has been cast under any law upon the Respondent to build a website as soon as Domain is registered, while infact Domain is available on first come first basis, therefore are registered to secure the rights before the third party registers. Further, neither there is any duty to register Domain as soon as you commence business.

- That the Complainant has been filed with a malafide intention of hijacking the Disputed Domain based upon false evidence in order to mislead the arbitration proceedings, which was registered for legitimate purpose only, while the Complainant doesn't even hold any rights in the shorter form of name, i.e. 'Sid Mallya' and otherwise also it has not been used in relation to any goods or services in terms of decided domain dispute decisions.
- The Respondent has never approached the Complainant as regard Sidmallya.in Domain Name to sell the same and neither Complainant ever contacted the Respondent in relation to .IN Domain name, which was registered in Oct 2013 only.

6) **Hearing:**

Both the representatives of the Complainant, Mr. S.R. Shiva Prakash and Ms. Sangeetha and the Respondent's representative, Mr. Ankur Raheja presented their case and reiterated their contentions in the hearing. The Complainant contended that it is common practice for media personalities to use their nickname or abbreviated forms of name. Examples cited were Bollywood Veteran actor- Amitabh Bachchan is known as Big B, Indian Prime Minister- Narendra Modi known as NaMo.

The Respondent reiterated that the name SIDMALLYA was used registered as domain by him owing to its nature of business i.e. sintered dolomite business. However, the Respondent could not produce any evidence proving the use of the term SIDMALLYA in relation to his business since the commencement of his business i.e. year 2006. Refuting the contentions of the Respondent, the Complainant claimed as the coinage of the term SIDMALLYA in respect of mineral business as a mere afterthought, relied on Supreme Court judgment M/s Satyam Infoway Limited vs. M/s Sifynet Solutions Private Limited "...Even if this inference is incorrect and the respondent was always a company, we are still not convinced as to the reason why the name "Siffy" was chosen by the respondent. If the originators of the company were the five persons viz. Salim, Ibrahim, Fazal, Fareed and Yousuf why was the domain name of the respondent already registered as 'Siffynet' in the name of Mr. C.V. Kumar? Furthermore, the list of names provided by the respondent to support its case that 'Siffy' as an original acronym was based on the initial letters of the respondent company's promoters seems unsupported by any evidence whatsoever. No document apart from a bare assertion that the five named individuals had any special collective role in the origination or promotion of the business has been filed."

Relying on US Anti-cybersquatting Consumers Protection Act, 1999, the Complainant contends that the registration of the disputed domain name by the Respondent amounts to bad faith registration since it fulfills the essential parameters laid down by such Act primarily act of transfer or sale of the domain name to the rightful owner for a hefty sum. This was refuted by the Respondent claiming that the he had knowingly quoted the high price on the domain www.sidmallya.com since it was never his intention to sell the domain at the first

place. The Complainant officials had made several calls to him to make an offer. During the hearing, I sought clarification from the Respondent, if the email dated May 03, 2013 to follow up on his offer to sell domain name is admitted to be written by him. He confirmed that he did write the email and follow up on his offer. I further enquired if he can show examples of any company/business that had coined its domain name from the name of Chemical that it was manufacturing/trading. No specific example(s) was provided.

7) Discussion and Findings:

The submissions and documents provided by Complainant supports that the Complainant is the son of the industrialist Vijay Mallya and their family name MALLYA is synonymous with IP Cricket league, business of diverse sectors, sports, media and fashion, etc. The Complainant has been using the abbreviated name Sid Mallya interchangeably with his legal name Sidhartha Mallya which are evidenced by interviews excerpts, magazine covers, advertisements, etc. The Complainant has produced evidence dating the year 2010 and interview excerpts where the Complainant has been referred to SID MALLYA alongwith magazine covers of GQ dated September 2011. Thus it can be said a) the web users are likely to associate the name "SIDMALLYA" as Siddhartha Mallya, the scion of the UB Group and other Mallya conglomerates b) the web users would reasonably expect to find Complainant's services/website at the domain www.sidmallya.in and c) they may believe it is an official website of the Complainant and is another form of fan- interactive website/forum developed by the Complainant.

Based on the elaborate submissions and documents submitted by both the sides, I now deal with the three requisite conditions laid in paragraph 4 of the policies which are listed below.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

According to Consensus view of WIPO, "Personal names that have been registered as trademarks are generally protected under the UDRP. While the UDRP does not specifically protect personal names as such, in situations where a personal name unregistered as a trademark is being used for trade or commerce, the complainant may be able to establish common law or unregistered trademark rights in that name. In order to do so, proof of use of the person's name as a distinctive identifier of goods or services offered under that name would normally be required. A trademark-equivalent basis has been found in the common law action of passing-off, which is generally intended to prevent the making of misrepresentations to the public in the context of trade, and which if established may provide grounds for reliance on a personal name for the purpose of the UDRP. However: The name in question needs to be actually used in trade or commerce as an identifier of goods or services to establish unregistered trademark rights for the purpose of the UDRP."



In order to prove the use of the person's name, the complainant must show that the name has become a distinctive identifier associated with the complainant or its goods or services. Relevant evidence of such "secondary meaning" includes length and amount of sales under the trademark, the nature and extent of advertising, consumer surveys and media recognition. The fact that the secondary meaning may only exist in a small geographical area does not limit the complainant's rights in a common law trademark."

In Chinmoy Kumar Ghose v. ICDSOFT.COM and Maria Sliwa, WIPO Case No.D2003-0248, the panel found that "... that the Complainant does appear to have used his personal name as a marketable commodity, for direct commercial purposes in marketing his own goods or services. There is evidence of published works being sold online at "www.amazon.com" under or by reference to the name "Sri Chinmoy," and some of those works appear to have been on the market since the 1980s. There is also some (more limited) evidence of the name "Sri Chinmoy" being used as an identifier of a broadcasting service (a radio station), and also to identify a meditation center run by the Complainant (although there is nothing to tell the Panel whether or not the meditation center is operated as a commercial enterprise). It is not strong evidence but on balance the Panel finds that there has been sufficient use of the SRI CHINMOY mark in association with goods or services of the Complainant, for him to have acquired common law rights in the mark". In Julia Fiona Roberts v. Russell Boyd, WIPO Case No. D2000-0210, it was held that "... the Panel understood that Complainant asserted common law trademark rights in her name. The Panel further decided that registration of her name as a registered trademark or service mark was not necessary and that the name "Julia Roberts" has sufficient secondary association with Complainant that common law trademark rights do exist under United States trademark law."

Based on the evidence filed by the Complainant including interview excerpts it has been established by the Complainant that it has common law rights in the abbreviated name Sid Mallya, and that these rights are on account of prior use and reputation acquired by the Complainant owing to its affiliation with UB Group, scion/heir of well-known family business and several media appearances and presence in the trade. The Complainant has in support submitted substantial documents including fashion magazines, interview excerpts, etc. which shows that Complainant abbreviated name Sid Mallya was used interchangeably with his legal name Sidhartha Mallya. It can be concluded that the Complainant has common law rights in the name Sid Mallya owing to media recognition and various business affiliations.

It is generally recognized today that cases concerning trademarks, trade names, names is not only the injury occasioned to the innocent parties but equally as much on the injury suffered by the public. It is perceived that "Sid Mallya" is the abbreviation which the Complainant has used and which the public associates with the Complainant. It is commonplace in our daily endeavor to shorten and abbreviate anything which is capable of being shortened or abbreviated, and it is also common knowledge that there is a marked tendency among public, usually to shorten and abbreviate, and it is therefore quite natural, that the public will



conceive Sid Mallya as the short name of the Complainant Sidhartha Mallya. It may be apt to mention that the Respondent has not denied that the Complainant has reputation and goodwill in the name 'Sidhartha Mallya'.

Having held that Complainant has common law trademark rights in his personal/abbreviated name, the next consideration is whether the domain name <sidmallya.in> is identical to or confusingly similar with Complainant's name. The second level domain name in <sidmallya.in> is identical to the Complainant's name. Therefore, I find that the requirement of the Policy paragraph 4(a)(i) is satisfied. The disputed domain name is identical to Complainant's name 'Sid Mallya' in its entirety. The name Sid Mallya forms key and entire part of the disputed domain name, which is identified by the person of the Complainant by the users, etc. The name has been highly publicized in the print media, etc. and has earned a considerable reputation in the market and is associated with the Complainant only.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

While the overall burden of proof rests with the Complainant to prove that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the policy.

I accept the pleadings made by the Complainant that the Complainant has not authorised the Respondent to register or use the 'sidmallya.in' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be unexplained. The said domain name is parked with the Registrar. There is no indication in the Respondent's pleadings that he is known under the disputed domain name.

It is to be noted that the Respondent had offered to sell the www.sidmallya.com (gTLD) to the present Complainant in the year 2012 for INR 11.00 crores and thereafter, has secured registration of the disputed domain name in the year 2013. The present fact amply proves that the Respondent was ready to relinquish its rights in the domain www.sidmallya.com. It is however unexplained fact that the Respondent registered the domain comprising <sidmallya> in the year 2012 based on his alleged business nature whereas the Respondent had admitted to commence its business in the year 2006. The Respondent on being enquired why did he again made an offer to sell vide his email dated May 03, 2013 for the domain www.sidmallya.com, he answered that he wanted to earn some money. In my opinion, the reason provided by the Respondent for the coinage of the domain SidMallya is farfetched. Thus it seems like an afterthought to explain its adoption.

The Respondent has himself admitted in the para B(3) that the disputed domain name has never been put to use but just carries a default parking page of Godaddy.com with default content which never related to the Complainant or any company in which the complainant is interested. Thus the Respondent seems to have made no attempt to use the domain name for any goods or services that it had registered the domain name.

In the circumstances the reasonable inference to be drawn is that the Respondent has failed to prove that he has legitimate rights in the domain name <sidmallya.in> and that he is using the said domain name for bonafide offerings of goods and services. Given these circumstances I find that Paragraph 4(a)(ii) of the Policy has prima facie been satisfied.

(3) the domain name has been registered in bad faith.

It is to be noted that registered disputed domain is the parked website and it seems that the Respondent has been passively holding the domain name.. No information or content has been hosted on the disputed Domain Name. The Respondent has merely parked the website without any bonafide offering of goods or services, and there has been action on part of the Respondent to host any website either in future date. It is settled law that registering the disputed domain name for no apparent purpose and passive holding, is evidence of bad faith registration.

Paragraph 6 of the INDRP policy states that "**Evidence of Registration and use of Domain Name in Bad Faith-** For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or



endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

According to Consensus View of WIPO, evidence of offers to sell the domain name are generally considered as bad faith. This is so both in relation to offers by a respondent to sell made prior to a complainant's filing of a UDRP complaint, or after such filing. In my opinion the said principle also extends to the offers to sell the identical second level domain prior to the Complainant filing the UDRP complaint. The Respondent had admittedly tried to sell the domain www.sidmallya.com to the Complainant and secured the disputed domain name www.sidmallya.in on later date i.e. approximately after a year. Additionally, it is not disputed that the Complainant had sent cease & desist notice dated October 30, 2012 to the Respondent notifying him of the rights in the name Sid Mallya, the response to which was never produced by the Respondent. Assuming that the claims made by the Complainant in the notice were not rebutted, it can be concluded that the Respondent was aware of common law rights of the Complainant and despite the same went ahead and registered the identical second level domain, probably in lieu of hefty payment for both the domains. Therefore, in my opinion, the circumstance provided in Paragraph 6(i) is present.

The Respondent has engaged in registering both gTLD and ccTLD for the identical second level domain name in which the Complainant has established valid rights. This essentially precludes the Complainant from reflecting his mark in a corresponding domain name(s). Acquiring the domain comprising SIDMALLYA necessarily devours the Complainant's rights in his abbreviated personal name and prevent him from exercising his subsisting rights. Therefore, in my opinion, the circumstance provided in Paragraph 6(ii) is present


The Complainant has not authorized or licensed the Respondent to register the disputed domain name. It is not disputed that the Respondent's business was never known under the name Sid Mallya in fact the business firm of the Respondent is named as M/s Hi-Tech Minerals and Chemicals and/or Vikas Chemicals. The Respondent has not provided any evidence to show that name Sid Mallya was bonafidely adopted and used for his business prior to the date/year Complainant garnered substantial goodwill and reputation. Therefore, it seems that the Respondent had intentionally registered the disputed domain to create confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of his unauthorised website, product or service, etc. Therefore, in my opinion, the circumstance provided in Paragraph 6(iii) is also present.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'SIDMALLYA' is identified with the Complainant's name, image and personality, therefore its adoption by the Respondent shows 'opportunistic bad faith'. The explanation offered for adoption is rather farfetched and lacks credence.



7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.sidmallya.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.sidmallya.in be transferred to the Complainant.



**RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA**

October 27, 2014