



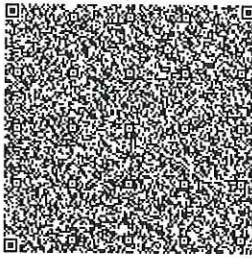
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL29856789808463Q
Certificate Issued Date : 24-May-2018 10:37 AM
Account Reference : IMPACC (IV)/ dl916803/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL91680363523862207874Q
Purchased by : LUCY RANA
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : LUCY RANA
Second Party : Not Applicable
Stamp Duty Paid By : LUCY RANA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry- National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <INDEEDJOB.NET.IN>

IN THE MATTER OF

Indeed, Inc.
6433 Champion Grandview Way,
Building I,
Austin, Texas 78750,
United States of America

.... Complainant

-----versus-----

Deepak Singh
Delhi-110036
India.

.....Respondent

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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.

1. The Parties

The **Complainant** in this arbitration proceeding is **Indeed Inc.**, of the address 6433 Champion Grandview Way, Building I, Austin, Texas 78750, United States of America.

The **Respondent** in this arbitration proceeding is **Deepak Singh**, an individual, having address at Delhi-110036, India.

2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <indeedjob.net.in> with the .IN Registry. The Registrant in the present matter is Deepak Singh, and the Registrar is GoDaddy.com, LLC.

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated March 27, 2018, sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day.

Thereafter, NIXI forwarded the soft copy of the Complaint, along with Annexures, as filed by the Complainant in the matter, to all Parties, including the Arbitrator vide emails dated April 12, 2018 and made the pronouncement that Mrs. Lucy Rana, in her capacity as Arbitrator, would be handling the matter.

The hard copies of the Domain Complaint along with Annexures as filed by the Complainant were received by the Arbitrator, and receipt thereof was confirmed vide email on April 16, 2018.

On April 17, 2018, NIXI informed the Arbitrator vide email that service of the hard copies of the domain complaint and Annexures as sent to the Respondent's postal address provided in the WHOIS details of the disputed domain had failed, as intimated to them by the courier agency, on account of the postal address being incomplete/ insufficient. However, NIXI confirmed that the soft copy of the Complaint along with annexures, as sent to the Respondent vide email, had not bounced back.

Therefore, the Arbitrator, vide email dated April 18, 2018, announced that the Complaint along with Annexures has been duly served upon the Respondent vide email as is evidenced by the fact that the emails as sent have not bounced back, and as per Rule 2(a)(ii) of the INDRP Rules of Procedure, this constitutes effective service. Further, Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 provides that *"If none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it."*

In view also of the courier agency's intimation that the Respondent was not reachable at the postal contact details as provided in the WHOIS details of the disputed domain, it prima facie appears that the Respondent has provided incorrect postal contact details in the WHOIS records

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for the impugned domain. Hence the service of notice was deemed to have been completed upon the Respondent.

Thereafter, the Arbitrator, vide email dated April 18, 2018, informed the Respondent that he is deemed to have been duly served with the Complaint and Annexures thereto and is granted a period of **fourteen (14) days** from the date of receipt of the email in which to file a response to the Complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law.

NIXI, vide email dated April 19, 2018, sought the Arbitrator's consent to have the undelivered consignment of the Complaint along with Annexures, which had proved undeliverable on the Respondent due to incomplete/insufficient address, returned or destroyed. The Arbitrator, vide email on the same day, requested NIXI to have the said consignment returned by the courier agency as evidence that delivery of the Complaint had been duly attempted upon the Respondent, however, due to his not having provided complete/sufficient address/contact details, the same had failed, and further ordered charges for the return of the consignment to be raised upon the Complainant.

On May 05, 2018, the Arbitrator, vide email, informed NIXI of the expiry of the Respondent's deadline to respond to the Complaint on May 03, 2018 and noted that the Respondent had not filed or communicated a response in the matter within the aforementioned deadline. The Arbitrator requested NIXI to confirm that it had not received a response in this regard from the Respondent within the aforementioned deadline.

NIXI confirmed vide email dated May 07, 2018 that it had not received a response in this regard from the Respondent within the aforementioned deadline.

In view thereof, the Arbitrator, vide email dated May 15, 2018, addressed to the Respondent brought it on the record that despite the prescribed deadline for the Respondent to respond in the matter having elapsed on May 03, 2018, in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **seven (7) days** within which to submit a response (if any) in the matter.

As no response to the Complaint was preferred by the Respondent in the matter before either the Arbitrator or NIXI even after expiration of the aforementioned final time period, the Arbitrator, vide email dated May 17, 2018, reserved the award to be passed on the basis of facts and documents available on the record.

4. Factual Background

The Complainant has submitted that it provides the world's largest job site with over 200 million unique visitors every month from over 60 different countries. The Complainant helps companies of all sizes hire employees and helps job seekers find employment opportunities. The Complainant owns and has used the top-level domain <indeed.com> with an employment related search engine since at least 2004 and continues to do so till date. The Complainant has annexed extracts from webpages highlighting the Complainant's goods and services as **Annexure 3**.

The Complainant has submitted that it has ensured significant presence of its brand and trademark **INDEED** in the Indian market through various promotional and advertising activities, such as by sponsoring a "Talent Acquisition Summit" in Mumbai in 2017, and by prominently integrating the services as offered by the Complainant under its brand and trademark **INDEED** into the Hindi feature film "Hichki", produced by Yash Raj Films, a



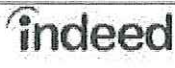
notable Indian production company. The Complainant has annexed extract of web articles in support of its submissions in this regard as **Annexure 4**.

The Complainant has submitted that its business has been recognized for its consistency in providing outstanding services, and further, that it has been rated as the top source of external hires and interviews by the human capital management company, SilkRoad for 6 years in a row. The Complainant has attached extracts from a report in support of its above submission collectively as **Annexure 5**.

5. **Complainant's Contentions**

The Complainant has submitted that it owns and has used the brand and trademark **INDEED** and variations thereof for over a decade with regard to its job websites and search engines, as well as related goods and services such as mobile applications and online advertising services.

The Complainant has submitted that its **INDEED** marks are a distinctive identifier associated with the Complainant's goods and services. In support of its trademark rights in the said marks, over and above its common law rights in respect thereof, the Complainant has given details of

certain of its trademark registrations for the marks **INDEED** and  in respect of classes 09, 35 and 42, and dating back to September 12, 2006 in the United States of America, and October 27, 2010 in India. The Complainant has further submitted that its trademark registrations as provided are duly renewed, valid and subsisting, and has annexed copies of the Registration Certificates of its US registrations and copies of the online records of its Indian registrations in support thereof collectively as **Annexure 6**.

The Complainant has submitted that it owns the domain <indeed.com> and operates its corresponding primary website at www.indeed.com through which it conducts a significant portion of its business and where information about the Complainant and its business is easily accessible and available to millions of internet users, who may be current or potential consumers of the Complainant. The Complainant has further submitted that its domain name <indeed.com> incorporates its registered trademark **INDEED** in its entirety, thereby augmenting its proprietary rights in the said mark.

The Complainant has submitted that its domain <indeed.com> is based on the corporate name of the Complainant, i.e. Indeed, Inc. and the same was created/ registered on, and has been regularly renewed since, March 30, 1998.

The Complainant has submitted that it is also the owner of the India specific domain <indeed.co.in>, which was created/registered on, and has been regularly renewed since, December 14, 2006. The Complainant has further submitted that Indian users are re-directed from its website at www.indeed.com to its website at www.indeed.co.in. The Complainant has annexed an extract from the WHOIS results of its India specific domain <indeed.co.in> as **Annexure 8**.

The Complainant has submitted that as a result of, and to leverage its internet-based business model, it has also set up several other country-specific domain names and websites in several major international markets such as Canada <indeed.ca>, Colombia <indeed.com.co>, France <indeed.fr>, Hong Kong <indeed.hk>, Japan <indeed.jp>, New Zealand <indeed.co.nz>, Peru <indeed.com.pe>, Portugal <indeed.com.pt> and <indeed.pt>, Quebec <indeed.quebec>, South Africa <indeed.com.za>, Taiwan <indeed.tw>, Turkey <indeed.com.tr>, Ukraine <indeed.com.ua> and the United Kingdom <indeed.co.uk>, through which it lists specific job opportunities in the specific markets. The Complainant has

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annexed relevant extracts from the WHOIS database for the said domains collectively as **Annexure 9**.

The Complainant has submitted that it is also the owner of several other domains containing its registered trademark **INDEED**, viz. <indeed.net>, <indeed.online>, <indeed.org>, <indeed.career>, <indeed.jobs> and <indeed.ceo>. The Complainant has annexed relevant extracts from the WHOIS database for the said domains collectively as **Annexure 10**.

The Complainant has submitted that it recently learned of the Respondent's registration of the disputed domain name <indeedjob.net.in> and use of the corresponding website at www.indeedjob.net.in for offering online career search and recruitment services. The Complainant has further submitted that it received several consumer complaints and thereby learned that the Respondent, via its website at www.indeedjob.net.in, was contacting job seekers for payment to secure interviews which then never took place. The Complainant has submitted that in response to these complaints, it filed a take-down request with the domain registrar of the impugned domain <indeedjob.net.in>, i.e. **GoDaddy.com LLC**, on February 08, 2018, whereupon the Respondent's website was suspended. The Complainant has annexed copies of its correspondence with the said domain registrar in this regard as **Annexure 11**, and a copy of the webpage evidencing that the impugned website has indeed been suspended as **Annexure 12**.

6. Legal Grounds Submitted by the Complainant

The Complainant has submitted the following legal grounds for its complaint:

A. The Disputed Domain Name's Similarity to the Complainant's Rights

The Complainant has contended that the disputed domain name is identical/confusingly similar to the Complainant's **INDEED** trademarks. The Complainant has further contended that the said domain name incorporates its registered trademark '**INDEED**' in its entirety along with the descriptive suffix 'JOB', which owing to its similarity with the Complainant's offered services, is not only insufficient for differentiation, but in fact is likely to be a greater cause of confusion.

The Complainant has, in this regard, placed reliance on the previous order passed in its favour in *Indeed, Inc. v. Josh Mathews*, Case No. INDRP/948, wherein the Learned Arbitrator had passed an order dated February 01, 2018 directing transfer of the disputed domain to the Complainant (who is also the Complainant herein) while observing as follows:

"While the Registrant's domain name contains the term 'INDEED' in its entirety, he has just added generic term 'JOB' to this term. It is noteworthy that the term so added, 'JOB', is directly concerned with the main business activity of the Complainant, in which it has gained long standing reputation. By adding such word to the registered trademark, the Registrant has cleverly coined the word 'INDEEDJOB', thereby compelling the internet user to think that it is official website of the Complainant."

The Complainant has further placed reliance on the previous order, also passed in its favour, in *Indeed, Inc. v. Indeedworld*, Case No. INDRP/931, wherein the Learned Arbitrator had stated in his decision that:

"...it is well settled proposition that when the relevant trademark is recognizable within the disputed domain name, the addition of any generic or common language term would not prevent a finding of confusing similarity under the first element of UDRP Policy."

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The Complainant has also referred to several Forum arbitration decisions in the following cases, wherein favourable orders have been passed, namely: **Indeed, Inc. v. Dinesh Sarang/ Indeed/ Josh Mathews** <indeedjobs.live> and <indeedjob.co> (Case No. 1749207); **Indeed, Inc. v. Rina Lay** <indeed.co> (Case No. 1693112); **Indeed, Inc. v. Grace Phillips** <indeed.com> (Case No. 1727609); **Indeed, Inc. v. Ankit Bhardwaj/ Recruiter** <indeedjobz.com> (Case No. 1739470); **Indeed, Inc. v. Zhiteng Sun** <indeed.net> (Case No. 1751940); **Indeed, Inc. v. Josh Mathews** <indeedjob.online> (Case No. 1757559); **Indeed, Inc. v. Javeed Khan** <indeedjob.info> (Case No. 1763184); **Indeed, Inc. v. Rina Lay** <indeed.us.com> (Case No. 1763393); **Indeed, Inc. v. Rina Lay** <indeed.com.co> (Case No. 1765495).

The Complainant has annexed copies of the above-referred decisions collectively as **Annexure 13**.

The Complainant has relied on several WIPO judgements upholding the fact that if a domain name entirely incorporates a complainant's registered trademark, it is sufficient to establish identity or confusing similarity for the purposes of the Policy (in the instant case, the .IN Dispute Resolution Policy). The cases relied upon by the Complainant in this regard are as follows:

- **Britannia Building Society v. Britannia Fraud prevention, WIPO Case No. D2001-0505;**
- **PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS), WIPO Case No. D2003-0696;**
- **Hoffman La Roche AG v. Andrei Kosko, WIPO Case No. D2010-0762;**
- **Farouk Systems, Inc. v. QYM, WIPO Case No. D2009-1572;**
- **Orange Personal Communications Services Ltd. v. Lutringer Alexander, WIPO Case No. D2008-1979**

The Complainant has contended that the addition of the word "JOB" as a suffix to its registered trademark "INDEED" is incapable of lending the disputed domain name any distinctiveness, or reduce its similarity with the Complainant's **INDEED** marks. The Complainant has further submitted that the word "JOB" in fact informs consumers of the nature of the services being offered, which are identical to those being offered by the Complainant worldwide. The Complainant has also contended that it is known worldwide as an employment/job search engine since the early 2000's, and hence use of the disputed domain name is likely to make internet users believe that it is originating from the Complainant when it is not so.

The Complainant has relied, in this regard, on the case of *Philip Morris USA Inc. v. Andy McMillan/ Registrations Private, Domains by Proxy, LLC*, WIPO Case No. D2016-1278, wherein the Panel had observed that:

"The disputed domain name is confusingly similar to Complainant's MARLBORO trademark because the disputed domain name incorporates the entirety of Complainant's MARLBORO trademark and merely adds the generic term "marijuana" and the generic Top-Level ".info" domain suffix... Neither the addition of purely descriptive terms to a well-known mark, nor the addition of a generic Top-Level Domain suffix is typically sufficient to create a distinct domain name capable of overcoming a proper claim of confusing similarity."

The Complainant has therefore contended that the addition of the suffix "JOB" in the disputed domain name is not sufficient to distinguish and thereby avoid consumer confusion between the disputed domain name and the Complainant's **INDEED** marks.

The Complainant has once again submitted in support of its rights thereto that it has been continuously and extensively using the registered trademark **INDEED** in commerce since its adoption in 2004, both internationally as well as in India. The Complainant has further contended that since the disputed domain name was registered in 2017, the same is subsequent to the Complainant's adoption, usage and statutory rights, both globally as well as in India.

Owing to the aforesaid submissions, the Complainant has contended that the conditions of Paragraph 4(i) of the INDRP have been satisfied in the present matter.

B. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

The Complainant has referred to Paragraph 7 of the INDRP and has submitted that the Respondent in the present case has not fulfilled any of the conditions as stipulated thereunder so as to demonstrate rights or legitimate interests in the disputed domain name.

The Complainant has contended that the mere fact of registration does not demonstrate that the Respondent has rights in or legitimate interests to the disputed domain name. The Complainant has relied on the decision passed in *Deutsche Telekom AG v. Phonotic Ltd.*, WIPO Case No. D2005-1000, wherein it was held that: "Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy", in support of its contention.

The Complainant has contended that the Respondent has not used or made any demonstrable preparations to use the disputed domain name, or any name corresponding thereto, in connection with a bona fide offering of goods or services. The Complainant has further contended that the Respondent's use of the disputed domain name is for fraudulent purposes, namely to imitate the Complainant, deceive job seekers into purchasing their services, which are then never provided, and acquire their personal information, none of which activities may be said to constitute a "bona fide offering" of goods or services. The Complainant has relied on the judgement in *Kmart of Michigan, Inc. v. David J. Terraciano*, WIPO Case No. FA 651113, wherein it was held that:

"Diversion of Internet users to a third-party website in order to fraudulently acquire their personal information does not constitute a bona fide offering of goods or services pursuant to policy paragraph 4(c)(i) or a legitimate non commercial fair use of the disputed domain name pursuant to Policy paragraph 4(c)(ii)."

The Complainant has contended that, to its knowledge, the Respondent has never been commonly known by, nor has acquired any trademark or service mark rights in the disputed domain name. The Complainant has relied on the judgement in *Alpha One Foundation, Inc. v. Alexander Morozov*, NAF Case No. 766380, wherein it was held that:

"This fact, combined with the lack of evidence in the record to suggest otherwise, allows the panel to rule that Respondent is not commonly known by the disputed domain name or any variation thereof pursuant to Policy 4(c)(ii)."

The Complainant has further referred to the decision of the Administrative Panel in *William Grant & Sons Limited v. Ageesen Sri, Locksbit Corp./ WhoisGuard protected, WhoisGuard, Inc.*, WIPO Case No. D2016-1049 to support its contention, wherein it had observed that:

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“There is no evidence that respondent was making a bona fide use of the disputed domain names before receiving notice of this dispute, or that Respondent has been commonly known by <balvenie.xyz> or <glenfiddich.xyz>. Rather, Complainant asserts that Respondent is not licensed or otherwise permitted to use Complainant’s marks and that Respondent has no trademarks that incorporate the BALVENIE or GLENFIDDICH marks and has not traded as BALVENIE or GLENFIDDICH. These allegations make out a prima facie case of lack of rights or legitimate interests...”

The Complainant has contended that the Respondent has neither rights, nor legitimate interests in the disputed domain name, nor has the Complainant assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or make use of its registered trademark INDEED. The Complainant has placed reliance on the judgement in *Six Continents Hotels, Inc. v. Patrick Ory*, WIPO Case No. D2003-0098, wherein it was held that:

“There is no evidence of any commercial relationship between the Complainant and the Respondent which would entitle the Respondent to the mark. Consequently, the Panel concludes that the Respondent has no rights nor legitimate interests in the Domain Name given there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Domain Name.”

The Complainant has contended that the word ‘JOB’ (a word which notably describes the sector in which the Complainant operates and is globally renowned) in the disputed domain name, as a prominent part thereof, reflects the intention of the Respondent to deceiving the public into believing that some association or commercial nexus exists between the Complainant and the Respondent. The Complainant has quoted the judgement in *The Dow Chemical Company v. Hwang Yiyi*, WIPO Case No. D2008-1276, wherein it was held, inter alia, that a website very similar to the complainant’s may be understood to intend to mislead the consumers into thinking that the respondent has some kind of business relationship with the complainant and therefore, is not legitimate.

The Complainant has contended that the Respondent is not making a legitimate, non-commercial or fair use of the disputed domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the Complainant’s INDEED marks, and, therefore, the respondent has not rights or legitimate interests in the disputed domain name. The Complainant has placed reliance on the decision in *Facebook, Inc. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. D2016-1832, wherein it was observed:

“Given the widespread reputation of the Complainant’s trademark, the Panel does not consider that the Respondent could actively use the disputed domain names in a legitimate way. Any use of the disputed domain names would likely result in misleading diversion and taking unfair advantage of the Complainant’s right.”

The Complainant has contended that it enjoys exclusive rights in the word ‘INDEED’ qua its specific services and products. The word ‘INDEED’ *per se*, when considered along with its descriptive/dictionary meaning (as an adverb) does not indicate in any manner services or goods relating to the employment industry, and accordingly, the Complainant’s registered trademark INDEED in classes 42, 35 and 09 is an inherently distinctive trademark. The Complainant has further contended that a general search for the word ‘INDEED’ on the popular search engine Google does not throw up any result on the generic meaning of the word, but rather directs to websites which either belong to the Complainant or to third parties providing information on the Complainant’s business and services under the mark INDEED, thereby augmenting the association between the Complainant and its INDEED marks. The Complainant has contended in his regard that it is therefore protected against all use of its mark INDEED, including by the

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Respondent herein, the results in dilution and tarnishment thereof, on account of the same being its registered and statutorily protected trademark.

The Complainant has contended that there is therefore no justification for the Respondent's registration and/or use of the disputed domain name. The Complainant has further contended that by virtue of dishonest adoption and mala fide intent of the Respondent, as has been contended by the Complainant in the preceding paragraphs, the Respondent cannot claim to be making, or to have made, legitimate, non-commercial or fair use of the disputed domain name.

The Complainant has quoted the **WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0")**, wherein the consensus view has been adopted that:

"While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, 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 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 UDRP..."

Therefore, the Complainant has contended that it has amply established a prima facie case for the absence of rights or legitimate interests in the disputed domain name in favour of the Respondent.

C. The Registrant's Domain Name has been registered or is being used in bad faith

The Complainant has contended that it is vested with worldwide, statutory and common law rights in its **INDEED** marks since the year 2004. In such circumstances, the Respondent's usage of the Complainant's trade name and mark **INDEED** in conjunction with the descriptive word 'JOB' is of concern to the Complainant as it is fraught with the likelihood of creating confusion in the minds of the public at large. The Complainant has contended therefore that it is highly probable that consumers searching for the Complainant's **INDEED** branded services online may perceive the disputed domain name to be another India-specific domain name of the Complainant. The Complainant has further contended that it is also likely that an unwary potential customer, on coming across the disputed domain name and proceeding to find out that its corresponding website has been suspended, will be led into the mistaken belief that the Complainant is no longer offering its services under the **INDEED** marks, which may damage the Complainant's business and reputation. The Complainant has contended that it is exactly this sort of injury that the Respondent is seeking to inflict on the Complainant and its business, which in itself, is evidence of its bad-faith and mala fide intentions.

The Complainant has contended that it has acquired significant reputation and substantial goodwill in the employment industry since 2004 and the Respondent, being in the identical industry and dealing with same/similar services, is bound to have knowledge of the world-renowned repute of the Complainant and hence has no cause for adoption of an identical trademark or domain name, except with bad faith and mala fide intention. Moreover, the disputed domain name was registered in December 2017, i.e. post 7 years of filing of trademark applications in this regard by the Complainant in India for registration of its **INDEED** marks and 13 years since the Complainant commenced using its said marks in commerce. Therefore, the Complainant has contended that the Respondent cannot escape the liability of knowledge of the Complainant and its business, and, by extension, of its **INDEED** marks. The Complainant

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has referred, in this regard, to the decision in *Compagnie Generale des Etablissements Michelin v. Terramonte Corp., Domain Manager*, WIPO Case No. D2011-1951, wherein it was held that:

"...it is clear in this Panel's view that, at the time the disputed domain name (mchelin.com) was registered, Respondent had actual knowledge of Complainant's pre-existing rights in the MICHELIN trademark. The Panel, therefore, concludes that the Complainant has established that the Respondent registered the disputed domain name in bad faith."

The Complainant has contended that in the present case, at the time of registration of the disputed domain name, the Complainant had already been known by its business/corporate/trade name for over a decade. Even so, the Respondent chose not only to register the disputed domain name, but also to appropriate the Complainant's **INDEED** marks in an unabashed and unauthorized manner. Thus, the Complainant contends, that a finding of bad faith registration of the disputed domain name must follow.

The Complainant has contended that there can be no doubt that the Respondent was aware of the Complainant's **INDEED** marks when it registered the disputed domain name, which clearly suggests 'opportunistic bad faith', which is in direct contravention of the .IN Dispute Resolution Policy. The Complainant has relied on the judgement as passed in **Morgan Stanley v. M/s keep Guessing**, INDRP/024 which states in relevant part that:

"Complainant is very well known and has been using his mark for a very long period, in his commercial/business activities...The respondent must have known about complainant's mark at the time of registration of his domain name."

and on *Orange Brand Services Limited v. Anshul Agarwal/ Orange Electronics Pvt. Ltd. <orangeindia.in>*, INDRP/579 which states in relevant part that:

"Given the fame of the Complainant's trademark and domain name, it is not possible to conceive a use of the same by the Respondent, which would not constitute an infringement of the Complainant's rights in the trademark"

The Complainant has contended that, as set forth above, **INDEED** is a well-known, internationally recognized mark, registered across several territories worldwide. Which suggests that the Respondent must not only have been aware of the Complainant's primary INDEED brand, but also should have known about the Complainant's related domain names, which constitutes strong evidence of bad faith (relying on *Marriott International, Inc. v. Momm Amed Ia*, NAF Case No. FA95573).

The Complainant has contended that the mere fact of the disputed domain name not hosting an active website and/or the Respondent not having attempted to sell the disputed domain name as on date of the present Complaint, does not by itself preclude a finding of bad faith. The Complainant has referred to the **WIPO Overview 2.0**, wherein the consensus view as adopted was that:

"With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the complainant having a well-known trademark, no response to the complaint having been filed, and the registrant's concealment of his identity. Panels may draw inferences about whether the domain name was used in bad faith given the circumstances surrounding registration, and vice versa. Some panels have also found

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that the concept of passive holding may apply even in the event of sporadic use, or of the mere 'parking' by a third party of a domain name."

The Complainant had further referred to the following WIPO decisions in support of its contention:

- *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003;
- *Jupiters Limited v. Aaron Hall*, WIPO Case No. D2000-0574; and
- *Intel Corporation v. The Pentium Group*, WIPO Case No. D2009-0273.

The Complainant has additionally relied on the judgement in *Amazon.com, Inc., Amazon Technologies, Inc. v. Giovanni Laporta/ Yoyo.Email*, WIPO Case No. D2015-0009, wherein the Administrative Panel had held, while ordering transfer of the domain name <amazonsupport.email> to the complainant, that:

"A further indication of Respondent's bad faith under the Policy is the fact that the AMAZON Mark predates the Respondent's registration of the Disputed Domain Name by twenty (20) years. From the paucity of evidence presented by Respondent on its prospective business plan, the panel can see no other reason than the desire of respondent to trade on the well-known, if not famous, AMAZON Mark. Therefore, based upon the evidence submitted in this proceeding, the Panel finds that Complainant has shown sufficient facts to support a finding that the Disputed Domain Name was registered and used in bad faith pursuant to the Policy paragraph 4(a)(iii)."

Therefore, the Complainant has contended that as the adoption of the trademark **INDEED** by the Complainant precedes the registration of the disputed domain name by over a decade, therefore the Respondent intended to trade on the reputation of the Complainant and its rights in the **INDEED** marks.

The Complainant has further contended that the Respondent is using/ likely to use the disputed domain name for the purpose of illegitimately extracting money and personal information from innocent job seekers who believe the Respondent to in fact be the Complainant or affiliated with the Complainant, and who pay money to the Respondent to secure interview opportunities which never occur. The Complainant has contended that the Respondent's bad faith intentions in this regard are thus lent further credence. The Complainant has relied, in support of its contention, on the observation made in *Skype Limited c. SADECEHOSTING.COM Internet Hizmetleri San Tic Ltd Sti*, WIPO Case No. 1059477:

"Respondent is using the... domain name in order to gain access to personal and financial information of Internet users. Such use of the disputed domain name in connection with a phishing scheme qualifies as bad faith registration and use under Policy paragraph 4(a)(iii)."

The Complainant has contended that even if the Respondent were offering actual online career search and recruiting services through the disputed domain name, such use would still support a finding of bad faith use and registration, as these are the same services offered by the Complainant under its famous and registered **INDEED** marks. The Complainant has relied in this regard on the observation made in *Kingston Technology Corp. v. c/o Asiakingston.com*, WIPO Case No. FA1464515:

"finding use of domain name incorporating Complainant's trademark in connection with the sale of competing products to constitute bad faith."

Finally, the Complainant has contended that the disputed domain name was registered and is being used in bad faith. Therefore, if the Respondent is not restrained from using the disputed

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domain name, and the same is not transferred to the Complainant, loss and hardship will be caused to the Complainant.

The Complainant has submitted that there are no other legal proceedings that have been commenced, are continuing, or have terminated with regards to the disputed domain name.

Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed for the disputed domain name, i.e. <indeedjob.net.in> to be transferred to the Complainant by means of the present Complaint.

7. **Discussion and Findings**

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
 - ii. The Registrant has no rights and legitimate interest in respect of the domain name;
 - iii. The Registrant's domain name has been registered or is being used in bad faith.
- i. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights (Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)**

The Complainant has established its rights in the trademark 'INDEED' as derived from its business name, i.e. 'Indeed, Inc.', by virtue of its numerous trademark registrations for the same in jurisdictions worldwide, including in India. The first trademark registration for INDEED in the name of the Complainant in India dates back to 2010, while use of the same by the Complainant for its services worldwide dates back to 2004. The Complainant has placed copies of the registration certificates of trademark registrations obtained by it in the United States and India on the record, all of which pre-date the registration of the Respondent's domain name.

It is well established that trade mark registration is recognized as prima facie evidence of rights in a mark. The Complainant, by filing documents of its registered trademarks has established that it has prior statutory rights in the mark 'INDEED' in jurisdictions around the world.

The Complainant has also submitted that it has registration of its own domain www.indeed.com since 1998, wherein it advertises as well as provides its services as an employment search engine, under its INDEED marks.

The Complainant has, in support of its arguments, further pointed out that the disputed domain name, www.indeedjob.net.in, incorporates its trademark 'INDEED' in its entirety and may, therefore, be said to be identical/confusingly similar to the Complainant's aforementioned trademark.

The Complainant has submitted that Respondent has intentionally adopted a domain name identical/ confusingly similar to the Complainant's popular trademark 'INDEED' with a view to attracting internet users and consumers for commercial gain by abusing the goodwill and reputation associated with the

Complainant's aforementioned mark and has further used it with respect to services such that the lay public consumers may easily, though erroneously, infer affiliation, association or sponsorship of the Respondent's activities by the Complainant.

The Complainant has established that it did not at any time license or otherwise authorize the respondent to register the disputed domain name or carry out its activities under the Complainant's trademark 'INDEED'.

The Complainant has referred to several WIPO decisions as well as decisions by the National Arbitration Forum and Panel decisions under the INDRP, as has been mentioned above, in favour of its contentions and arguments.

The Complainant has submitted a number of annexures, as described above, to establish the availability, extent of use and popularity of its INDEED marks in India as well as worldwide..

It may be stated that the disputed domain name <indeedjob.net.in> is confusingly identical/similar to the Complainant's trade mark 'INDEED' and completely incorporates the said trade mark of the Complainant. It has been held by prior panels deciding under the INDRP that there exists confusing similarity where the disputed name incorporates the Complainant's trade mark, such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, *Indian Hotel Companies Limited v. Mr. Sanjay Jha, INDRP/148 <Gingerhotels.co.in>*, *Carrier Corporation, USA v. Prakash K.R. INDRP/238 <Carrier.net.in>*, *M/s Merck KGaA v. Zeng Wei INDRP/323 <Merckchemicals.in>*, *Colgate-Palmolive Company & Anr. v. Zhaxia INDRP/887 <Colgate.in>* and *The Singer Company Limited v. Novation In Limited INDRP/905 <singer.co.in>*.

In view of the aforesaid, the Arbitrator accepts that the Complainant's rights in its trademark 'INDEED' under Paragraph 4(i) of the INDRP has been established.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)**

The disputed domain name incorporates the mark 'INDEED' which is identical to the Complainant's trademark INDEED in which the Complainant has statutory rights by virtue of having valid and subsisting prior trademark registrations in several jurisdictions around the world and being globally well known, including in India.

The Complainant has further contended, with substantiating arguments, that there is no credible or legitimate reason for the Respondent to have adopted a domain name identical/ deceptively similar to the Complainant's trademark INDEED other than to ride on the goodwill and reputation accumulated by the Complainant's mark by the time of the Respondent's registering the disputed domain name, and derive unjust enrichment therefrom by causing consumer confusion.

On the other hand, the Respondent has not submitted any registration certificates for the mark 'INDEED' or 'INDEEDJOB', or in fact any evidence of its rights to the aforesaid marks. It has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 7 of the INDRP.

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The Complainant has established a prima facie case of its rights in the mark 'INDEED', and has referred to several WIPO decisions as well as decisions by the National Arbitration Forum, as has been mentioned above, in favour of its contentions and arguments. Therefore, in accordance with the holding of previous panels under the INDRP, the evidentiary burden shifted to the Registrant (Respondent) to rebut the showing by providing evidence of its rights or interests in the domain name, which it has failed to do in the current proceedings.

The Complainant has no relationship with the Respondent and has not permitted or licensed the Respondent to use or register the disputed domain name.

Use of such a confusingly and deceptively identical/similar domain name by the Respondent is likely to mislead and misrepresent to the general public and members of the trade as to the source, sponsorship, affiliation or association of the activity being carried on through the website.

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(ii) and 7 of the INDRP.

iii. **The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)**

The Respondent is not making any fair and non-commercial use of the disputed domain name as on date. The Respondent had in fact been using the website at the disputed domain in conjunction with the Complainant's INDEED trademarks to offer online career search and recruitment services which are identical services to those as offered by the Complainant, and, as illustrated by the Complainant, led to actual confusion among the lay public and consumers as well as members of the trade as they, when the Complainant received several consumer complaints of fraudulent job postings and interview opportunities posted by the Respondent for the purpose of deceiving innocent job seekers into making payments to the Respondent without receiving the services paid for in return. The Respondent's use of the disputed domain name, therefore, was not bona fide as the Respondent was using the disputed domain name to fraudulently con internet users into making undue payments to the Respondent.

Further, the fact that the Complainant was forced to file a take-down request with the domain registrar, i.e. GoDaddy.com for suspension of the disputed domain only goes further to establish the Respondent's bad faith in attempting to financially profit from its misuse of the Complainant's INDEED trademarks in respect of the website hosted on the disputed domain.

It is pertinent to mention, also, that the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use of the disputed domain name.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

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7. **Decision**

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has statutory and proprietary rights over the trade mark '**INDEED**' and variations thereof. The Complainant has herein been able to prove conclusively that:

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

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**indeedjob.net.in**> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana

Sole Arbitrator

Date: May 28, 2018

Place: New Delhi, India.