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S. DEVAMANOHARI
Stamp Vendor
L.No. 16690/B4/87
HIGH COURT
CHENNAI - 104.

BEFORE THE SOLE ARBITRATOR SHRI.D.SARAVANAN
.IN REGISTRY
C/o.NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)
NEW DELHI, INDIA.
registry@nixi.in

Disputed Domain Name: <yola.co.in>

Yola Inc.,
394 Pacific Avenue, 5th Floor,
San Francisco
CA, 94111, U.S.A.
trevor@yola.com
gurpreet@amarjitassociates.com

.Complainant.

Vs.

Karan
Karan Limited
Mumbai, India.
sproose@gmail.com

. Respondent

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தமிழ்நாடு தமில்நாடு TAMILNADU

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HIGH COURT
CHENNAI - 104.

-2-

1. The Parties:

The Complainant is Yola Inc., 394 Pacific Avenue, 5th Floor, San Francisco, CA, 94111, U.S.A., represented by M/s.Amarjit & Associates, Suite 404 Law Arcade, 18, Pusa Road, New Delhi - 110 005.

The Respondent is Karan, Karan Limited, Mumbai, India. Respondent represented himself.

2. The Domain Name and Registrar:

The disputed domain name: <yola.co.in>

The domain name registered with .IN REGISTRY

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3. Procedural History:

September 3, 2010 : The .IN REGISTRY appointed D.SARAVANAN

as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.

September 3, 2010 : The Arbitrator has consented for such appointment and has submitted Statement of Acceptance and Declaration of Impartiality And Independence to the .IN REGISTRY.

September 8, 2010 : The .IN REGISTRY forwarded a copy of the complaint including annexures by postal mail to the Arbitrator.

September 9, 2010 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant,



Complainant's authorised representative and .IN
REGISTRY.

- September 10, 2010 : Respondent submitted a Response by email and an attachment.
- September 11, 2010 : Claimant sent an email stating that they are in process of filing Rejoinder.
- September 21, 2010 : The Claimant sent a Rejoinder by email.
- : The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The Complainant is Yola Inc., 394 Pacific Avenue, 5th Floor, San Francisco, CA, 94111, U.S.A.

4.2 Complainant's Activities:

The Complainant Yola Inc., is a duly incorporated company under the provisions of law of Delaware, U.S.A. The complainant is in the business of providing services relating to website, development, hosting, designing, providing technical support with regard to the website development amongst others and operates under the domain <www.yola.com>

4.3 Complainant's Trading Name:

The Complainant is a registered proprietor of the trademark YOLA in United States vide registration No.3735155 and has also filed trademark applications in various other countries of the world, including but not limited to European Union, Australia, China, Switzerland, Canada, Mexico, Brazil and India, which is pending registration in each of those countries as per the list annexed to the Complaint under Annexure B. The Complainant operates its business activities from the domain <yola.com>, which was first registered by



predecessor -in- interest of the Complainant on June 11, 2001. The Complainant has also registered various domain names under different gTLDs and ccTLDs around the world, as per the list annexed as Annexure B.

44 Respondent's Identity and activities:

The Respondent is Karan, Karan Limited, Mumbai, India. Respondent represented himself.

5. Parties contentions:

A. Complainant:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has rights:

- i) The Complainant states that it is a registered proprietor of the service mark YOLA in United States vide registration No.3735155 for the services falling in Classes 42 and 45; the Complainant is prior in adoption use and registration of trademark YOLA in respect of variety of services falling in international classes 42 and 45 of the International specification of good and services; the trademark YOLA is in commercial use on the part of Complainant since at least March 26, 2009 and on account of extensive worldwide use and publicity given thereto, it has acquired the status of a well known mark; any reference to the mark YOLA is indicative of the complainant's source of origin and none else; the complainant has filed various applications in the other parts of the world which are pending, including in India.
- ii) The complainant's Indian service mark application in Class 42 is numbered as 1975877 featuring software for providing an on-line database in the field of transaction processing to upload transactional



data, provide statistical analysis, namely, monitoring and reporting on the performance, availability, and errors of web sites of others; Computer services, namely creating and maintaining web sites for others; Computer services, namely, designing and implementing web sites for others; computer services, namely hosting and maintaining an on-line web site for others to create, design, build, develop and maintain web sites for others; computer services, namely, monitoring the websites of others to improve scalability and performance of web sites of others; Computer services, namely, providing an interacting web site that allows users to collect, store, manage, deliver and show case electronic and paper based content; Displaying the web sites and images of others on a computer server; providing a web site featuring technology that enables internet users to create, bookmark, annotate, and publicly share data; providing a web site featuring temporary use of non-downloadable software allowing website users to upload, post and display online videos for sharing with others for entertainment purposes; providing a website featuring on-line non-downloadable software tools for image editing; providing an online website for creating and hosting micro websites for businesses; providing on-line non-downloadable software for creating, designing, building, developing and maintaining websites; web site development for other Services; and the Complainant asserts passing off action against the respondent and also put reliance on Yahoo Inc V/s.Akash Arora 1999 PTC (19) 201, a copy which has been annexed as Annexure D.

- iii) The Complainant sates that their domain Yola.com was registered on June 11, 2001 and complainant has started its business activities on the said domain on March 26, 2009. The Complainant has been providing the services featuring software for providing an on-line database in the



field of transaction processing to upload transactional data, provide statistical analysis, and produce notifications and reports; Computer Services, namely, monitoring and reporting on the performance, availability, and errors of websites of others; Computer Services, namely creating and maintaining web sites for others; Computer Services, namely designing and implementing web sites for others; computer services, namely hosting and maintaining an on-line web site for others to create, design, build, develop and maintain websites; computer services, namely managing web sites for others; computers services, namely monitoring the websites of others to improve scalability and performance of web sites of others; computer services, namely, providing and interacting website that allows users to collect, store, manage, deliver and show case electronic and paper based content; displaying the website and images of others on a computer server; providing a website featuring technology that enables internet user to create, bookmark, annotate, and publicly share data; providing a website featuring temporary use of non-downloadable software allowing website used to upload, post and display online videos for sharing with others for entertainment purpose; providing a website featuring online non-downloadable software tools for image editing; providing an online website for creating and hosting micro websites for businesses; providing on-line non-downloadable software for creating, designing, building, developing and maintaining website; website development for others and Domain Name Registration Services, since its inception without any interruption at any point of time; the complainant has also registered various Domain Names under different gTLDs and ccTLDs around the world as per the list annexed as Annexure C; the complainant has also registered the Domain <Yola.in> on March, 26, 2010 as per the WHOIS record of the said Domain annexed as annexure E.



- iv) The mark YOLA is well known Indian Internet uses and has acquired immense goodwill and reputation in India; the website analytics for the period 01.04.2009 to 31.02.2010 shows the hits from the Indian users on the website Yola.com as 366, 796 which amounts to 3.3% of the unique visitors to the website <Yola.com>; the website analytics by Site Catalyst showing Indian has fifth largest country in terms of users to Yola.com as per the annexure F; the goodwill of YOLA has spilled over to India and is a well known mark for services featuring software for providing an online database in the field of transaction processing to upload transactional data, provide statically analysis, and produce notification and reports; computer services, namely, monitoring and reporting on the performance availability, and errors of websites of others; computer services, namely creating and maintaining websites for other; computer services, namely, designing and implementing websites for others; computer services, namely hosting and maintaining on online website for others to create, design, build, develop and maintain website; computer services, namely managing websites for others; computer services, namely monitoring the websites of others to improve scalability and performance of websites of others; computer services, namely, providing and interacting websites that allows users to collect, store, manage, deliver and show case electronic and paper based content; displaying the websites and images of others on a computer server; providing the website featuring technology that enables internet users to create, bookmark, annotate and publicly share data; providing a website featuring temporary use of non-down loadable software allowing website users to upload, post and display online videos for sharing with others for entertainment purposes; providing a website featuring online non-downloadable software tools for image editing; providing an online website for creating and hosting micro websites for businesses; providing online non-downloadable



software for creating, designing, building, developing and maintaining website; website development for others and Domain Name Registration Services since its inception without any interruption at any point of time.

- v) The complainant states that they spent around USD 36,196 in marketing its services through search engines in the Indian market alone and a copy of few search engines marketing the mark YOLA by the complainant is annexed as annexure G; the mark YOLA is being used by complainant since March, 26, 2009 who has rendered the service to its users and interruptedly throughout the world since then and a copy of press releases, reviews and list of service offered by YOLA on its websites is annexed as Annexure H; the complainant and its mark YOLA has also been featured by the Wall Street Journal, ABC News, Tech. Crunch, Business Week, Seanet amongst others and the relevant copies of the reviews by the industry is annexed as Annexure I; the mark YOLA due to its extensive and continuous use is associated with the complainant only and non else; the respondent registered the Domain Name <Yola.co.in> on March, 27, 2009 which is identically similar to the complainant's well known mark YOLA; the respondent registered the impugned Domain a day after the widely publicized launch of the YOLA brand at <Yola.com>, and a day after complainant registered the <Yola.in> Domain; the impugned Domain Name is identically similar to the complainant's well known mark YOLA in which the complainant has rights and enjoys well known reputation, goodwill and recognition around the world; and reliance is made on INDRP Domain Disputes Decision in the matter of Sony Ericson Mobile Communications AB V/s. Chen Shenglu 2006 (33) FTC 597 a copy of which is annexed as Annexure J.



(b) Respondent has no rights or legitimate interests in the domain name:

According to the claimant the respondent does not have rights or legitimate interest in respect of the Domain Name <yola.co.in> which has been registered by him to encash by the goodwill of the well known mark YOLA and does not intent to offer any legitimate product or services through this Domain; the web page of the Domain <yola.co.in> shows that the same is available for sale and offers the visitor's to make an offer for the Domain Name; the web page of the disputed Domain Name <yola.co.in> reveals that the Domain is being handled by the Domain Name sales agency and the offers for the sale for the impugned Domain Name are accepted at names @ Live.com; the screen shot of the webpage hosted at the disputed Domain Name <yola.co.in> is annexed as Annexure K; the claimant further states that the conduct of the respondent clearly shows that the respondents has no rights or legitimate interest in the disputed Domain Name and the same has been registered by the respondent to trade upon the goodwill of the complainant's well known mark YOLA and to divert the traffic from the complainant's legitimate websites to the respondent's impugned Domain for creating a confusion or deception in the minds of the internet users; the respondent is not using the impugned Domain in connection with the bonafide offering for goods or services; the respondent has not been commonly known by the Domain Name or the mark YOLA before acquiring it; the respondent is not making a legitimate and fair use of the Domain Name and has offered it for sale to the general public including the complainant to encash upon the complainant's well known mark YOLA. The complainant further states that the respondent on March, 5, 2010 contacted the complainant to sell the dispute Domain Name <yola.co.in> through an Email which is annexed as Annexure L; the respondent has squatted upon the complainant's well known mark YOLA to trade / encash upon the complainant's well known mark and to earn money by trading in the subject



Domain Name; the complainant has not licensed or otherwise permitted the respondent to use the mark YOLA nor has permitted the respondent to register or use any Domain Name incorporating the complainant's mark YOLA.

(c) Respondent has registered and is using the domain name in bad faith:

i) According to the complainant the respondent has registered the impugned Domain Name <yola.co.in> in bad faith, knowing that the complainant is proprietor of the mark YOLA with a clear intention of encashing upon the goodwill and reputation of the complainant's mark YOLA; the respondent is using the impugned Domain Name <yola.co.in> with the bad intention for selling the same in Domain market and has also offered to sell the same to the complainant through his Email dated March 5, 2010; the impugned Domain Name <yola.co.in> has been registered by the respondent being well aware of the complainant's rights in the mark YOLA and a day after the complainant publicized the launch of its Global Yola Brand and registered the Domain <yola.in> in India to offer its services to the Indian consumers through .IN ccTLD; it has been well established through Annexure L that the respondent has registered the impugned Domain Name with a clear intention to sell it either to the complainant or in the Domain after market for consideration; the respondent has not provided the accurate WHOIS record while registering the Domain <yola.co.in> which is against clause 3 (a) of the .In Domain Name Disputes Resolution Policy and clause 2(1) of the Registrant Registrar Agreement agreed by the respondent while registering the Domain through Registrar #.1 Indian Domain dba Mitsu.in; the respondent has registered the Domain Name in order to prevent the complainant from using the corresponding Domain Name in which the complainant has rights; the respondent has no justification for adopting the impugned Domain <yola.co.in> incorporating the complainant's well known mark YOLA for wrongful and illegal gains; the respondent has not used and / or demonstrated preparations to use the disputed Domain Name in connection with



bonafide offering of goods or services; the respondent has not being commonly known by the impugned Domain Name <yola.co.in> or by the mark YOLA; the respondent is not making a legitimate non commercial or fair use of the disputed Domain Name <yola.co.in> but using the same with intent for commercially gain and to mislead and divert uses and to injure the reputation of the complainant's well known mark YOLA. The complainant places Reliance on British Telecommunication V/s One in a Million Case 1999 FBRP, a copy of which is annexed as Annexure M. By stating so, the complainant seeks a remedy to direct the Registrar #1 Indian Domains dba, Mitsu.in to transfer the Domain Name <yola.co.in> to the name of the complainant; to direct the respondent to pay damages and cost of proceedings and any other order that may be deem fit in the facts and circumstances of the case.

B. Respondent:

The Respondent did submit his response through an email which reads as follows: The Respondent is Yola, and yola.co.in was registered for his personal blog; Yola is a very common people name; Respondent feels that he is pretty confused about the complaint issued by Yola Inc. as he just searched the keyword for Yola at <http://www.trademarkia.com/trademarks-search.aspx?tn=vola&fs=01/01/1960&fe=09/10/2010&pri=&gs=&cn=&st=1> and found there are a few trade marks which were registered much before Yola Inc.; by searching internet, it can be easily fond that Yola's former name is SynthaSite <http://www.vinnylmgham.com/synthasite-yola.html>, so that means their name was changed just one year ago; by checking the archive history of the domain name [yola.com](http://www.yola.com), it can also be found at <http://web.archive.org/web/20050201083404/http://vola.com/> that the domain name [yola.com](http://www.yola.com) was just purchased by Synthasite company last year which means Yola brand was not famous in 2009; and also, the domain name was registered is just for his personal blog, and he do not have any intent to set up a website or provide any commercial service similar to [Yola.com](http://www.yola.com).; there are 45 categories for any trade



mark to register, but the domain name with single extension is exclusively for the registrant only, so the earliest registrant of the domain name will be the exclusive owner unless the domain name is a top famous trade mark like Nike, Adidas, Google or Cocacola.; individuals should have the right to register trade mark and have the right to protect domain name rights; Respondent had also found that there are two companies which have almost the same names, Yola Inc. and Yola, Inc.; it is pretty clear that Yola Inc. registered Yola trade make much earlier than Yola.Inc, so Yola.Inc has also violated the copy right of Yola Inc.

C. Complainant's Re-joinder:

i) The Complainant denies that the Respondent name is "YOLA" and the disputed domain <yola.co.in> was registered for the purpose of personal blog; the Complainant draws the attention of the Panel to Annexure K to the complaint to the effect that it clearly establishes the fact that the disputed domain name registered by the Respondent is not for the personal blog and is for sale, and further the Tribunal's attention was drawn to Annexure L to the complaint to the effect that it shows the conduct of the Respondent contrary to its submissions in his response; the Respondent wrote to the Complainant, offering him to buy the disputed domain name <yola.co.in> on March 5, 2010 which is not disputed by the Respondent; it is further denied that "YOLA" is a common man name as alleged by the respondent; and nevertheless, it is also not the personal name of the Respondent in these proceedings.

ii) The Complainant denies the submission made by the Respondent in Paragraph two of the response made by the Respondent through its email dated September 10, 2010. At the outset, the Complainant submits that none of the marks cited by the Respondent is registered in his name and the Respondent has failed to establish his own rights in the name/mark "YOLA". The Complainant further submits that the different marks appearing in the register do not have any



conflict of interest for the services offered by the Complainant with any of the parties till date. It is further submitted that, according to the list provided by the Respondent, number of applications have either been abandoned or cancelled, even though they are not in conflict with the Respondents activities at all. The Complainant admits that the rights in the domain name <yola.com> have been acquired by the Complainant through their predecessor in the interest and title from Synthasite Company which the Complainant himself has mentioned in Paragraph-5 of the complaint. The Respondent through his own admissions has admitted the rights of the Complainant through his predecessor, viz., Synthasite.

iii) The Complainant denies the submission made by the Respondent in Paragraph three of the response made by the Respondent through its email dated September 10, 2010. The complainant submits that the respondent has registered the domain name <yola.co.in> is a subsequent to the registration of the domain name <yola.in> by the complainant to encash upon the goodwill of the well known mark YOLA of the complainant. It is denied that "YOLA" brand was not famous in year 2009. The Complainant submits that the Trademark "YOLA" was in commercial use on part of the Complainant since March 26, 2009 and on account of extensive world wide use and publicity given thereto, it has acquired the status of well known mark. The Complainant would like to draw the attention of the Panel to Annexure F to the complaint which clearly establishes Complainants claims through the figures and the users to his site, (yola.com) from the period April 1st, 2009 to March 31st, 2010 in which India ranks fifth largest country in terms of the users to <yola.com> and amounts to 3.3 percent of the unique visitors to the website <yola.com>.

iv) The Complainant denies the submission made by the Respondent in Paragraph four of the response made by the Respondent through its email dated September 10, 2010. It is denied that the domain name was registered for the personal blog, which has been clearly established by Annexure K & L to the



complaint. The Respondents own submission was that he do not have any intention to set-up a website, is contrary to his interest and rights in the domain name. Paragraph 4(ii) of the INDRP policy is clear in this aspect and states that if the registrant has no rights or legitimate interest in respect of the domain name that should be treated as one of the grounds for cancellation or transfer of the domain name to the complainant.

v) The Complainant denies the submission made by the Respondent in Paragraph 5 of the response made by the Respondent through its email dated September 10, 2010. It is denied that the earliest registrant of the domain name will be exclusive owner. The Complainant submits that the Respondent is infringing upon the complainants well known mark "YOLA" and has registered the domain name with the clear intention to sell the same to the complainant, which has been established through Annexure L of the complaint, which has not been disputed by the respondent at any stage. The Complainant has also been successful to demonstrate that the Complainant has rights to the mark "YOLA" and it is well known mark not only in United States, but in other parts of the world including India. It is further submitted that the Respondent has admitted the case set-up by the Complainant and has not disputed rights in the mark "YOLA" and the domain name incorporating the mark "YOLA" under different gTLD's or ccTLD's. The Respondent has further failed to establish his rights in the domain name <yola.co.in> and has also failed to demonstrate his preparations to use the said domain name for personal blog as alleged by him. Nevertheless, he has admitted that he has no intention to use the said domain name in the near future.

6. Discussion and Findings:

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



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

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark being Yola in United States vide Registration No.3735155 and has also filed trademark applications in various countries of the world including in India in Class 42 vide No.1975877. The said contention is supported by Annexure **B**. The Complainant has also registered the domain <Yola.in> on March 26, 2010 which is evidenced by WHOIS record under Annexure E. The contention of the Claimant that the Respondent registered the impugned domain a day after the widely publicized launch of the YOLA brand at Yola.com, and a day after Complainant registered the yola.in domain, has not been disputed by the Respondent. The Respondent has miserably failed to produce any piece of evidence to establish his claim over the disputed domain name. Though the respondent claims his name is Yola he has not produced any evidence to that effect, more particularly when the Claimant disputed such fact. The Respondent's domain name, <yola.co.in>, consists of entirely Complainant's trademark, except ".co" and the ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <yola.co.in> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.



(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. As held above, the Respondent has not chosen to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. However, the Complainant established their rights in the domain name <yola.com> which has been acquired by them through their predecessor in the interest and title from Synthasite Company and such factum has also been clearly admitted by the Respondent. The Complainant has established their rights and legitimate interest over the YOLA. Further, the Complainant has also clearly established the fact that the Respondent has himself publicized under Annexure K that the Respondent is an sales agency and further the Complainant has also established under Annexure L that the Respondent himself offered sale of disputed domain name viz., <yola.co.in> to the Claimant itself so as to explore an Indian market. Further, the email id of the Respondent itself reads as sellnames@yahoo.co.in. Hence, it exhibits the fact that the Respondent has engaged in a pattern of such conduct.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.



iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal comes to an irresistible conclusion 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 to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <yola.co.in> be transferred to the Complainant.

Dated at Chennai (India) on this 4th October, 2010.


(D.SARAVANAN)
Sole Arbitrator