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Mahindra & Mahindra Limited, Mumbai vs Yitao, Apex Limited, Hong Kong
INDRP Case no. 1871
Arbitrator: Mr. P.K.Agrawal

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AWARD

1. The Parties

The Complainant is Mahindra & Mahindra Limited, Gateway Building Apollo Bunder, Mumbai-400001.

The Respondent is Yitao, Apex Limited, 76, C.P. Rama Road, Hong Kong - 999077.

2. The Domain Name and Registrar

The disputed domain name is <mahindra.in>. The said domain name is registered with the Registrar – Business Solutions (IANA ID: 800026). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D8324521-IN
- b. Date of creation: Apr 21, 2014.
- c. Expiry date: Apr 21, 2024.

3. Procedural History

- (a) A Complaint dated 6.06.2024 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K. Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 7.06.2024 by email. The Arbitrator served the Notice under Rule 5(C) of

INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 7.06.2024. The Complainant was advised to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator through Notice dated 7.06.2024 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant confirmed through email dated 8.6.2024 that the complaint with annexures was communicated to the Respondent through email dated 8.6.2024. The Complainant through email dated 12 .6.2024 again confirmed that they had served a copy of the Complaint along with the annexures upon the Respondent by e-mail (on the e-mail address sunong@live.com) on June 8, 2024. They also informed that they had dispatched a copy of the Complaint along with the annexures via "Blue Dart" courier to the Respondent. However, the courier sent to the Respondent's address "Apex Limited, 76, C.P. Rama Road, Hong Kong - 999077" is not deliverable as the address is incorrect / cannot be located. Therefore, the Complainant have requested the Respondent to please confirm an alternate address or contact number for the shipment to be delivered. However, the Respondent has not responded to this request. On 20.6.2024, the Complainant requested through email dated 20.6.2024 to pass award.

- (d) In view of the aforesaid, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. Since the Respondent has not responded and presented any grounds in his defence, the present proceedings have to be conducted *ex parte* as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. Factual Background

The Complainant, Mahindra & Mahindra Limited, Gateway Building Apollo Bunder, Mumbai-400001, is an Indian vehicle manufacturing corporation and part of the Mahindra Group, a multinational conglomerate incorporated in 1945. A US multi billion global federation of companies, the Mahindra Group has a presence in more than 100 countries and employs over 2,50,000 people in over 150 companies. The Mahindra Group operates in 22 key industries, including but not limited to, automotive, aerospace, aftermarket, Agri industry, boats, clean energy, construction equipment, consulting, defence, farm equipment, financial services, hospitality, industrial equipment, information technology,

insurance broking, logistics, power back up, real estate & infrastructure, retail, rural housing, finance, steel, trucks & buses, and two wheelers.

The Complainant further states that the Complainant's goods and services under the trademark "MAHINDRA" have also been extensively publicized on various social media platforms. The Complainant is known within members of trade and public by its trading name "MAHINDRA" and the trade mark "MAHINDRA" is associated with the Complainant alone.

In addition to the common law rights accruing in favour of the Complainant's "MAHINDRA" trademark, the Complainant is also the registered proprietor of the said mark. The Complainant's registration for the mark "MAHINDRA" in India claims a date of first use from November 1, 1975.

The details of a few such trademark registrations are listed below:

Jurisdiction	Registration No.	Application Date	Status
African Intellectual Property Organization (OAPI)	2013/13744	24-05-2013	Registered
Argentina	3265570	24-07-2013	Registered
Australia	1556429	10-05-2013	Registered
Bangladesh	48148	05-09-1996	Registered
Brazil	840497660	26-04-2013	Registered
Canada	TMA978882	04-02-2013	Registered
Chile	1.100.237	04-02-2013	Registered
China	12211773	25-04-2013	Registered
European Union	11768141	25-04-2013	Registered
India	322911	10-02-1977	Registered
India	338997	27-07-1978	Registered
India	800558	30-04-1998	Registered
India	5559144	05-08-2022	Registered
India	5559762	05-08-2022	Registered
Japan	5624941	05-03-2013	Registered
Kuwait	36405	05-05-1997	Registered
New Zealand	976999	09-05-2013	Registered
Oman	16621	12-10-1997	Registered
Qatar	16815	24-05-1997	Registered
Singapore	T1308068A	21-05-2013	Registered
South Africa	2013/12627	14-05-2013	Registered
Sri Lanka	180585	27-05-2013	Registered
United Arab Emirates	190704	24-04-2013	Registered
United States of America	85839743	04-02-2013	Registered

WIPOs application designating Algeria, Australia, Monaco, Republic of Belarus, Russian Federation, Samoa, San Marino, Syrian Arab Republic, United Kingdom:

IR No. 1706287 09-08-2022 Protection Granted

The Complainant is the registered owner of various domain names, including but not limited to:

1. www.mahindra.com 2. www.mahindraagri.com
3. www.mahindralogistics.com 4. www.mahindraauto.com
5. www.mahindralifespaces.com 6. www.mahindramitra.com
7. www.mahindraaerospace.com 8. www.mahindralastmilemobility.com
9. www.mahindrafarmequipment.com 10. www.mahindrafinance.com
11. www.mahindrafirstchoice.com 12. www.mahindracareers.com
13. www.teammahindra.com 14. www.mahindrasuper.com
15. www.mahindraracing.com 16. www.mahindratractor.com

Respondent's Identity and Activities

The identity and activities of the Respondent are not known. The Respondent has neither responded to the Notices served upon him nor submitted any reply to the complaint.

On 27.6.2024, the Complainant informed through email that the Complainant had previously filed a domain name complaint with the NIXI re. the disputed domain name <mahindra.in> against the **same Respondent**, i.e., Apex Limited, Hong Kong. The Hon'ble Panel had ruled in favour of the Complainant and ordered that the domain name be transferred to the Complainant (Case No. INDRP/653). However, the domain name continues to be registered in the same Respondent's name. Accordingly, the Complainant has filed the subject complaint against the disputed domain name.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy (INDRP) are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant argues that:

- i. The Complainant offers for sale various products under the trade mark "MAHINDRA". The Complainant also owns and operates a website on the domain name, and is the registered proprietor of the trade mark "MAHINDRA" and several "MAHINDRA" formative trade marks in India and globally, all significantly prior to the registration of the disputed domain name.
- ii. The disputed domain name subsumes the Complainant's trademark "MAHINDRA", which is identical to the Complainant's prior adopted and used trade mark and trade name "MAHINDRA". The disputed domain name comprises of the Complainant's well-known trademark "MAHINDRA" in its entirety. The Respondent has not even included any generic additional term to attempt a differentiation with the Complainant's trademark "MAHINDRA". Given the glaring identity between the disputed domain name and the Complainant's trademark, an Internet user may be misled when coming across the disputed domain name. In this regard, reliance is placed on the findings in the following: a) Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Edmunds Gaidis, WIPO Case No. D2021-0401 wherein the Panel observed that the Complainant is the owner of the trademark INSTAGRAM both by registration and acquired reputation and that the disputed domain name is confusingly similar to the trademark INSTAGRAM, b) Royal Multisport Private Limited. v. Deepak Jawade WIPO Case No. D2023- 0048 held that "where a domain name incorporates the entire trademark, the domain name will generally be considered identical or confusingly similar to the mark for purposes of UDRP standing". Given that the Complainant's trade mark "MAHINDRA" has been blatantly and entirely copied by the Respondent in the disputed domain name, is sufficient to establish confusion for the purposes of the Policy. c) Nike Innovative C.V. v. Amy Hill, Case No. INDRP/1288, where the Panel held that "The domain name www.nikestore.in substantially incorporates the Complainant's brand "NIKE" and couples it with the generic word "STORE" which clearly refers to a key element of the Complainant's business, namely a retail store. Therefore, this domain name is identical/confusingly similar to the Complainant's brand "NIKE". Given that the Complainant's distinctive trademark "MAHINDRA" has been entirely copied by the Respondent in the disputed domain name, is sufficient to establish confusion for the purposes of the Policy.
- iii. Further, the Complainant has established its rights in the trademark "MAHINDRA" on account of its extensive use and trademark registrations in India and internationally. Any consumer when reading the disputed domain name would get confused with the Complainant's

- trade mark "MAHINDRA" as it consists solely of the Complainant's said trade mark and trade name which have garnered immense goodwill and are associated with the Complainant alone. Owing to the disputed domain name subsuming Complainant's registered trademarks in India and globally along with the extensive use of the trademark "MAHINDRA", the relevant public and the people will associate the said disputed domain name with the Complainant alone.
- iv. The disputed domain name also consists of links leading to third party websites selling the Complainant's as well as the Complainant's competitor's goods in the same industry. Given that a consumer on visiting the disputed domain name will come across such third-party links leading directly to purchase products in the same industry, i.e., automobiles, the Internet users will naturally assume that the disputed domain name belongs to or has been authorized by the Complainant.
 - v. The Complainant further submits that an Internet user who carries out a WHOIS search for the disputed domain name will find that the registration of <mahindra.in> is not in the name of the Complainant. This will further exacerbate the severe confusion in the mind of such a user and would mislead a user into believing that the Respondent is in some way associated with or affiliated to the Complainant, or that the Respondent is acting with the consent or endorsement of the Complainant, which is not the case.
 - vi. In view of the above, it is submitted that the disputed domain name is identical with the Complainant's prior adopted, prior used and registered trade mark "MAHINDRA".

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any right or legitimate interest in <mahindra.in>.

The Complainant submits that:

- i. The Respondent has no proprietary or contractual rights in the Complainant's trademarks "MAHINDRA" in whole or in part. The Respondent could have no possible justification for registering the disputed domain name which comprises solely of the Complainant's trade mark "MAHINDRA". The Respondent is, therefore, using a domain name that prominently comprises of a term identical to the Complainant's well-known trademark "MAHINDRA", without the

- Complainant's consent or authorization and with no rights or legitimate interests with respect to the disputed domain name.
- ii. The Complainant is the registered proprietor of the trade mark "MAHINDRA" in India and several jurisdictions. As such, the trade mark "MAHINDRA" has become highly distinctive of the Complainant's goods and is well-known. The Complainant relies on the findings by the Panel in *Aditya Birla Management Corp v Chinmay INDRP 1197*, wherein the Panel relied upon *Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000-0003* which held that "Given the Complainant's numerous trademark registrations for, and its wide reputation in, the word <TELSTRA>, as evidenced by the facts established in paragraphs 4.2 to 4.5, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name. It is also not possible to conceive of a plausible situation in which the Respondent would have been unaware of this fact at the time of registration."
 - iii. Assuming without admitting that the Respondent would not have known of the Complainant's trademarks, a Google search would have revealed the Complainant's trade mark rights to the Respondent immediately. In this regard, reliance is placed upon *Nuplex Industries Limited v. Nuplex, WIPO Case No. D2007-0078*; *L'Oreal v. Domain Park Ltd., WIPO Case No. D2008-0072*; *BOUYGES v. Chengzhang Lu Ciagao, WIPO Case No. D2007-1325*.
 - iv. Furthermore, the Respondent is not commonly known by the disputed domain name nor does the Respondent engage in any business or commerce under the trademark and / or trade name "MAHINDRA". The Complainant has no relationship with the Respondent. Reference may also be made to the decision of the Hon'ble Tribunal in *The Toro Company v. Dick Egy, Case No. FA1404001553926*, wherein it was held that "if a Respondent is not commonly known by the disputed domain name, then the Respondent cannot have any legitimate rights or interests in the same". As such, the Respondent's rights and legitimate interests in the disputed domain name are highly questionable.
 - v. The Respondent's lack of rights and legitimate interest is further substantiated by the fact that the Respondent has not made any legitimate use of the disputed domain name since its registration in April 2014. There is no evidence whatsoever of the Respondent's use of, or demonstrable preparations to use, the disputed domain name, in connection with a bona fide offering of goods and/or services. To the contrary, the Respondent almost certainly registered the disputed domain name to divert Internet users to the Respondent's pay-per-click parking page. The Respondent's use of the disputed domain name for a

pay-per-click parking page does not constitute use of the disputed domain name in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(iii) of the Policy. The Complainant relies on the Panel's findings in *SGII, Inc. v. New Ventures Services, Corp.* (WIPO Case No. D2019-2748) wherein, it was held that "...The factual record does not suggest that Respondent is commonly known as the disputed domain name or any portion thereof. Moreover, Respondent's use of the disputed domain name in connection with a pay-per-click website as done here is not a legitimate or bona fide use.". Further the Respondent is not even making legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain as it is evidently misleading and diverting consumers.

- vi. The Complainant is the registered proprietor of the trade mark "MAHINDRA", in several jurisdictions. The Respondent is in no way related to the Complainant or its business activities nor has the Complainant entered into any agreement granting the Respondent any right, license or authorization to make use of its registered trade mark "MAHINDRA". The Complainant relies on the findings by the Panel in *F. HoffmannLa Roche AG v. WhoisGuard Protected, WhoisGuard, Inc. / Samantha Park* (WIPO Case No. D2018-2495) wherein, it was held that "...the Complainant makes it clear that it has given no license or authorization to the Respondent to use the KLONOPIN trademark, and that its use without the Complainant's authorization would violate the Complainant's rights in its KLONOPIN trademark...At the same time there is no evidence that the Respondent has any right or legitimate interest in the disputed domain name... the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name...". Accordingly, the third-party pay-per-click links leading directly to websites of third parties also engaged in the same industry, i.e., automobiles, violate the Complainant's rights in its registered trade mark "MAHINDRA". This further substantiates the Respondent has no rights or legitimate interest in the disputed domain name.
- vii. Given the distinctiveness of the Complainant's trademark and reputation, the Complainant contends that the Respondent has registered the Domain Name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name. Accordingly, the Respondent has no rights or legitimate interests in respect of the domain name.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the Domain Name has been registered and used in bad faith for the following reasons:

- (i) It is submitted that the Respondent has registered and is using the disputed domain name solely with an ulterior motive to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name and disrupt the legitimate business of the Complainant's business.
- (ii) The lack of any legitimate, good faith use suggests the Respondent's strong bad faith. The disputed domain name is registered and used by the Respondent after complete knowledge of the Complainant's well-known trademark "MAHINDRA" with an ill-motive to gain unfair advantage.
- (iii) The Respondent evidently has no intention of bona fide use of the disputed domain name and, instead, is seeking to make unfair and illegal commercial gain and cause immense losses to the Complainant. If the motive of the Respondent was bona fide, the Respondent could well have chosen a domain name that was not identical to Complainant's and/or in which Complainant had no rights. Hence, the Respondent is using the disputed domain name with mala fide intentions.
- (iv) The Complainant is extremely well-known and popular and there is virtually no possibility that the Respondent was unaware of its existence or presence in the market. It has been observed in Signify Holding B.V. v. Private Registration / Tomas Baran, Case No. D2019-3135, that "In any event it is well established that registration of a well-known trade mark as a domain name is itself likely to give rise to a finding of bad faith". Previously in Mari Clarie Album v. Marie-Claire Apparel Inc. D2003-0767, Veuve Clicquot Ponsardin, Maison Fondee en 1772 v. Herreveld, D2000-0776, Adidas-Salomon AG v. Domain Locations D2003- 0489, it has been held that registration of a well-known trademark of which the Respondent must reasonably have been aware is sufficient to amount to bad faith. Accordingly, by no stretch of imagination can it be conceived that the Respondent was unaware of the staggering presence of the Complainant and its rights in the well-known trademark "MAHINDRA". Moreover, as the Respondent is hosting links to purchase automobiles manufactured by the Complainant itself, is further evidence of its knowledge of the Complainant.
- (v) The Respondent has parked the disputed domain consisting of the Complainant's well-known trade mark "MAHINDRA" and such

dishonest use amounts to bad faith. Further, the disputed domain name is not only registered in bad faith but is also being used by the Respondent in bad faith, as it has never been used in relation to any active website but simply lists pay-per-click advertisement links. In this regard, reliance is placed upon *Overstock.com, Inc. v. Metro Media*, WIPO Case No. DME2009-0001 where the Panel held that “the Respondent’s use of the Domain Name is not “non-commercial or fair use” under paragraph 4(c)(iii) of the Policy, given that Respondent is seeking commercial gain from its use of the Domain Name by establishing a parked page with pay-per-click advertisements that compete with Complainant’s services. Therefore, the Domain Name is used for commercial purposes and paragraph 4(c)(iii) is not applicable.”. This was referred to by the Panel in *Sodexo v. Domain Privacy, Above.com Domain Privacy* Case No. D2021-0592. Moreover, the disputed domain name also indicates that the domain name is available for purchase. As such, the Respondent has no intention to use the disputed domain name and is unlawfully monetizing the Complainant’s goodwill and reputation by providing pay-per-click links on the disputed domain name. Such inactivity suggests a strong bad faith on the part of the Respondent. In support, the Complainant relies on the Panel’s decision in *Telstra Corporation Limited v. Nuclear Marshmallows*, (WIPO Case No. D2000-0003), the Panel held that, “...it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith.” In the present case as well, the disputed domain name is identical to the Complainant’s trademark registrations and Internet users are bound to be confused regarding the source of the disputed domain name and the pay-per-click links leading to third party websites, including listing goods of the Complainant, and its competitors in the same industry indicates the Respondent’s bad faith.

- (vi) It is not unlikely that the Respondent is receiving pay-per-click fee from the linked websites that are listed on the disputed domain name and are being used for its own commercial gain. The Complainant places reliance on *Ferring B.V. v. Domain Administrator, Fundacion Privacy Services LTD.* (Case No. D2021-0784), wherein it was observed that “As regards bad faith use, the Domain Name redirected at times to websites displaying links to third party websites, which suggests that, presumably, Respondent received PPC fees from the linked websites that were listed thereon. It has been recognized that such use of another’s trademark to generate revenue from Internet advertising can constitute registration and use

in bad faith.”. The use of the disputed domain name to host a parked page comprising pay-per-click links does not represent a bona fide offering. viii. Further, the date of registration of the disputed domain name, i.e., April 21, 2014, is significantly subsequent to the Complainant’s adoption and use of the trade mark “MAHINDRA” since 1945. The Complainant is extremely well-known and popular and there is virtually no possibility that the Respondent was unaware of its existence or presence in the market. It has been observed in Signify Holding B.V. v. Private Registration / Tomas Baran, WIPO Case No. D2019-3135, that “In any event it is well established that registration of a well-known trade mark as a domain name is itself likely to give rise to a finding of bad faith”. Previously in Mari Clarie Album v. Marie-Claire Apparel Inc. (D2003-0767), Adidas-Salomon AG v. Domain Locations (D2003-0489), it has been held that registration of a well-known trademark of which the Respondent must reasonably have been aware is sufficient to amount to bad faith. This is further substantiated by the fact that the Respondent itself is hosting pay-per-click advertisements on the disputed domain name leading to the websites selling the goods by third parties in the same industry, i.e., automobiles. As the Respondent was evidently aware of Complainant’s presence, popularity and stature, there can be no legitimate ground or reason for which the Respondent would register the well-known trademark of another company to attract Internet users to its website. Reliance is placed on Vorwerk International AG v. Host Master, Transure Enterprise Ltd Case No. D2022-4237, where the Panel held that “The Domain Name has also been used for competing pay-per-click links. Use for pay-per-click links indicates bad faith being disruptive of the Complainant’s business and diverting and confusing Internet users for commercial gain and can indicate actual knowledge of the Complainant and its business. In this case, the pay-per-click links include those relating to home electrical appliances making it more likely than not that the Respondent is aware of the Complainant and its rights, business, and products.”. In this regard, Section 2.9 of the WIPO Overview 3.0 notes that: “Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC [pay-per-click] links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users.”. It is accordingly submitted that by no stretch of imagination can it be conceived that the Respondent was unaware of the staggering

presence of the Complainant and its rights in the trademark "MAHINDRA".

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has neither responded to the Notice nor submitted his reply.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

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

A. Identical or Confusingly Similar

The disputed domain name <mahindra.in> was registered by the Respondent on Apr 21, 2014.

The Complainant is an owner of the registered trademark MAHINDRA for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <mahindra.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the

Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for MAHINDRA products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <mahindra.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

There is no evidence to suggest that the Respondent has been known by

the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not MAHINDRA as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark MAHINDRA or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <mahindra.in> under INDRP Policy, Para- 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the 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.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <mahindra.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 1st July, 2024