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 दस्तावेज प्रकार: डिजिटल कॅम्पेन
 दस्तावेजाचा प्रकार: आदेश का? होय/नाही.
 मिळविलेला न्याय: विवादाचा विभागीय न्याय
 मुद्रांक विभागाच्या नांव: शांतिदास ए. ए. ए. पुणे
 पत्ता: ४२५४२५४ पुणे
 दस्तावेजाचा क्रमांक: २०२२/२०२२ पुणे
 हस्ताक्षर: नरेश सुते - ६७७ विवादाचा न्याय
 मुद्रांक विभागाच्या नावाची सही: सौ. जयश्री विठ्ठल केसकर
 परवाना क्र. २२०१०११
 ४२५ ब, शानेवार पेठ पुणे-३



ज्या कारणासाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केल्यापासून ६ महिन्यात वापरणे बंधनकारक आहे.

FINAL AWARD

IN ARBITRATION IN INDRP CASE NO.1254

WWW.ANDROID.CO.IN

COMPLAINANT	Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America
V/s	

REGISTRANT / RESPONDENT	Jing Ren Wuchangqu Mingzhulu, Wuhan Hubei 430012. CN
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IN THE MATTER OF DISPUTED DOMAIN NAME: - `ANDROID.CO.IN`

ARBITRATION PANEL: - MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR

DELIVERED ON THIS THIRTEENTH DAY OF AUGUST TWO THOUSAND TWENTY AT PUNE, INDIA.

I] SUMMARISED INFORMATION ABOUT THE DISPUTE: -

SR. NO.	PARTY TO THE DISPUTE	NAME	ADDRESS
01	COMPLAINANT	Google LLC,	1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America
02	AUTHORISED REPRESENTATIVE OF THE COMPLAINANT	Shwetaree Majumder	Fidus Law Chambers F-12 Ground Floor Sector 8, NOIDA, 201301
03	RESPONDENT / REGISTRANT	Jing Ren	Wuchangqu Mingzhulu Wuhan Hubei 430012. CN
04	DOMAIN NAME REGISTRAR	Dynadot LLC	210 S Ellsworth Ave # 345 San Mateo CA 94401US

II] CALENDER OF MAJOR EVENTS:-

Sr. No.	Particulars	Date (All communications in electronic mode)
01	National Internet Exchange of India (NIXI), Ministry of Electronics and Information Technology, Government of India referred the case for Arbitration to me	27.07.2020
02	Acceptance was given by me to undertake arbitration proceedings	27.07.2020

03	PDF files of Complaint and Annexures were received from NIXI through internet	27.07.2020
04	Notice of Arbitration issued, with the period to file reply by the Respondent, if any, latest by 07.08.2020	28.07.2020
05	Respondent's reply received	06.08.2020
06	Complainant was asked to file rejoinder, if any, latest by 10.08.2020	06.08.2020
07	Since no re-joinder was filed by the Complainant, Notice of Closure of Arbitration was sent	12.08.2020
12	Award passed	13.08.2020

III] PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:

1. Disputed domain name is '**ANDROID.CO.IN**'.
2. Date of registration of disputed domain name by Respondent is 08.04.2018
3. Registrar is Dynadot LLC

IV] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

- 1) Arbitration proceedings were carried out as per *.In* Domain Name Dispute Resolution Policy (INDRP) read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 (including amendments thereto) and Code of Civil Procedure (India), wherever necessary.
- 2) The parties were requested to expedite their submissions so as to enable this panel to pass award within the prescribed time frame of 60 days.
- 3) Copies of all communications were marked to both the parties and NIXI.
- 4) No personal hearing was requested / granted / held.

V] BRIEF INFORMATION OF THE COMPLAINANT: -

The Complainant in these arbitration proceedings is Google LLC, a Delaware limited liability company from California, United States of America. According to the Complainant it has been engaged in the business of internet related services and products including advertising technologies, internet search, cloud computing and software and mobile and computer hardware. The Complainant is also responsible for the development of an open source

operating system for mobile devices under its trademark ANDROID which has become one of the most widely adopted operating system based on Linux kernel in the world. It is primarily designed for touchscreen portable devices such as smartphones, tablets and computers with specialized user interfaces for televisions, cars, and wearables.

In the year 2007 a consortium of technology companies including the Complainant, device manufacturers such as HTC, Sony, Samsung, wireless carriers such as Sprint, Nextel, T-Mobile and chipset makers such as Qualcomm and Texas Instruments, unveiled the mobile device platform built on the Linux Kernel under the trademark ANDROID. The first commercial version Android 1.0 was released in September 2008. As per IDC report, the operating system under ANDROID had 85% market share in 2018. The Complainant's goods / services under ANDROID are spread globally including the countries from Afghanistan to USA including India. The Complainant is also the owner of <https://www.android.com>.

VII] SUMMARY OF THE COMPLAINT: -

The Complaint is, inter-alia, based on the following points, issues, representations or claims in brief:-

(A) CONTRAVENTION OF THE REGISTERED TRADEMARKS AND DOMAIN NAMES OF THE COMPLAINANT (CONTRAVENTION OF POLICY PARA 4(i) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY) (INDRP) : -

- i. The disputed domain name www.android.co.in registered by the Respondent incorporates the Complainant's registered trademark ANDROID in its entirety and is identical to the Complainant's registered domain name www.android.com. (*Nike Inc. V/s Nike Innovative CV Zhaxia – Case No. INDRP/804 and other cases.*)
- ii. The Complainant has used the trademark ANDROID well prior to 8th April, 2018 on which date the Respondent has registered the disputed domain name.

(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME (PARA 4(ii) OF INDRP): -

- i. The Respondent is not a part of or is related to the Complainant. The Complainant has never assigned, granted, licensed sold or transferred or in any way authorized the Respondent to use its ANDROID trademark.

- ii. The Respondent is not commonly known by the disputed domain name.
- iii. The disputed domain name is merely parked since its registration and is not being used for a bonafide commercial purpose. The domain is currently up for sale through a third party escrow.com which establishes malafides of the Respondent. (***Plug & Play, LLC Vs Matt Morris – D2018-2385***)
- iv. The Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If he fails to do so, a Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. (***Croatia Airlines d.d. v/s Modern Empire Internet Ltd. WIPO –D2003-0455***)

(C) REGISTRATION AND USE IN BAD FAITH (PARA 4(iii)) OF INDRP: -

- i. The Respondent has merely registered disputed domain name and warehoused it without any bona fide use of the same. In view of distinctiveness and reputation of the Complainant and its registered trademark, it can be concluded that the Respondent has registered disputed domain name in bad faith. Non-use and passive of holding of a domain are evidence of bad faith registration. (***HSBC Holdings PLC V/s Hooman Esmail Zadeh – INDRP-32***).
- ii. The home page of disputed domain contains on its home page an offer to sell the domain name by stating **“Buy Android.co.in for USD 19500”**. This confirms that the Respondent has clear intentions of making profit by selling disputed domain name at a cost much in excess of its actual registration expenses. This is an evidence of bad faith registration of disputed domain name. (***Rolls-Royce Motor Cars Ltd. V/s Amy Hill***).
- iii. Due to name and fame ANDROID trademark has acquired globally, it is extremely unlikely that the Respondent created the disputed domain name independently without any knowledge of the Complainant's trademark.
- iv. The Respondent has registered the disputed domain name for commercial gain by creating a likelihood of confusion among internet users with the Complainant's services under the registered trademark.

(D) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the above background of the Complaint and reasons described therein the Complainant has requested for transfer of disputed domain to the Complainant. The Complainant has also requested for grant of costs of the present proceedings to the Complainant.

VII] RESPONDENT'S DEFENSE: -

The Respondent filed his say / reply which mainly contain pleas as follows: -

1. Android is a generic term.
2. He did not check on trademarks and is not aware of it.
3. He never tried to sell the domain name.
4. He is willing to transfer to the Complainant for free if the Complainant agrees to cancel arbitration.

VIII] REJOINDERS OF THE PARTIES: -

Upon filing of reply / say by the Respondent / Registrant, rejoinder from the Complainant was called for.

IX] EVIDENCE RELIED UPON: -

This panel has, *inter-alia*, placed reliance upon the following evidences / details thereof, submitted by the Complainant: -

1. Copies of trademarks registered in India and in other countries in the name of the Complainant
2. *whois* details

X] DISCUSSION: -

Based on the complaint and the Respondent's say, this panel makes following observations: -

1. The Complainant has registered trademarks containing the term ANDROID in several countries like Japan, USA, Canada. In India it has registered trademarks with the term ANDROID under registration number 2228007 dated 03.08.2016, No. 2226770 dated 02.08.2016, No. 1753446 dated 12.11.2008.

As against this, the Respondent has not claimed having any trademark / service mark with the term 'ANDROID'. The above facts establish that the Complainant has rights, legitimate interests in respect of the disputed domain name.

2. Undoubtedly the ANDROID is a well established and reputed brand all over the world and it is impossible to assume that the Respondent was not aware of the same.
3. The Complainant has not authorized / licensed / permitted the Respondent in any way to use ANDROID term / brand at any point of time. In other words the Respondent has illegitimately and illegally registered the disputed domain name, without having any right, interest or permission to do so. By this act the Respondent has infringed rights and interests of the Complainant vested in the disputed domain name.
4. Submission of the Respondent that he was unaware of registered trademarks of the Complainant is not acceptable and cannot be considered as reliable. Moreover according to the INDRP Rules the Respondent is duty bound to check, before registering domain name, about any third party rights, interests or privileges that may be violated / infringed by the proposed registration. The Respondent has willfully neglected / failed in taking these precautionary measures before registration of disputed domain name.
5. The Complainant affirmed that he has neither authorized / licensed to the Respondent to use the word 'ANDROID' in any manner or the Respondent has claimed such authority having issued by the Complainant in his say.
6. The Respondent is Jing Ren who is not known by the word ANDROID or any resembling word to it. There is no submission by the Respondent on this issue.
7. The Respondent is not making bona fide use of disputed domain name for non-commercial or charitable purposes. Contrarily, the Respondent is attempting to sell it @19500USD which is very much in excess than the actual registration expenses. This makes it very clear that the Respondent has registered disputed domain name purely for making profit which is bad in itself and not permissible as per INDRP 4(iii).
8. The offer for sale of disputed domain name on the home page not only goes against the submission of the Respondent that he never attempted to sell disputed domain name, but also proves his untruthfulness. The

Respondent is habitual cyber squatter and has been involved in many prior similar cases, where he has put up such false defenses in the past.

9. The Respondent's condition that he would transfer disputed domain name for free to the Complainant, '*if the Complainant agrees to cancel arbitration.*' At the time of registration of any domain name with TLD *.in*, the registrant agrees to submit any dispute to arbitration and this is binding upon him as well as any other party having any right, interest or privilege in the disputed domain name. This condition and behavior of the Respondent reveals his criminal intention of getting out of legal process when he cannot defend his case.

XII FINDINGS: -

On the basis of above discussion this panel finds that: -

1. The Respondent's domain name is identical or confusingly similar to trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name;
3. The Respondent's domain name has been registered in bad faith.
4. The circumstances indicate that the Respondent has registered or acquired the domain name primarily for the purpose of selling, or otherwise transferring to the Complainant, who 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.

XII] AWARD: -

On the basis of above findings on issues, foregoing discussion, and findings and as per the remedies requested by the Complainant, this panel passes the following award: -

- a. **The disputed domain name `ANDROID.CO.IN' shall be transferred to the Complainant.**
- b. **The Respondent shall pay to the Complainant expenses of these arbitration proceedings.**

Date: - 13.08.2020

Place: - Pune, India



**(S.C.INAMDAR)
SOLE ARBITRATOR
NATIONAL INTERNET
EXCHANGE OF INDIA**